

(2011) 02 J&K CK 0002
In the Jammu And Kashmir High Court
Case No : C. Rev. 09 of 2011

Abdul Rehman Mir

APPELLANT

Vs

Mst. Rifat Ara

RESPONDENT

Date of Decision : 24-02-2011

Acts Referred:

Citation : (2011) 2 JKJ 11

Hon'ble Judges : Muzaffar Hussain Attar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Muzaffar Hussain Attar, J.—In terms of order dated 16th May 1989, the Id Principal District Judge Anantnag, appointed Mst. Hafiza

widow of Mohammad Ayoub Mir as guardian for person of Ms. Rifat Jan and Ab. Rehman Mir as guardian for property of minor (Ms. Rifat Jan)

under The Guardian and Wards Act, 1890 (for short Act of 1890). When Ms. Rifat Jan became major she filed an application seeking release of

the property which was entrusted to the guardian Ab. Rehman Mir. The Id District Judge Anantnag, passed order on 29th March 2008, operative

part whereof is reproduced as under:

I have heard counsel for the parties. The learned Counsel appearing on behalf of non-applicant has in his objections not objected to surrender the

property of the applicant, however, he has contended that during the intervening period from 1989 till he has incurred a huge amount of Rs.

1,35,717.00 for maintaining the property. Since the applicant has not objected to the surrender of the land falling under the share of the applicant,

therefore, non-applicant Ab. Rehman Bhat is relieved from the guardianship with

a direction to surrender the land in favour of the applicant.

However, the applicant shall be handed over the property in presence of Tehsildar concerned and Nazir of this Court after identifying the same in

accordance with law. The Tehsildar as also the Nazir of this Court shall go on spot to effect the change of custody from guardian to the applicant

after notifying their visit on spot one week before and report compliance to this Court within a period of two weeks thereafter, let the application

come up for further orders on 24.4.2008.

2. It is submitted at bar by Id. counsel for Petitioner, that dispute was raised by co-sharers about the identification of the property possession

whereof was to be delivered to Ms. Rifat Jan. It is also submitted at bar that enquiry was initiated by Id Principal District Judge and present

Petitioner who was guardian of the property of minor was directed to lead evidence in rebuttal to the evidence lead by Respondent. The Id District

Judge, it is submitted, however, passed the order on 03.02.2011 which is impugned in this petition.

3. Ld counsel for Petitioner submitted that dispute has arisen amongst the co-sharers in respect of survey No. 645 and 637. Ld counsel further

submitted that a case is already pending in respect of survey No. 645 before Joint Agrarian Reforms Commissioner Anantnag. Ld counsel

submitted that unless the dispute so raised is settled the possession of the property could not be delivered.

4. This petition in the facts and circumstances of the case is held to be meritless, for the reason that the Petitioner was appointed as guardian of the

minor, he had taken charge of property of the minor, so is duty bound to handover the possession of the immovable property to the minor who has

now come of age. The Id Principal District Judge Anantnag, has given the following direction in terms of the order impugned in this petition. The

operative part of which is reproduced as under:

Tehsildar concerned is directed to go on spot and handover the property to the minor which at the time of passing the earlier order for the

appointment of the guardian was in possession of the deceased. He is further directed to report compliance within 10 days from the date of this

order. In case Tehsildar concerned needs the assistance of police he is free to approach the SHO concerned in order to return the property to the

minor which has been entrusted to the non applicant way back in the year 1989.

5. It is the duty of the guardian to handover and deliver the possession of the property to the minor of which he had taken charge way back in the

year 1989, when he was appointed as guardian. If any dispute is raised by any of co-sharers that cannot be settled in these proceedings. The

guardian is duty bound to handover the possession of the property of which he had taken charge and which belonged to minor. He cannot on any

pretext escape from the responsibility of handing over the possession of property to the Respondent. It is the duty of the court to ensure that

property of which charge was taken by the guardian in pursuance of the court orders is handed back to the Ms. Rifat Jan.

6. No fault can be found with the order passed by the Id Principal District Judge Anantnag. However the impugned order shall not come in the

way of Petitioner to get his claim settled in appropriate proceedings before the appropriate form. But for the moment he is duty bound to handover

the possession of the immovable property to the Respondent.

7. Apprehension of the Id counsel for Petitioner is that in the guise of order of Id Principal District Anantnag, he cannot be divested of his own

share of property. The Petitioner has to hand over the immovable property to the Respondent of which he had taken charge of as guardian of

minor.

8. For the above stated reasons, the petition being meritless, is dismissed.