

provisions of section 582 of the Civil Procedure Code, and because no inquiry was made to ascertain the value of the property.

The value of the minors' property sought to be recovered must not be confounded with the whole inheritance.

The value of the inheritance is a question put in issue on the pleadings.

The property sought to be recovered in this action is assessed in the plaint at Rs. 400 only. That is not traversed in the answer. Two of the five children only are minors.

Their share of the premises, assessing it to be two-fifths of three-fourths of Rs. 400, is considerably under Rs. 1,000.

The appointment of the next friend was made with consent of the defendants, who raised no objection on the ground of the value of the minors' interest in the premises exceeding Rs. 1,000.

Hence, under section 582, the father was not disqualified to act as next friend even if he claimed to have charge of the fifth and sixth plaintiffs' share of the premises. But he has made no such claims, and because he comes forward to recover shares in land withheld from them, their adult brethren and himself, I fail to see why he should be considered to claim charge of their shares. *Non constat*, that he will not place the children in charge of their shares when recovered, or give them up to any one they nominate.

They consented to their father being appointed their next friend. Anyhow it seems to me that the utmost the Judge could do was to have the names of the fifth and sixth plaintiffs struck out as improperly joined, and to let the trial continue. But in my opinion the plaintiff should be allowed to carry on the action as constituted, and I would set aside the order and remit the case for trial.

Reading sections 481 and 493 together, I understand the Code to say that any person being of sound mind and full age, so long as his interest is not adverse to that of the minor, and he is not a defendant in the action, may, if he is otherwise a fit person, be appointed next friend of a minor.

If he *claims charge* of a minor's property of the value of Rs. 1,000 under a deed or will, or by reason of nearness of kin and otherwise, he cannot institute an action with reference to that property unless he first takes out a certificate of curatorship.

LAWRIE, A.C.J.—

In the Kégalla case reported in the 3rd volume of the *Ceylon Law Reports*, p. 26, I expressed the opinion that a next friend regularly appointed under section 481 must get a certificate of curatorship before he could bring an action in the name of the minors.