

Gajraj Singh vs Mt. Deohlu on 4 April, 1950

Equivalent citations: AIR1952ALL331, AIR 1952 ALLAHABAD 331

JUDGMENT

Seth, J.

1. This is an appeal from an order of the District Judge of Allahabad, which, on account of its brevity, may appropriately be reproduced in extenso in this judgment. It runs thus:

"It is impossible to consider the applicant a fit guardian of the person of the minor as there is admittedly no woman living in his house and the youngest minor is only four years told and the female minor is aged 14. Application rejected."

2. This order is so sketchy that it is not possible for me to regard it otherwise than unsatisfactory. It may be possible to gather from its perusal that it is an order intended to dispose of an application under Section 10, Guardians and Wards Act, but many relevant facts have been completely omitted from it. The learned District Judge has not chosen to mention even those facts which are required by the statute to be mentioned in an application for guardianship and which have to be taken into consideration by an appellate Court as well as by the Court of first instance while dealing with such an application.

3. The order does, not mention how the applicant, who is the appellant in this appeal, is related with the minors and what other relatives the minors have. It does not state with whom and under what condition the minors are living, by whom they are being supported and why the applicant desires to be appointed their guardian;

nor does it state whether the application was opposed and if it was opposed, by whom and on what ground.

4. I would have readily overlooked this objectionable feature of the order had I not thought it necessary, in the interests of the administration of justice, to advert to it for two reasons to be presently stated.

6. Firstly, the order under appeal is an order passed by a senior District Judge, who is expected to set an example to his subordinates and to be a model to them. If a District Judge him-self writes such sketchy judgments and orders, it is obvious that the standard of judgments and orders written by his subordinates is bound to deteriorate.

6. Secondly, I have noticed these days, with much regret, a general tendency in many judicial officers to write sketchy orders which are not self-contained and which cannot be appreciated by the

appellate or the revisional Court, without an examination of the record. I have noticed in several cases an order disposing of an application without mentioning even, what the application was and simply referring to it by its paper number.

7. I desire it to be understood by the subordinate Courts that such orders are looked upon with disfavour by this Court, as they cause great inconvenience to it and lead too much of its time being wasted. They also leave it in doubt whether all the relevant matters, including the contentions put forward by the parties, were judicially considered before the order was passed. In this very case the time which I had to spend needlessly in examining the record would have been saved if the learned District Judge had been good enough to add two or three more paragraphs, to his order. It is obvious that the relevant facts being fresh in his mind when he wrote his order, he could have done that in much less time than was taken here in the examination of the record.

8. The applicant in this case claims to be the uncle of the three minors whose guardianship he seeks. Two of the minors are boys and the third is a girl. The boys were ten years and four years old respectively and the girl was fourteen years old on the date of the application. Ever since the death of their father, which sad event took place three years before the application, the minors had been living with, and were being supported by, their mother, Deohuti alias Deoki. The applicant and his brother, the father of the minors, had resided in different villages, situated about twenty-five miles away from each other. They had been so dissociated from each other that for nearly three years after the death of his brother, the applicant did not become aware of that event. According to his own statement, the applicant became aware of his brother's death only a few months before the application. The application did not mention any other near relative of the minors except their mother and the applicant. The reason why the applicant desired to be appointed a guardian of the minors was that the mother of the minors is living with one, Dubre who is a Brahmin and belongs to a different caste, the minors being Chhantris, that minors are not being properly looked after, that the girl is grown up and is of marriageable age but her mother does not care to marry her and is making her work as a menial servant and that the mother of the girl is on a look out to sell her to somebody.

9. The application was opposed by the mother of the minors who entered appearance through a lawyer but who did not file any reply, nor did she produce any evidence. The applicant examined himself and produce no other evidence. It transpired from his statement that no female was living with the applicant. As would be evident from his order quoted above, the learned District Judge refused to appoint the applicant a guardian of the minors because in his opinion it was not for the welfare of the minors to keep them in his custody when there was no female in his house and when one of the minors was four years old and the other was a girl aged fourteen years.

10. Having carefully considered the submissions made by the learned counsel for the appellant and the facts and circumstances of the case, I am of the opinion that the order of the learned District Judge is a proper order and should be maintained.

11. It seems to me that although the applicant is an uncle of the minors, he is no better than a stranger. According to his own statement, the applicant and his brother had been living away from

each other. The applicant does not state that there was any affection between the two brothers and that they had been visiting each other. I am unable to believe the applicant when he states that for nearly three years after the death of his brother he did not become aware of it although he was living only about twenty-five miles away. This leads me to suppose that this application has been made from some ulterior motive and not because the applicant is anxious for the well being of the minors. Even if I believe the statement of the applicant to be true, it discloses that he and his brother were not on visiting terms much less affectionately disposed towards each other, for, if that were so, it is impossible that the applicant should not have visited his brother for the long period of three years, when he was living only about twenty five miles away,

12. There is nothing in the application or in the statement of the applicant which may suggest that the applicant is willing to keep the mother of the minors also with him and to support her also. In these circumstances the learned District Judge was perfectly right in holding that it was not for the welfare of the minors to keep them in the custody of the applicant apart from their mother, when one of the minor boys was only four years old and the minor girl was about fourteen years old, and when there was no female living in the house of the applicant.

13. Ordinarily the mother would be the best guardian of such minors. The learned counsel for the appellant has, however, contended that the mother of the minors is not leading a chaste life and that, therefore, it would not be for the welfare of the minors to leave them in her custody. This contention of the learned counsel is wholly unfounded, because there is no evidence to support it. It has not been stated either in the application or in the statement of the applicant that the mother of the minors is leading an unchaste life. All that has been stated is that she is living with a Brahmin, named Dabri. After all the mother of the minors is a woman. Admittedly, there is no property belonging to the minors. Their mother has, therefore, to rely upon the support of somebody. The applicant himself never cared to support her or to support the minors. He has shown no such inclination either in the application or in his deposition. If Dabri has been good enough to extend a helping hand, there seems to be no reason why this unfortunate widow should not avail herself of that support.

14. As already stated, on account of her natural love and affection, the mother is the best person to look after her children. I fail to discover any reason why she should be deprived of the custody of her children and why this uncle, who had been living away from his brother and who was so dissociated from him that he did not, according to his own statement, know of the death of his brother, should be appointed their guardian.

15. This appeal is dismissed with costs.