(1868) 12 CAL CK 0009

Calcutta High Court

Case No: Application for Review No. 285 of 1868

Kedar Nath Mookerjee		APPELLANT
	Vs	
Mathuranath Dutt		RESPONDENT

Date of Decision: Dec. 16, 1868

Judgement

Loch, J.

On hearing the arguments of both parties, I am inclined to think, that our judgment, of which a review is now sought, went beyond the record, when it determined that as the resignation of the jote, by the grandmother of the minor, was not for his benefit, such resignation was of no force. Two good reasons have been urged against the judgment: 1st.--That the question of injury was never urged in the Court below, and no issue was raised on the point. The plaintiff''s case was, that his grandmother had let the lands to Chandra Sekhar, and that individual has been ejected by the defendant. The defendant pleaded resignation of the lands by plaintiff''s grandmother. The Judge disbelieved the evidence of the plaintiffs, and held that the defendant had proved the fact of resignation, and dismissed the case. There was no other question before him. 2nd.--The mere fact of an act done by a guardian for a minor turning out to the disadvantage of the minor, is not a sufficient reason for declaring such act to be null and void. If the act were one which at the time it was done appeared to be for the interest of the minor and was done in good faith, but the result was injurious to the minor, such result would not be a sufficient ground for setting aside the act of the guardian as invalid, Under this view of the case, I think our judgment should beset aside, and that of the judge restored. I think the plea of limitation, as it was not taken before, must be rejected.

Glover, J.

I am against this application, at least as it was argued before us by the learned counsel Mr. Paul.

2. It appears to me that the petitioner should be kept to the grounds detailed in his application for review, and that the only ground for argument is, that we sitting in

special appeal were not justified in finding a fact not found by the Court below, namely, that the relinquishment was against the minor''s interests.

3. Now I am very much disposed to think, that the Judge did substantially find this fact. He held, that the land, an hereditary jote, had been allowed to pass into the defendant''s possession, through the carelessness and neglect of the minor''s guardian, and it seems to follow that such neglect must, in the nature of things, have been prejudicial to the minor''s interests; and that under the circumstances we were justified in drawing such a conclusion ourselves, and in thinking that the Judge had done the same. And the only ground of review, as it appears to me, would have been, that, as a matter of law, there was no obligation on the part of the defendant to show that the abandonment by the guardian was for the minor''s interests, but that the minor was bound in either case.

4. But had that ground been taken, I would have held that there was such an obligation on the defendant. I take it to be a sound legal proposition, that alienations or abandonment''s by a guardian must not be wantonly done, but must be for the manifest interest and convenience of the infant, or at least must be made in good faith to those ends.

5. It was not denied in this case, that the land was the minor''s hereditary jote, prima facie a desirable property to retain; and it, therefore, seems to me, that if he did fail to prove Chandra Sekhar''s dispossession (he being a minor at the time), he was still entitled to call upon the defendants to show how they became possessed of the land. Indeed, the Judge below seems to have admitted his right so far, by going into the defendant''s title, and by making the abandonment by the grandmother fatal to the rights of the grandson.

6. I am willing, if it be thought worth while, to remand the case to the Judge to find the fact, whether or no the relinquishment by the guardian was made in good faith for the interests of the minor, but I would not go beyond the grounds of review as stated in the petition.

Loch, J.

Review is hereby granted, and the decree in Special Appeal No. 2809 of 1869 is set aside, and the lower Court''s judgment restored.