

## **Brij Kishore Lal vs Satnarain Lal And Ors. on 5 January, 1954**

**Equivalent citations: AIR1954ALL599, AIR 1954 ALLAHABAD 599**

### **JUDGMENT**

Randhir Singh, J.

1. This is a plaintiff's second appeal against the judgment and decree of the Additional Civil Judge of Sultanpur dismissing the suit which had been decreed by the trial court.

2. The facts of the case are simple. Sat Narain Lal respondent No. 1 brought a suit in the year 1941 for the partition of some tenancy holding and groves standing thereon, against the appellant and some others who are respondents in this case. He claimed a half share in the land and grove. The plaintiff was a minor and is said to have been represented by his elder brother Newal Kishore as guardian in that suit. The suit was contested and was ultimately decreed. The unsuccessful party went in appeal and the decree passed by the trial Court was affirmed in appeal. On 23rd March, 1946, the appellant instituted the suit, which has given rise to this appeal, for a declaration that the decree passed in the earlier suit instituted by Sat Narain Lal against him was not binding on him and that it was null and void against him on the ground that he was a minor all along during the pendency of the suit and that there was no properly constituted guardian and further that Newal Kishore, who is said to have acted as guardian acted negligently and did not look to the interest of the minor.

The suit was contested by Sat Narain Lal and it was contended on his behalf that the plaintiff appellant had been duly represented by his elder brother Newal Kishore who was appointed guardian and that the guardian did not act negligently. It was also contended that no prejudice had been caused to the plaintiff appellant and that he was not entitled to the declaration asked for. The learned Munsif who tried the case came to the conclusion that there was no proper appointment of a guardian of the plaintiff who was a minor and that the guardian did not contest the suit properly. The defendant Sat Narain Lal then went in appeal and the learned Additional Civil Judge who heard the appeal reversed the finding of the trial Court and dismissed the suit. The plaintiff has now come up in second appeal.

3. The first point which has been pressed on behalf of the appellant is that there was no proper appointment of a guardian of the plaintiff who was a minor at the time when the suit was instituted as also during the pendency of the suit. The original record of the suit instituted by Sat Narain Lal was, it appears, summoned by the trial Court and the trial Court has observed that there was no proper appointment of a guardian. There is, however, on the record of the present suit copies of the vakalatnama and the written statement filed by Newal Kishore on his own behalf and as guardian of his minor brother Brij Kishore Lal. A perusal of the copy of the vakalatnama shows that Newal Kishore appointed a vakil, along with the other defendants of that suit and in the body of

vakalatnama it was mentioned that Newal Kishore made the appointment on his own behalf and as guardian of his minor brother Brij Kishore.

In the signatures which are made on this vakalatnama, however, it is not mentioned that he signed the vakalatnama on behalf of his own self and as guardian of the minor. If it is definitely mentioned in the vakalatnama that the appointment was being made by Newal Kishore on his own behalf and on behalf of the minor, it was not necessary for him to describe himself as guardian also in the signatures which he affixed to this vakalatnama. The appointment of a counsel by Newal Kishore would, therefore, be deemed to have been made on his own behalf and on behalf of the minor. The written statement was also filed on behalf of the minor as is mentioned at the bottom of it, but it appears that Newal Kishore did not affix his signatures.

4. It has been held in a number of reported cases that if some formalities for the appointment of a guardian have not been observed, but if the guardian has agreed to act as guardian and has done something in the suit to show that he accepted his appointment as a guardian, the mere fact that some formalities were overlooked or not observed, or there was no formal order of appointment, would not vitiate the proceedings or would not affect the result of the suit, provided there has, been no prejudice to the minor.

5. It appears from the copy of the plaint filed by Sat Narain Lal as also from the other documentary evidence produced in this case that besides Newal Kishore and Brij Kishore, the grandfather of Brij Kishore and other members of the family were also arrayed as defendants in the suit instituted by Sat Narain Lal. Ganga Lal the grand-father of Brij Kishore was the patwari of the village where the property was situate, for a number of years and he did actually contest the suit. Not only that the suit was hotly contested but Newal Kishore and Ganga Lal and some others went in appeal against the judgment of the trial Court in the suit instituted by Sat Narain Lal." All this clearly shows that Newal Kishore took steps not only to safeguard his own interest but also the interest of the plaintiff which were identical.

It is also evident that the defence of Ganga Lal, Newal Kishore, Brij Kishore as also of other members of the family was- common and there was nothing specially to be pleaded on behalf of Brij Kishore Lal. It is difficult, therefore, to believe that the plaintiff Brij Kishore Lal was in any manner prejudiced by the non-observance of the due formalities for the appointment of a guardian. The learned Civil Judge has in a very exhaustive judgment dealt with all the points reiterated on behalf of the appellant before me and has come to a finding that no prejudice had been caused to the appellant and that he had in fact no good defence to put up in the suit instituted by Sat Narain Lal.

6. The learned counsel for the appellant has relied on certain rulings in support of the contention that if a minor is not properly represented by a guardian the decree would be void 'ab initio'. In -- 'Dwarka Halwai v. Sitla Prasad', AIR 1940 All 256 (A), a vakil was appointed guardian of a minor, but the vakil did not enter appearance nor did he contest the suit. It was held that there was no proper representation and the decree was not binding. In -- 'Shah Udey Bam v. Kanchan Singh', 1941 R. D. (All) 658 (B), there was no formal appointment of a guardian and nobody appeared for the minor at all. It was held that the procedure was wholly irregular and the decree was not binding

on the minor.

In -- 'Mt. Chambi v. Tara Chand', AIR 1924 All 892 (C), there was no appointment of a guardian of a minor & the minor was, it appears, impleaded as a major. It was held that the decree passed against the minor was not binding on him. In -- 'Mahbub Husain Shah v. Anjuman Imdad Qarza', AIR 1942 Lah 129 (D), the matter was referred to an arbitrator and there were some minors who were defendants. No appointment of a guardian of these minors had been made and the arbitrator stated that the brother of the minor neither agreed nor was asked to act as their guardian 'ad litem' for the purposes of the award and it was held that the award was not binding on the minors.

7. It would thus appear that in all the reported cases mentioned above there was either no formal appointment of a guardian or, even if there was one the guardian did not enter appearance on behalf of the minor nor did he contest the suit. In the present case, however, it is in evidence that though Newal Kishore was not formally appointed a guardian of the minor, he accepted the guardianship and entered appearance as the guardian of the minor. He filed a vakalatnama as also a written statement. He also went in appeal against the decree passed by the trial Court against the minor. The guardian did not, therefore, act negligently and did put up a proper defence.

There is one other circumstance in this case and it is that there were other members of the family, including the own elder brother of the minor, Brij Kishore Lal parties to the suit. Ganga Lal the grand-father of the minor was also a party and the defence was common to all. The case was hotly contested both in the trial Court as also in appeal. There can, therefore, be no question of any prejudice to the interest of the minor and it would be difficult to say that the minor was not properly represented. I, therefore, agree with the view taken by the lower appellate Court that the appellant was properly represented and that the decree passed in the suit instituted by Sat Narain Lal could not be held to be not binding upon the plaintiff.

8. The other point as to whether Brij Kishore Lal was or was not a minor on the date of the suit, or during the pendency of the suit, does not arise as it is not now disputed that Brij Kishore Lal was a minor during the pendency of the suit instituted by Sat Narain Lal.

9. No other point has been pressed in arguments.

10. As a result the appeal fails and is dismissed with costs to the respondent No. 1.