

(2006) 10 AP CK 0016

Andhra Pradesh High Court

Case No: Civil Miscellaneous Writ Petition No. 8695 of 1984

Shashikant Rai

APPELLANT

Vs

Subhash Chandra and Others

RESPONDENT

Date of Decision: Oct. 10, 2006

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 32 Rule 3(5), Order 32 Rule 7

Hon'ble Judges: S.U. Khan, J

Bench: Single Bench

Advocate: S.K. Varma, for the Appellant; R.N. Singh, V.K. Singh and S.C., for the Respondent

Judgement

S.U. Khan, J.

Respondent No.2 Deo Narain Rai filed a suit for permanent prohibitory injunction against petitioner and respondents 1, 3 and 4. In the plaint of the suit which was filed on 02.06.1976 petitioner was arrayed as minor aged 16 years. Petitioner's mother refused to act as his guardian hence Sri Chandra Bali Ram Advocate was appointed as guardian ad litem (G.A.L.). The suit was registered as O.S. No. 164 of 1976 Deo Narain v. Subhash and others. In the suit, Advocate who was appointed as G.A.L. of the petitioner applied for permission of the Court for entering into compromise in the suit on behalf of minors. It was stated that the compromise was for the benefit of minor. Application was filed on 29.11.1978 and was allowed on 30.11.1978. Thereafter suit was decreed on 30.11.1978 on the basis of compromise in which plaintiffs exclusive ownership of the house in suit was accepted. Thereafter application for recall of the order accepting the compromise was filed by the petitioner on 01.01.1979, which was registered as Misc. Case No. 1 of 1979. Munsif Ghazipur, allowed the said application on 11.03.1982, set aside the order dated 30.11.1978 and restored the suit on its number. Against the said order appeal was filed by the plaintiff respondent No.2 Deo Narain being Misc. Civil Appeal No. 19 of 1982. The appeal was allowed by the Additional District Judge/Special Judge,

Ghazipur on 01.05.1984. Order of Munsif dated 11.03.1982 was set aside.

2. Trial Court in penultimate paragraph of its Judgment held that provision of Order XXXII, Rule 3, CPC, was violated, interest of minor was not kept in mind and at the time of compromise and its acceptance, it was not seen that whether the compromise was in the interest of minor or not.

3. Appellate Court held that at the time of filing and acceptance of compromise petitioner had become major hence all the points taken by the Trial Court were meaningless. Appellate Court further held that petitioner did not apply for discharge of the G.A.L. hence GAL. was fully authorised to enter into compromise.

4. If petitioner was minor when permission to compromise the suit on his behalf was granted then compromise was liable to be set aside on the ground that the Court while granting permission did not apply its mind. Permission was granted only in two words i.e. "Permission granted". Neither it was shown to the Trial Court nor it was found by it that permission was in the interest of minor. However, in case petitioner had become major at the time of compromise as held by the Appellate Court then G.A.L. had no authority to enter into compromise even though without any formal order of discharge he could appear in the proceedings for other purpose. In this regard reference may be made to *Kaloo v. Board of Revenue U.P.*, AIR 1983 All. 272.

5. Under Order XXXII, Rule 3(5), CPC, G.A.L. continues as such throughout all proceedings arising out of the suit unless his appointment as G.A.L. is terminated by retirement removal or death. Under Order XXXII, Rule 7, it is provided that G.A.L. without leave of the Court expressly recorded in the said proceedings cannot enter into compromise on behalf of the minor with reference to the suit. By Act No. 104 of 1976 with effect from 01.02.1977 sub-rule (1-A) has been added to Rule 7 of Order XXXII, CPC according to which application for leave/permission shall be accompanied by affidavit of G.A.L. and also certificate of the Counsel of the minor, if any, to the effect that proposed compromise is for the benefit of the minor. In the instant case no such affidavit of G.A.L. was filed. Accordingly I find that the order passed by the Appellate Court is erroneous in law and liable to be set aside.

6. Writ petition is therefore allowed. Judgment and order of the Appellate Court is quashed and that of Trial Court is restored.

This writ petition has already been dismissed for want of steps against respondent No.4 under Chapter XII Rule 4 of the High Court Rules. However, respondent No.4 was only one of the defendants along with the petitioner and petitioner is challenging the order of the Appellate Court only on the ground that suit could not be compromised on his behalf hence dismissed of the suit against respondent No.4 will not make much difference.