

(1929) 02 BOM CK 0024

Bombay High Court

Case No: None

Narsey Tokersey and
Co.

APPELLANT

Vs

Sachindranath
Gajanan Gidh (No. 1)
and Another

RESPONDENT

Date of Decision: Feb. 25, 1929

Citation: 122 Ind. Cas. 132

Hon'ble Judges: Kemp, J

Bench: Single Bench

Judgement

Kemp, J.

This is a notice of motion taken out by the plaintiffs for an injunction against defendants Nos. 1 and 2 from dealing with their interest in the joint family properties for receiving the sale-proceeds of the Picket Road property. There was a partition Suit No. 2773 of 1927 In which defendant No. 2 in this suit sued defendants Nos. 1, 3 and 4 in this suit and also the mortgagee. In that suit the present defendant No. 1 was described as a minor On the ground that a guardian of his property had been appointed under the inherent jurisdiction of this Court. That, it was considered, extended the period of minority to twenty-one years. The present plaintiffs who claim to be creditors of the estate were ordered to be given notice during the trial of that partition suit and whilst it was before the Commissioner to take the accounts so that they might have an opportunity to safeguard their interests before the Commissioner. They attended and cannot now deny having notice of everything that took place in that suit. It is clear, therefore, that they had notice that defendant No. 1 was alleged to be a minor.

2. The plaintiffs have, therefore, rushed into this notice of motion knowing that there is dispute as to whether defendant No. 1 is or is not a minor. They have sued him as a major and they claim to do so on the contention that the period of minority

is only extended to twenty one years in the event of guardian of the property being appointed under the Guardians and Wards Act. But what I mark of importance, so far as this notice of motion is concerned, is that although the plaintiffs had notice that defendant No. 1, it was claimed, rightly or wrongly, was a minor they have not asked for the trial of any issue on that point which would be the correct procedure to adopt before they took out this notice of motion and certainly before they brought it on. If they first had knowledge of the contention that defendant No. 1 was a minor, after the notice of motion had been taken out, the proper course for them to have taken was to have stopped further proceedings on the notice of the motion and immediately arrived at a consent order with defendant No. 1's attorneys to have the issue of minority determined and a guardian appointed ad litem purely for the purpose of deciding that issue. This they did not do but have added to the costs by bringing on this notice of motion. Now that it has been brought on, Counsel for the plaintiffs says that he does not wish to press it until the issue is determined. It might well be asked why then it was necessary to bring it on and increase the costs? I, therefore, pass the following order: That the issue be tried, (1) whether by reason of the appointment of a guardian of the property of defendant No. 1 under the inherent jurisdiction of this Court defendant No. 1 is a minor, and (2) what was the date of defendant No. 1's birth.

3. With regard to the second issue I may state that when asked by the Court Counsel for the plaintiffs stated that whilst he did not admit that February 7, 1909, was the date of defendant No. 1's birth he was unable to say on what date his client alleged that defendant No. 1 was born: in other words, he merely denies the date of birth and cannot put forward any other date. It appears to me that the whole of this proceeding up to the present has been unnecessary and taken only for the purpose of increasing costs and harassing the minor. I think it a vexatious proceeding, at any rate be far as the bringing on of this notice of motion is concerned.

4. Notice of motion is discharged. Plaintiffs to pay two separate sets of costs of this notice of motion as between attorney and client. The question as to the liability of the defendants, if any, should it be determined that defendant No. 1 is a minor, will be left over till the disposal of the two issues. Trial of these issues to morrow. Mr. Fahey appointed guardian ad litem for the purpose of the trial of these issues.