

ALLAHABAD HIGH COURT

Mohd. Yusuf

Vs

Abdul Wahid

(Bind Bansi Prasad, J.)

05.01.1948

ORDER

Bind Basni Prasad, J.

1. This is a petition in revision filed by the plaintiffs against an order dated 9th February 1946 passed by Mr. Mohammad Jalil, Civil Judge of Saharanpur. It arises out of a suit for the recovery of rent of a shop. The suit was based on a rent note of 1926 purporting to have been executed by Ali Ahmad, father of the defendant and also by Abdul Wahid the defendant.

2. The defense was that the defendant was a minor in 1926 and the rent note is, therefore, void. It was also alleged that the defendant was an occupant of the shop in his own right and not as a tenant from the plaintiff.

3. The suit was decreed by the learned Munsif who held that the defendant's plea of minority was barred by res judicata and that on the date of the execution of the rent note he was not a minor. According to him the defendant was born in 1907. The defendant went up in appeal and certain additional documents were produced before the learned Civil Judge which related to a guardianship proceeding. He remanded the case to the trial Court. On the receipt of the finding from the trial Court the learned Civil Judge held that the defendant was born in the year 1910. As such he was a minor in 1926 when the rent deed was executed and the deed, therefore, does not bind him. In the result he has dismissed the suit. The plaintiff, there fore, comes in revision.

4. It appears that in 1910 Ali Ahmad and his son Abdul Wahid opposite party executed a deed of sale in respect of this shop in favour of Mohammad Yusuf the plaintiff. Simultaneously with the sale deed the vendors executed a rent note which is the basis of the suit. In the year 1929 a suit was brought by the present plaintiff for arrears of rent against Ali Ahmad and Abdul Wahid. Abdul Wahid filed a written statement raising the same plea of minority which he has done in the present suit, but subsequently he absented himself and the suit was decreed ex parte. It was

contended on behalf of the plaintiff that the decision of the Court of Small Causes in the suit of 1929 operated as res judicata against the defendants' plea of minority in the present suit. The learned Munsif upheld this contention. The learned Civil Judge, however, has not dealt with the point of res judicata. The learned Counsel for the applicant contends before us that the lower appellate Court' acted with material irregularity in not considering the question of res judicata.

5. There is the finding of fact by the learned Civil Judge that the defendant opposite party, was born in 1910. He was, therefore, minor in 1929. It is in evidence that in the year 1921 the defendant's mother, Mt. Hanifa, was appointed his guardian. By virtue of Section 3, Majority Act 1875, the defendant attained majority on the completion of 21 years. The learned Counsel for the applicant, however, contends that as subsequent to her appointment as a guardian Mt. Hanifa died, the age of majority of the defendant was reduced to 18 after her death. I am unable to agree with this contention. In *Jambagathachi v. Rajamannaswami* 7 A.I.R. 1920 Mad. 661, it was held that the termination of the guardianship does not make any difference to the age of majority, for the Indian Majority Act expressly declares that every minor of whose person or property a guardian, other than a guardian ad litem, has been appointed by any Court of justice "shall be deemed to have attained the majority when he shall have completed the age of 21 years and not before." The effect of this provision is that once a guardian of a minor is validly appointed that minor's age of majority becomes fixed by law at 21 and nothing which may subsequently transpire can have the effect of reducing it to 18.

6. The position thus is that in 1929 when the suit was brought against the present defendant he was a minor, but in those proceedings he was treated as a major. The decree passed in 1929 against him was, the before, a nullity and cannot operate as res judicata.

7. There is another aspect of the matter.. In the 1929 suit, the plaintiff's title to the shop was disputed by the present defendant. According to Section 23, Provincial Small Cause Courts Act it was open to the Court of Small Causes, before which the suit was brought, to return the plaint to the plaintiff for presentation to a Court having the jurisdiction to determine the title. At all events, the Court of Small Causes was not competent to "finally" determine the question of title. So even if the decree passed in 1929 was valid otherwise, it cannot operate as res judicata so far as the question of title is concerned. In the present suit the learned Civil Judge has held that the defendant was in possession of the shop in his own right and that the rent note purporting to have been executed by him did not bind him as he was a minor in 1926. I agree with him. The sale deed executed in 1926 is null and void so far as the defendant is concerned because he was then a minor. It did not convey the defendant's title to the plaintiff.

8. There is no force in this revision and it is dismissed with costs.