

## Arun Kumar Tayal Vs Javed Malik and Another

**Court:** Allahabad High Court

**Date of Decision:** Aug. 24, 2012

**Acts Referred:** Civil Procedure Code, 1908 (CPC) – Order 10 Rule 2, Order 32 Rule 1, Order 7 Rule 11  
Majority Act, 1875 – Section 3

**Citation:** (2013) 3 ALJ 312

**Hon'ble Judges:** Sibghat Ullah Khan, J

**Bench:** Single Bench

**Advocate:** L.P. Singh and Samir Garg, for the Appellant;

**Final Decision:** Dismissed

### Judgement

@JUDGMENTTAG-ORDER

Sibghat Ullah Khan, J.

Heard learned counsel for the petitioner at length. Respondent No. 1-Javed Malik has filed O.S. No. 825 of 1998

against the petitioner and proforma No. 2. In the suit plaintiff described himself as aged about 22 years. However, in his statement under Order 10

Rule 2, CPC he stated that he was born in the year 1979 meaning that he was of 19 years of age at the time of institution of the suit.

2. Permission to sell the property of plaintiff when he was less than 18 years of age had been granted to his father, hence by virtue of Section 3 of

the Majority Act, 1875 as it stood at the relevant time he would be deemed to have become major at the age of the 21 years. (Suit is also in

respect of the same property regarding which permission was granted earlier by the Court in favour of the father of the petitioner to sell the same).

3. Petitioner filed application for rejection of the plaint under Order 7 Rule 11, CPC which was rejected on 06.10.2004 by Additional Civil Judge

(Senior Division), Court No. 2, Bulandshahar. Against the said order petitioner filed Civil Revision No. 219 of 2004 which was dismissed by

Additional District Judge, Court No. 6 Bulandshahr on 26.09.2005 hence this writ petition.

4. Plaintiff filed his passport before the court below in which his date of birth was mentioned as 05.08.1976. However, as in his statement under

Order 10 Rule 2, CPC plaintiff had stated that he was born in the year 1979, hence for the purposes of the suit that should have to be taken as

correct.

5. Order 32 Rule 1, CPC providing that minor plaintiff may sue through his guardian is for the benefit of the minor. It cannot be used to his

detriment.

6. Further, even if plaintiff's year of birth is taken to be 1979 he attained the age of 21 years i.e. majority in 2000. In Kamalammal v. A.M.

Shanmugham, AIR 1976 Madras 235, it has been held that if during pendency of the suit minor plaintiff attains the age of the majority, the suit can

be treated to have validly been instituted from that date. Similar view has been taken by this Court in Raja Ram Vs. Naveen Chand and Another .

The Supreme Court in M/s. Puspa Sahkari Avas Samiti Limited v. M/s. Gangotri Sahkari Samiti Limited, JT 2012 (3) 563, and Vithalbhai Pvt.

Ltd. Vs. Union Bank of India, has held that if the suit or execution application has been filed premature i.e. before the accrual of the cause of action

then it will be deemed to be properly filed from the date of accrual of the cause of action. Accordingly, I do not find any error in the impugned

orders. Writ petition is dismissed.