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AIR 1926 Cal 82 : 89 Ind. Cas. 373

Calcutta High Court

Case No: None

Husena Banoo and Others	APPELLANT
Vs	
Hon''ble Brojendra Kishore Roy Choudhury	RESPONDENT

Date of Decision: April 9, 1925

Acts Referred:
Bengal Tenancy Act, 1885 â€" Section 105

Citation: AIR 1926 Cal 82 : 89 Ind. Cas. 373

Hon'ble Judges: Ewart Greaves, J; Cumming, J

Bench: Division Bench

Judgement

Cuming, J.
In the three suits out of which these three appeals have arisen the plaintiff sued the defendants for arrears of rent on the

following facts. In a Settlement Record the three holdings for which the plaintiff now sues were shown as liable to assessment of rent. The plaintiff

brought proceedings u/s 105 of the Bengal Tenancy Act against the defendants for assessment of fair and equitable rent. While these cases were

pending defendants No. 1 and 2 executed a kabuliyat on their own behalf and defendant No. 1, on behalf of defendants Nos. 3,4 and 5 in respect

of the three holdings and upon this the proceedings u/s 105 were withdrawn. The plaintiff, has now sued for rent for these three holdings on the

basis of the kabuliyats. The defence was, firstly, that the kabuliyats were brought about by undue influence, fraud and coercion and that, therefore,

they were not binding on them; and secondly, that defendant No. 1 is a parddnashin lady and that defendant No. 2 at the time of the execution of

the kabuliyats was a school boy of 19 or 20 years of age and that the kabuliyats were not properly. explained to defendant No. 1 and the third

ground was that defendant No. 1 was only a de facto guardian of the children, defendants Nos. 3, 4 and 5 and that, therefore, the kabuliyat

executed by defendant No. 1 on their behalf is not binding on them. I should note here that defendant No. 4 had died since the institution of the

suit. The Trial Court found all the issues in favour of the plain till and against the defendants and decreed the suit in full and this finding was

confirmed on appeal in the District Court. Defendants Nos. 1, 2, 3 and 5 have now appealed to this Court.

2. The first point argued is that defendant No. 1 is a pardanashin lady and that the burden of proof lay on the plaintiff to prove that she had had

independent advice and that she understood the terms of the kabuliyal. This is purely a question of fact which is disposed of, I think, by the finding

of the lower Appellate Court. The learned Judge states "It seems to me a safe inference from the circumstances that the advice of the defendants"

Pleader in the Section 105 cases was taken regarding the kabuliyats. The learned Judge seems to be satisfied that the lady had acted on

independent advice.

3. The next point raised on behalf of the defendants has more substance. The point is that at the time of the execution of the kabuliyals defendants

Nos. 3 and 5 admittedly were minors, that defendant No. 1 was not a legal guardian of the two minors and that she was only a d& facto guardian

and, therefore, she could not bind the two minors defendants Nos. 3 and 5 and in support of this contention he relies on the case of Imambandi v.

Mutsaddi 47 Ind. Cas. 513 : 45 C. 878 : 35 M.L.J. 422 : 16 A.L.J. 800 : 24 M.L.T. 330 : 28 C.L.J. 409 : 23 C.W.N. 50 : 5 P.L.W. 276 : 20

Bom. L.R. 1022 : (1919) M.W.N. 91 : 9 L.W. 518 : 45 I.A. 73 (P.C.), a decision of the Privy Council. In dealing with this case at page 903*

their Lordships laid down ""under the Muhammadan Law a person who has charge of the person or property of a minor without being his legal

guardian, and who may, therefore, be conveniently called a de facto guardian'' has no power to convey to another any right or interest in

Immovable property which the transferee can enforce against the infant; nor can such transferee, if let into possession of their property under such

unauthorized transfer, resist an action in ejectment on behalf of the infant as a trespasser."" The respondents have contended that this decision only

decides the powers of a de facto guardian so far as regards the sale or transfer of Immovable property. But I am inclined to think that the principle

which underlies the ruling is that a de facto guardian cannot contract on behalf of a minor so as to bind him. The learned Advocate who has

appeared for the respondents has further argued that the Section 105 proceedings were compromised as a result of the parties having entered into

a kabuliyat and contends that had there been no; compromise and had a fair rent been fixed in the proceedings u/s 105 and had a guardian been

legally appointed they could not challenge the order made in the proceedings. Possibly, this is correct. But the facts are that no final order was

passed in the proceedings, the proceedings being withdrawn on the ground that the parties had compromised. The conclusion, therefore, I must

come to is that the minor defendants Nos. 3 and 5 are not bound by the terms of the kabuliyats and so far as they are concerned the appeals must

succeed and the suits must be dismissed. So far as defendants Nos. 1 and 2 are concerned the appeals must fail and are dismissed.

4. We make no order as to costs in any Court.

Greaves, J.

5. I agree.