# Custodian Of Evacuee Property, U.P., ... vs Hamiduddin And Ors. on 3 August, 1954

## Equivalent citations: AIR1955ALL417, AIR 1955 ALLAHABAD 417

## Author: Raghubar Dayal

## Bench: Raghubar Dayal

JUDGMENT

Raghubar Dayal, J.

1. Shrimati Saira Bibi was appointed guardian of person and property of Rahim Elahi minor, son of Baksh Elahi, and his sisters on 4-7-1929, by the District Judge of Mainpuri. She appointed Haji Nurul Hasan manager of the property. He was required to furnish accounts to her husband Rafi Uddin. Rafi Uddin executed a surety bond in pursuance of the orders of the court, Saira Bibi remained in possession of the property till her death in November 1932. She filed no accounts in the court of the District Judge, Mainpuri. Rahim Elahi attained majority on 27-5-1942. He instituted the present suit on 26-5-1945, against the four sons of Saira Bibi, defendants Nos. 1 to 4, against Nurul Hasan, defendant No. 6 and against Shrimati Allah Rakkhi, his own sister, defendant No. 5.

The reliefs were claimed against defendants 1 to 4 only and the main relief was that a correct and formal account in respect of the income of the property and the income from the business of the plaintiff for the period from 21-7-1928, upto 14-11-1932, during which Saira Bibi was the guardian and manager of the plaintiff and defendant No. 5 be taken from defendants Nos. 1 to 4, sons and representatives of Saira Bibi de-ceased, and that any amount which might have remained as unrealised on account of the carelessness and negligence of Saira Bibi be charged against defendants Nos. 1 to 4. It was prayed that a decree for a sum of Rs. 6,500 or any, amount which might be found with reference to the correct account to the extent of the plaintiff's share of the income together with interest at the usual rate be passed in favour of the plaintiff.

Of the various grounds on which the suit was contested by defendants 1 to 3, the most important was that they could not be held liable to render accounts for the period their another had been the certificated guardian of the plaintiff minor. The learned Civil Judge agreed with this contention for the defendants and dismissed the plaintiff's suit. The plaintiff has filed the present appeal.

2. We may say at the outset that though the plaintiff alleged in the plaint that, the income from the minor's property was about Rs. 400 a month and the expenditure was about Rs. 100 a month and that, therefore, the guardian had saved about Rs. 300 a month no evidence was led to substantiate these allegations. The defendants were not called upon to produce accounts for the purpose of

providing evidence in support of the plaintiff's contention about definite income and expenditure relating to the minor's property. The court could not have, therefore, found even if it was possible for it under the law, as to what amount due to the minors remained with their guardian and passed on to the defendants after the guardian's death. No decree could, therefore, have been passed for any such amount in these circumstances.

3. The view of the court below that the representatives of a guardian cannot be sued for rendition of accounts is based on the case reported in -- 'Manmothonath Bose Mullick v. Basanto Kumar', 22 All 332 (A). That case followed the earlier case reported in -- 'Rameshur Tewari v. Kishun Kumar', 1882 All WN 6 (B) which held that the Judge had no power to require the heirs of Bhugwan Das to render an account for all moneys received and disbursed by him in the capacity of guardian, the provisions being personal to the guardian himself. It was considered that from the provisions of Section 41, Guardians and Wards Act, Act No. VIII of 1890.

It should be Inferred that the view expressed in the Allahabad case of 1882 had been considered correct by the Legislature.

4. The Allahabad case reported in 22 All 332 (A), has been differed from in several cases decided by the other High Courts. We have considered those cases and are of opinion that there is nothing in those cases which should lead us to consider the view taken in the Allahabad case to be wrong. The earliest case is reported in -- 'Maharaj Bahadur Singh v. Basanta Kumar Roy', 18 Ind Cas 876 (Cal.) (C). The facts of that case were very much different. The learned Judges stated that the District Judge was in error in holding that no suit lay against the heirs of Khettra Nath Ray and appeared to have considered himself bound by the decision of the Allahabad High Court in that case. They went on to observe:

> "The distinction is a somewhat fine one between a suit against representatives for the rendition of accounts, and a suit against them to recover what may be found due from the estate of the deceased on taking an account. With all respect to the learned Judges who decided that case, we have doubts as to its correctness. Sections 19 and 20 of Act XL of 1858 and Sections 36 and 37 of Act VIII of 1890 appear to us to indicate that such a suit would lie. In this case, however, the circumstances are entirely different."

The Allahabad case did not hold that the representatives of a deceased guardian could not be sued for such amounts which be found due from the estate of the deceased on taking an account. It simply held that the representatives of a deceased guardian could not be sued for the rendition of accounts. When the representatives are sued for the recovery of the amount alleged to be due from the estate of the deceased, guardian on account of his dealing with the minor's property, it is for the plaintiff to establish what had been realised and spent by the guardian and what was due to him. The representatives are not bound to explain the entries of the accounts which be before the court.

5. Sections 36 and 37 of the Guardians and Wards Act (Act No. VIII of 1890) do not provide for the institution of a suit for rendition of accounts against the representatives of a deceased guardian on

the minor's attaining majority. Section 36 contemplates of suits instituted against a guardian during the continuance of the minority by any person as next friend with the leave of the court and in case of his death against his representative for an account of what the guardian had received in respect of the property of the ward. It, therefore, does not allow a suit against the representatives of a deceased guardian after the minor had attained majority.

Section 37 of the Act provides that nothing in Sections 35 and 36 of the Act shall be construed to deprive a ward or his representative of any remedy against his guardian, or the representative of the guardian, which not being expressly pro-

vided in either of those sections, any other beneficiary or his representative would have against his trustee or the representative of the trustee.

This simply means that ward or his representative can sue the guardian or his representative to establish rights which any beneficiary could claim against his trustee or the representative of the trustee. It is not mentioned in the Calcutta case that a beneficiary can sue the representative of a deceased trustee for rendition of accounts.

The later cases reported in -- 'Amiya Krishna v. Debendra Lal', 46 Cal WN 865 (D) and -- 'Srish Chandra v. Supravat Chandra', AIR 1940 Cal 337 (E) expressed the view that such a suit cannot be instituted against the representatives of a deceased trustee. It follows, therefore, that the provisions of Sections 36 and 37 of Act VIII of 1890 referred to in the Calcutta case do not support the view that the representatives of a deceased guardian can be sued for rendition of accounts and that the decision in 22 All 332 (A) was wrong.

6. In 18 Ind Cas 876 (Cal) (C) the facts, as already mentioned, were different. The suit was really instituted not against the representatives of a deceased guardian taut against the guardian himself who had continued to act as the manager of the minor's property after the, minor had attained majority. The suit had been decreed against him but had to be reopened on account of a co-defendant coming in under Section 108, Civil Procedure Code of 1882. The guardian died during the pendency of the suit and his legal representatives were brought on the record. It was held that the suit could proceed against them.

7. The next case is reported in -- 'Muhammad Jamil v. Mt. Mehran Bibi', AIR 1918 Lah 119 (P). It was a suit to recover a sum of Rs. 200 or whatever sum might be ascertained to be due after going through the accounts of the defendants who were the widow and minor daughter of the deceased guardian. The suit was maintainable. The case reported in 22 All 332 (A), did not bar it. Reference was made to the case reported in 18 Ind Cas 876 (Cal) (C) and to the alleged overlooking by this Court in 22 All 332 (A), of the provisions of Sections 36 and 37 of Act 8 of 1890. It was held that Section 41(3) of the Guardians and Wards Act did not bar a minor from instituting a suit against the representatives of the deceased guardian especially when that right was considered to have been preserved by sections preceding Section 41, Guardians and Wards Act. We have already shown that Sections 36 and 37 of the Act do not allow such a suit to be instituted.

Reference is also made to -- 'Seth Chand Mal v. Kalian Mar, 1886 Pun Re 96 (G) in which it was held that a principal can sue the son of an agent for account when the agent dies without rendering accounts. This view has not been uniformly followed by other Courts.

8. In -- 'Kumeda Charan v. Asutosh Chatterjee', 16 Cal LJ 282 (H) a suit for rendition of accounts against the legal representative of an agent was held not maintainable. In -- 'Jhapa-jannessa Bibi v. Rash Behari', 16 Cal LJ 288 (I) such a suit was held good in view of the decision in -- 'Sib Chundra v. Chundra Narain', 1 Cal LJ 232 (J) that a suit for money found due from an agent on an account being taken and a suit for rendering an account cannot be distinguished. The case reported in 1 Cal LJ 232 (J) related to a suit against an agent and not against an agent's legal representative.

8a. In--'Purshottam Vasudeo v. Ramkrishna Govind', AIR 1945 Bom 21 (K) it was held that the legal representative of a deceased agent can be sued for an account but not for rendition of accounts and that in such a suit for account the burden of proof primarily lies upon the plaintiff and it is for the Court to take an account on such materials as are laid before it by the parties and determine what amount, if any was due to the plaintiff from his deceased agent.

9. The next case is reported in -- 'Narayan Balaji Nagarkar v. Kashibai Keshav', AIR 1920 Bom 166 (L). It is very much similar to the Calcutta case reported in 18 Ind Cas 876 (Cal.) (C). There also the suit had been instituted against a guardian who died during the pendency of the suit. His legal representatives were then brought on the record. No reasons are given for the view that there seemed no sound reason why the representatives of a deceased guardian should not be liable to account except that this view was in consonance with the opinion of the Calcutta High Court in 18 Ind Cas 876 (Cal) (C), with which we have already dealt.

10. The next case on the point is reported in -- 'Allah Dad Khan v. Mohammad Habib Ullah Khan', AIR 1934 Lah 410 (M). In this case also it is expressed that the Allahabad High Court had overlooked Sections 36 and 37 of the Guardians and Wards Act in the case reported in 22 All 332 (A) and reliance was placed on an earlier case of the Lahore High Court referred to in the judgment as -- 'Mohar Singh v. Daulat Ram', AIR 1928 Lah 534 (1) (N). The reference seems to be wrong because this case is on a different point altogether.

11. The last case is -- 'Mirabai v. Kaushalyabai', AIR 1949 Nag 235 (O). The facts of this case are that on the death of Moti Ram, the guardian of the property of the minors, the maternal grandfather of the minors was appoint-ed guardian and he complained to the District Court that Mira Bai, the widow of the deceased fardian and in possession of the estate, had not livered to him the possession of cash, ornaments and clothes belonging to the minors and (sic)ayed that she be ordered to hand them over to him. The District Court directed Mirabai to hand over the keys of the safes to, the guardian of the minors and asked her to prepare a list of the contents of the safes in the presence of responsible persons and to pay over, any sums which e found due from her husband to the minors (sic) an examination of the account books. The guardian of the minors was directed to state whether he claimed any additional sum. The guardian stated subsequently that he claimed in all Rs. 7,700 and filed a statement in support thereof Mirabai was asked to file a reply. She admitted that she had Rs. 3,000/- with her. She was directed to deposit that amount in court and also to check up the

ornaments belonging to the minors. Mirabai did not comply with the directions and was ordered to produce the cash in court. She did not comply with the order. No action was taken afterwards.

12. Sometime in 1931, the then guardian of the minors applied to the District Court that certain sums were due to the minors from the previous guardian Moti Ram and that steps be taken to recover the amount from Mirabai. Ultimately the minor on attaining majority had to file a suit on 12-6-1939, to recover the alleged amount of Rs. 7,756 and odd from Mirabai as the sum for which her husband was liable as he had taken it during her minority and had not repaid it. It will be noticed that this suit was for a definite sum which was alleged to be due, presumably on the basis of the accounts which had been got in court in proceedings before the guardianship court. The view expressed in 22 All 332 (A) did not find favour with the Nagpur High Court as in their opinion Section 41(3) of the Guardians and Wards Act did not exclude a suit for accounts against the representatives of the deceased guardian. Reference was made to the cases already considered by us above and then it was held:

> "Naturally the same considerations will not apply in toto to the legal representatives as would have applied in the case of the guardian.
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> They would not necessarily be in a position to know all the facts, and that would have to be taken into consideration; also their liability would be limited, as in the case of other legal representatives, to the extent of the assets of the deceased in their hands. But, except for that the suit would lie in the ordinary way."

13. Further, reference was made to the Privy Council case reported in -- 'Gopal Chetty v. Vijayaraghavachariar', AIR 1922 PC 115 (P) in support of the view that the suit would have to be for accounts and not for the recovery of the specific debt or debts. This view is not expressed in the Privy Council case, which dealt with the question of a partner's right to claim a share in a specific item of property realised by another partner when the partner had not sued for accounting or when the partner's suit for accounting would have been time-barred as that item itself would have been one of the items for consideration in accounting if that was possible.

The effect of the Allahabad case is not that the minor on attaining majority had to sue the legal representatives for the recovery of specific items but is that the minor cannot call upon the representatives of a deceased guardian to render account, though he can sue them for the recovery of such amounts as the minor alleges to have been due to him from the estate of the deceased guardian on account of his proving the income and expenditure which the guardian did realise and disburse. Such a claim by the minor on attaining majority will not be for the recovery of any specific item realised by the guardian but would be really for the recovery of such amount which on the basis of accounts as proved by the plaintiff the guardian must have had in his hands on behalf of the minor and which the minor can recover from the representatives of the deceased guardian.

14. In view of the above we are of opinion that there is nothing in these cases which should incline us to the view that the case reported in 22 All 332 (A), did not lay down correct law.

15. It follows, therefore, that the appellant's suit had been rightly dismissed by the court be low. We, therefore, dismiss the appeal with costs.