

Ram Shankar vs Mst. Shyama And Ors. on 5 January, 1954

Equivalent citations: AIR1954ALL690, AIR 1954 ALLAHABAD 690

ORDER

Randhir Singh, J.

1. This is an application in revision against an order passed by the learned Civil Judge, Unnao in certain proceedings under the Guardians and Wards Act. It appears that one Chandika died leaving two minor girls. The police came to the village and entrusted some property of the minors to one Ram Shankar, applicant. This property included a sum of Rs. 500/-. After the property had been made over to Ram Shankar, applications were made by various persons including Smt. Shyama for appointment of a guardian of the minors. Ram Shankar, applicant was also one of those who claimed to be a guardian of the minors. He also made an application for his own appointment as a guardian of the minors. In the application which he made, he definitely mentioned that the minors and their property were in his care. The court, however, ultimately appointed Smt. Shyama as the guardian of the minors. After the appointment had been made, Smt. Shyama made an application to the court praying that Ram Shankar, who was in possession of the property of the minors may be ordered to make over the property to her. The property which was in the possession of Ram Shankar, included Rs. 500/- in cash, a pair of bullocks and a horse. Ram Shankar contested the application made by Smt. Shyama for the delivery of the property on the grounds that he was in possession of Rs. 270/- only which had been accounted for and that the bullocks and the horse were no longer in his possession. The court made no order for the delivery of the horse and bullocks as they were not in the possession of Ram Shankar and directed Smt. Shyama to file a separate suit for the recovery of that property. It, however came to the conclusion that Ram Shankar had in his possession Rs. 500/- belonging to the minors out of which he had accounted for Rs. 270/- only and Rs. 230/- remained due by him to the minors and directed this amount to be paid by him to Smt. Shyama. It is against this order that the applicant has come up in revision.

2. The only point which has been urged on behalf of the applicant is that the learned Civil Judge had no jurisdiction under Section 41 (3) of the Guardians and Wards Act to direct the applicant to pay Rs. 230/- to Smt. Shyama as Ram Shankar was not a duly appointed guardian of the minors. Section 41 (3) of the Guardians and Wards Act reads as follows:

"When for any cause the powers of the guardian. cease, the Court may require him, or if he is dead, his representative, to deliver, as it directs, any property in his possession or control belonging to the wards or any accounts in his possession or control relating to any past or present property of the ward".

A perusal of the section quoted above clearly Shows that it is open to the court to require a person, whose powers as a guardian cease to deliver any property in his possession belonging to the minors.

The word 'guardian' has been defined to Section 4(2) of the Act. "Guardian" means a person having the care of the person of a minor or at his property, or of both his person and property. The question as to whether the word 'guardian' as defined in Section 4(2) refers only to guardians under the Guardians and Wards Act or to other persons also who have the care of the person or property of a minor has come up for decision in several cases and it has been held that the word 'guardian' has a very wide meaning and includes all persons who have the care of the person of the minor or the care of the property of the minor vide -- 'Mt. Siddiq-uh-Nissa Bibi v. Nizamuddin Khan', AIR 1932 All 215 (A); --'Deputy Commr. Gonda v. Mohammad Shikoh', AIR 1934 Oudh 392 (B).

In the latter case it was held that the word 'guardian' used in Section 41 of the Guardians and Wards Act does not refer merely to a guardian appointed or declared by the court but also to other guardians. The fact that whenever it was intended that the word "guardian" should refer to a guardian appointed by the court, the words 'appointed by the court' have been mentioned in the relevant section of the Act leads to the conclusion that the word 'guardian' does not refer only to a guardian appointed by the court.

In -- 'Sithabai v. Radha Bai', AIR 1919 Mad 189 (C), a point very similar to the one, which arises in this case before me, came up for decision and it was held that it was open to the court to make an order under Section 41(3) against a person who was a de facto guardian but not a duly appointed guardian by the court. It would thus appear that the court has a right to pass an order against a de facto guardian also under the provisions of Section 41(3) of the Guardians and Wards Act and the application of the section is not limited to guardians appointed by the court. The learned Civil Judge was, therefore, perfectly within his rights to make the order which has been challenged in this application for revision. I see no reason to interfere with the order passed by the learned Civil Judge.

3. The application in revision is dismissed with costs.