

Punjab-Haryana High Court

Sathir Singh And Ors. vs Rajbir Singh on 2 July, 1954

Equivalent citations: AIR 1954 P H 274

Author: Falshaw

Bench: Falshaw, Dulat

JUDGMENT Falshaw, J.

1. This petition under Section 3, Guardians and Wards Act, was filed by S. Sewa Singh Gill and his wife Sardarni Bhupindar Kaur praying for their appointment as guardians of persons and property of Satbir Singh, Gajbir Singh and Ravindarbir Singh, the three minor sons of Maharani Satindar Kaur, the wife of the Maharaja of Jind, who died at Dehra Dun on 10-2-1954. S. Sewa Singh Gill petitioner is stated to be the brother of the mother of the deceased Maharani Satindar Kaur, and the petitioners' claim to be appointed as guardians of the persons and property of the minors in preference to their prima facie natural guardian, i.e., their father the Maharaja, who has been made the respondent in the petition, is based on the allegations that the Maharani had long since been estranged from her husband, whose cruel treatment has hastened her death, and that the late Maharani had been brought up by S. Sewa Singh Gill petitioner and she and her children had frequently been living with him.

As an additional ground relating to jurisdiction it was stated in the" petition that the late Maharani had left a house at New Delhi No. 1 Sikandra Road, and it was further alleged that by a will executed two days before she died on 8-2-1954 she had appointed the petitioners as guardians of the persons and property of her minor sons.

2. This petition was filed in the Circuit Court at Delhi on the 17th of February and was admitted on 17-2-1954 by Kapur J., who also passed a number of orders in the days immediately following on applications filed by the petitioners relating to the safeguarding of the property of the minors.

3. In the written statement filed on behalf of the respondent Maharaja some preliminary objections relating to jurisdiction had been raised. The first of these is that this Court had no jurisdiction to entertain the petition direct as it has no ordinary original civil Jurisdiction in guardianship matters.

It is further objected that in any case the Court to which the petition would be filed is outside the territorial jurisdiction of this Court, it being contended that it would either lie at Dehra Dun in Uttar Pradesh, where all three minor boys were at school, and where the late Maharani was residing at the time of her death, or else at Sangrur which is the place of residence of the Maharaja respondent and where the boys have been residing with him since the death of their mother. The mere fact that the late Maharani owned a house at Delhi, though it might furnish some ground for the Court at Delhi to have jurisdiction to entertain a petition for appointment as guardian of the property of the minors, would, not give that Court jurisdiction to entertain a petition for appointment as guardian of both persons and property.

4. In support of his objection to the jurisdiction of this Court to entertain the petition the learned counsel for the respondent has attempted to argue all aspects of the matter, but it is clear-that if the

first of his objections succeeds, namely, that the petition could not be entertained directly by this Court, then this Court would have no jurisdiction to go further into the matter or to decide in which particular District Court the petition should be filed, which in any case, involves disputed question of fact on which there are not at present sufficient materials before this Court for it to come to a conclusion.

5. The petition is headed "An application of Sardar Sewa Singh Gill and his wife Sardarni Bhupindar Kaur residing at 11, Delhi Gymkhana Club, New Delhi, under 'INHERENT POWERS OF THE HIGH COURT' reserved under Section 3. Guardians and Wards Act," and in para. 9 of the petition there is a further explanation of its being filed in this Court in the following words:

"As the appointment of a guardian in this case by the Court is also urgently required and in the peculiar circumstances of this case and because important questions are involved and it is necessary that the last wishes of the deceased Maharani be carried out, whether under the Guardians and Wards Act or under the inherent powers of this Hon'ble Court reserved by Section 3 of the Act, this application is filed in this Hon'ble Court. It is fit case for the exercise of the extraordinary jurisdiction of the High Court under its inherent powers."

6. Section 3 of the Act reads--"This Act shall be read subject to every enactment heretofore or hereafter passed relating to any Court of Wards by any competent legislature, authority or person in any state to which this Act extends and nothing in this Act shall be construed to affect, or in any way derogate from, the jurisdiction or authority of any Court of Wards, or to take away any power possessed by any High Court."

7. In arguing the case for this Court's jurisdiction to entertain the petition direct the learned Solicitor-General for the petitioners has relied almost entirely on the words of Clause 12 of the Letters Patent dated 31-3-1919 under which the High Court at Lahore was constituted and which still govern this Court under the provisions of the High Courts (Punjab) Order of 1947 enacted at the time of the partition. The Clause in question reads;

"12. And we do further ordain that the High Court of Judicature at Lahore shall have the like power and authority with respect to the persons and estates of infants, idiots and lunatics within the provinces of the Punjab and Delhi as that which was vested in the Chief Court of the Punjab immediately before the publication of these presents." It is argued that these words are virtually meaningless unless in fact some jurisdiction with respect to guardianship matters had been vested succeeded. The learned counsel had, however, to confess that he had been unable to trace any enactment by which ordinary original civil jurisdiction had been conferred on the Chief Court in guardianship matters, and it is worthy of note that the petition itself in the passage quoted above referred to the Court's extraordinary jurisdiction.

3. It certainly must be conceded that no such jurisdiction is conferred by the Guardians and Wards Act (8 of 1890) itself. In Section 4(5)(a) the "Court" is defined as meaning the District Court having Jurisdiction to entertain an application under this Act for an order appointing or declaring a person to be a guardian and in Sub-section (4) it is stated that the 'District Court' has the meaning assigned

to that expression in the Code of Civil Procedure and includes a High Court in the exercise of its ordinary original civil jurisdiction.

There is, however, no clause in the Letters Patent of the Lahore High Court expressly conferring any powers of the ordinary original civil jurisdiction such as occurs in the Letters Patent of the High Court of Calcutta, Bombay and Madras in which ordinary original civil jurisdiction is conferred on those Courts regarding the areas of the cities in which they are situated, and there is only Cl. 9 relating to extraordinary original civil jurisdiction which reads:

"9. And we do further ordain that the High Court of Judicature at Lahore shall have power to remove, and to try and determine as a Court of Extraordinary original jurisdiction, any suit being or falling within the jurisdiction of any Court subject to its superintendence, when the said High Court may think proper to do so, either on the agreement of the parties to that effect, or for purpose of Justice, the reasons for so doing being recorded on the proceedings of the said High Court."

On behalf of the respondent Mr. Tek Chand has endeavoured to show, and in my opinion has succeeded in showing, that from the time when the Chief Court was constituted the Court has never had any ordinary original civil jurisdiction except such as has been conferred on it by particular enactments, which do not include the Guardians and Wards Act. He first, drew our attention to Act 23 of 1865 by which the Punjab Chief Court was first constituted. The only relevant sections in this Act appear to be No. 13, which makes the Chief Court the ultimate Court of Appeal from all civil and criminal Courts in the Punjab, and Section 14 which is essentially the same as the present Clause 9 regarding extraordinary original civil jurisdiction.

9. This Act was superseded the following year by Act 4 of 1866 in which Ss. 13 and 14 of the earlier Act were repeated. Next comes Act 17 of 1877 which seems to be the first Punjab Courts Act. Nothing in this Act helps the petitioners and it is to be noted that Section 14 was essentially the same as Section 13 of the earlier Act relating to the Chief Court except that the word 'withdraw' was used instead of the word 'remove'. Another Punjab Courts Act (Act 18) came into force in 1884. In this Act Chapter II deals with the functions of the Chief Court, but it says nothing about the ordinary civil jurisdiction and even does not contain any reference to the extraordinary civil Jurisdiction of the Court.

It is, however, noteworthy that Section 29 of this Act empowers the Chief Court to authorize any District Judge to transfer to a Subordinate Judge or Munsif under its control certain proceedings which include proceedings under Act 40 of 1858 for making better provision for the care of the persons and property of minors in the Presidency of Fort William in Bengal, which was apparently in force in the Punjab before the Guardians and Wards Act came into force. This Act was amended by Act 13 of 1888 and Act 25 of 1899 which do not contain anything relevant to the discussion. The later Punjab Courts Acts, 3 of 1914 and 6 of 1918 do not alter the situation.

10. Then comes the Guardians and Wards Act (8 of 1890) which, as I have said, clearly makes a District Court the Court to entertain applications for appointment as guardian of person or property of a minor except in those cases where the High Court specifically enjoys ordinary original civil

jurisdiction, which for all practical purposes is confined to the High Courts of Calcutta, Bombay and Madras with regard to their cities.

It is worthy of note that in the Letters Patent of those High Courts there is both Clause (12) which empowers them to 'receive', try and determine suits arising within the local limits of their ordinary original civil jurisdiction and also Clause (13) which is the same 'mutatis mutandis' as Clause 9 in the Letters Patent of the Lahore High Court, empowering them to 'remove', try and determine as a Court of extraordinary original civil jurisdiction suits arising outside the limits of their ordinary original civil jurisdiction.

There is also a Clause (17) which 'mutatis mutandis' is identical with Cl. 12 in the Lahore Letters Patent relating to infants and lunatics. In the case of those Courts this Clause certainly had considerable significance since the Courts which they succeeded had some original jurisdiction in the matter of minors owing to the fact that their powers had been based on the powers of the Courts in England including the Courts of Chancery.

11. As I have said the learned Solicitor-General based his argument almost entirely on the contention that the very fact that this Clause appeared in the Letters Patent of the Lahore High Court necessarily implied that the Chief Court had been vested with some Jurisdiction in the matter of minors and lunatics, and the fact that in the rules framed under the Government of India Act, the Letters Patent and the Acts of the Indian Legislature, Rule 1 gives a list of what cases should ordinarily be decided by a Judge sitting alone and item (xviii) reads:

"(xviii) a proceeding of a Civil nature under a special Act of the Imperial or Local Legislature coming before the Court in the exercise of its original Jurisdiction, e.g., under the Indian Trusts Act, 1882, the Indian Companies Act, 1913, the Inventions and Designs Act, the Indian Divorce Act, the Indian Succession Act, or the Guardians and Wards Act."

It is, however, to be noted that in this Clause only the words 'original Jurisdiction' are used, which obviously cover either ordinary or extraordinary original Jurisdiction.

12. It must therefore be concluded that there is nothing in the Guardians and Wards Act which gives ordinary original jurisdiction to the High Court to deal with the petition filed under the Act and that there is nothing in the various Acts relating to the Chief Court or in the Letters Patent of the High Court which gives the Court ordinary original civil jurisdiction in these matters, and it must therefore be held that the present petition could only be entertained in this Court in the exercise of its extraordinary civil jurisdiction, i.e., the petition must first be instituted in the District Court where it lies and then if that Court is subordinate to this Court it can, if the Court so thinks fit, be withdrawn from that Court and decided in this Court. It follows from this that the petition must be returned to the petitioners for them to file in the Court where it lies, and that all the orders which have already been passed by the learned Single Judge relating to matters arising out of the petition are without jurisdiction and must be set aside.

13. The arguments in this case were heard on Monday the 28th of June and Friday the 2nd of July was fixed for announcement of the order. In anticipation of this I had dictated my judgment as above when yesterday, the 30th of June, the petitioners filed an application in which it was stated that S. Sewa Singh Gill had now had an interview with the Hon'ble Dr. Kailash Nath Katju, the States Minister, who had given him an assurance that the States Ministry would look to the welfare, upbringing, education, safety and property of the three minors, and that S. Sewa Singh Gill petitioner had been authorised to make a statement to that effect in this Court, and that therefore, since the interests of the minors were the sole concern of the petitioners and they were satisfied with the assurance given by the Hon'ble Minister, they withdrew their application for the guardianship of the person and property of the minors. A final paragraph was added to the effect that the petitioners reserved their right in future to apply for guardianship in case circumstances arose which might justify such a course.

14. On the presentation of this application Mr. Tek Chand, the counsel for the respondent, was called and he opposed the application for the simple withdrawal of the petition to the extent of contending that since an Important point of jurisdiction had been fully argued before us we should give our decision in the matter. It was in fact quite clear from the general tenor of the discussion before us when the question of jurisdiction was being argued that the decision was likely to be in favour of the respondent, and it was argued that our decision in the matter should be given in order that, if on some future occasion, the present petitioners deem it necessary to make any application regarding the guardianship of the minors, it should be made clear to them that this was not the Court which could entertain such an application.

In reply to this S. Sewa Singh Gill who was present in person and his counsel offered to give an undertaking that they would not again file such a petition In this Court but this in itself is obviously no reason for this Court's not giving the decision In the matter, since although I do not consider that the present petitioners are likely to commit the same mistake again, such an under-taking has no binding force and cannot deprive anybody of his legal rights, and it should obviously be made clear both for the benefit of the present petitioners and for any other persons who may contemplate acting in the same manner that it is the considered opinion of this Court after a full argument on the point that the Court cannot directly entertain such applications, there apparently being no reported case on the point although I am informed that such cases have in fact arisen in the past. I am accordingly of the opinion that in spite of the filing of the application to with-draw the petition my decision as recorded before the application was filed should be allowed to stand and should be delivered, and that the correct order is still, as I then held, that the petition should be returned to the petitioners on the ground that this Court has no jurisdiction to entertain it.

15. As regards the question of costs, I do not consider that in the circumstances we can look at all into the merits of the case and on the whole I am of the opinion that the parties should be left to bear their own costs.

16. On the return of the petition to the petitioners in this manner some other matters remain to be settled. Obviously since the Court had no jurisdiction to entertain the petition all the interim orders of various kinds which have been passed since the petition was first entertained relating to the

safeguarding of the property of the minors must be held to be nullities and must be set aside. The most important of these orders was one which appointed the Collector of Delhi to make an inventory of the property of the minors and to take measures for the protection of their valuables, it being left open to the Collector to appoint one of his subordinates to act on his behalf in this matter.

In pursuance of this order Mr. Raja Lal Gupta, Revenue Assistant, was appointed by the Collector to act in the matter and among the steps taken by him were the placing under the Police guard of the late Maharani's house at Dehra Dun and the removal therefrom of a quantity of valuable property which has been placed in boxes and stored in the Treasury at Dehra Dun. Incidentally the petitioner S. Sewa Singh Gill has advanced various sums of money out of his own pocket for the purpose of meeting the expenses incurred by Mr. Gupta and the learned Single Judge ordered that the expenses should be made a charge on the estate. Along with the application for withdrawal a statement of account was presented showing the expenditure of a sum exceeding Rs. 3,000/-.

I do not, however, consider that this Court can pass any order for the payment of this amount out of the estate of the minors, which no longer in any sense of the word remains under the charge of the Court. I therefore consider that with regard to this matter S. Sewa Singh Gill must be directed to claim payment of the expenses incurred by him from the person who is ultimately appointed as the legal administrator of the estate of the minors.

17. As regards the property which is at present under the custodianship of Mr. Raja Lal Gupta, it is obvious that he must at once relinquish charge of it to somebody and since the present petition no longer remains pending, the care of the property cannot possibly be made over to the present petitioners, nor in spite of the fact that the petition was sought to be withdrawn on the assurance of the Hon'ble Minister that the States Ministry would look to the welfare and interests of the minors, do I think it possible to direct Mr. Gupta to hand over the care of the property to a body as vague in a matter of this sort at least as the States Ministry. In my opinion the only possible person to whom the responsibility of taking over immediate custody of the property of the minors can be delegated is the father of the minors, the Maharaja who is the respondent in the present petition. I would accordingly direct Mr. Raja Lal Gupta to hand over with due formality the custody of the property of the minors to the Maharaja after giving him notice, where necessary, of the date and time at which this handing over is to take place, as for instance, in the case of property at Dehra Dun.

18. There is also an application pending here which was filed by Surja Ram, the driver employed by the late Maharani, for the return to him of some personal belongings which are included in the property lying in the house at Dehra Dun. Since this Court is no longer entertaining the main petition this petition must be dismissed and Surja Ram directed to approach the Maharaja directly for the purpose of the return of his property.

19. A number of bills due from the late Maharani have also been forwarded to this Court to be dealt with and all these must be handed over to the Maharaja for him to deal with.

Dulat, J.

20. I agree.