

**(1907) 07 AHC CK 0006**

**Allahabad High Court**

**Case No:** None

Joti Prasad and Others

APPELLANT

Vs

Ramchandra Das

RESPONDENT

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**Date of Decision:** July 12, 1907

**Final Decision:** Disposed Of

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### **Judgement**

Richards, J.

This was a suit brought by the plaintiff for a declaration as to an alleged right of way over the defendant's land. The Court of first instance dismissed the suit. After the suit had been dismissed the defendant died. The plaintiffs thereupon filed an appeal, putting the name of Musammat Pavitra Mati as guardian of Mahant Ram Chandar Das, alias Paras Ram, the successor in title of the deceased defendant. On the 13th of February 1906 the plaintiffs applied that the Musammat, who was the step-mother of the minor, might be appointed his guardian ad litem, and on the 17th of February 1906 an order that notice should go to show cause against such appointment was made. It appears from the order of the 16th June that these notices were never issued, and fresh notices were ordered to issue for the 17th of July following, which was also fixed as the date of trial. From the order sheet of the 17th of July a recital appears that the Musammat had not appeared and also an order that the appeal should be heard ex parte. On the same day the Musammat had appeared before the judgment was concluded, informed the Court that she was a parda-nishin lady and was not a fit and proper person to be appointed a guardian ad litem for the minor. She named Har Narain as a fit and proper person, and one who would be able to look after the interests of the minor. The only order that appears after this protest of the Musammat is in the following words: "I have heard the argument in this appeal and cannot accept this application at this late hour. Refused." It seems to me that the proceedings had been quite irregular from the very institution of the appeal. The appeal ought never to have been admitted until after the Court had appointed a proper person to be the guardian of the minor. Up to the present moment there has been no order appointing a guardian to the minor.

It is the duty of the Court not only to appoint a guardian but to satisfy itself that the proposed guardian is a fit and proper person to represent the minor, to put in a proper defence and generally to act in the interests of the minor. The duty of the Court is not a mere matter of form. In the present case the learned Judge fixed a date for the trial of the case for the same day as the day fixed for the appointment of a guardian. It may well be asked how the guardian could be expected to be prepared to look after the interests of the minor, to instruct pleaders to act and to get witnesses on the very day on which the appointment was made. I cannot help feeling astonished that the learned Judge should have proceeded to make an ex parte decree against a minor on the day which he had fixed for the appointment of the guardian. I am still more astonished that he should have made the order that he did make, after the appearance of the Musammat bringing under his notice that she could not and would not act as a guardian of the minor. I would desire to draw the particular attention of the learned Judge to the provisions of Section 444 of the Code of Civil Procedure, and also to remind him that it is the duty of the Courts of Justice to protect in every possible way the interests of minors. I would allow the appeal with costs.

George Knox, Acting, C.J.

2. I agree with my learned brother that we have no alternative but to set aside the order appealed from, and I must admit that I am very much surprised at the undue haste and disregard of the law which has characterized the proceedings of the lower appellate Court. There was a time when the Courts were very remiss in following the provisions laid down in Chapter XXXI of the CPC of 1882 and the corresponding Chapters in the former Codes, but I hoped that by this time Courts have fully recognized that the appointment of a guardian ad litem is not a matter in the hand of the opposite party, but that it is the duty of the Judge when it is brought to his notice that a defendant or respondent is a minor, himself to decide who is the proper person to be appointed as a guardian ad litem. If any inference can be drawn from the appeal before the Court of the District Judge of Saharanpur it would appear that that Court has relapsed into the old careless way. I notice that in the memorandum of appeal the appellant inserts as a matter of course and without any reference to the Court the person who is to be appointed as guardian ad litem. I notice that the Munsarim, who is a Munsarim of long standing, has passed the memorandum of appeal as not open to any objection on this score. I also notice that, as my learned brother has pointed out, the learned Judge appears to have considered that the guardian ad litem could immediately on his appointment properly defend the interests of the minor. The appeal should never have been admitted on the register of appeals until the Judge had determined who was the proper person to be appointed as a guardian. In this case the result has been very disastrous. A minor whose interests are especially under the care of the Judge has had an ex parte decree passed against him without any person appointed as a guardian and in the face of a careful remonstrance addressed to the Judge by the

person whom the appellants have proposed as a guardian ad litem to the effect that she was a parda-nishin lady not in a position to properly guard the interests of the minor and that there was a person who was fitted and who was a proper person so to be appointed. On behalf of the respondents it is argued that the case of 7 CWN 774 (Privy Council) was an authority to the effect that the absence of a formal order appointing a guardian was a mere irregularity which u/s 578 would not be a ground for reversing the judgment. But that was a suit brought to set aside a decree in which their Lordships of the Privy Council were satisfied that in the suit in which the decree had been obtained the minor's interests had been effectively represented by their mother, who appeared throughout the proceedings as their guardian ad litem. In the present case the minor's interests had been entirely disregarded.

3. We decree the appeal, set aside the order under appeal and return the case to the lower appellate Court with instructions to readmit it on the file of pending appeals and to dispose of it according to law in the presence of the guardian ad litem who has since been appointed by this Court. The respondents will pay the costs of the appellant in this Court.