

Banney Singh & Anr. @APPELLANT@Hash Board of Revenue & Ors.

Final Decision : Dismissed

maintenance. He also pleaded that in his life time Rewat had raised similar dispute about his share. The then State had fixed ₹ 504/- as maintenance for Rewat which was increased to 600/-. That even Banney Singh and Gopal had received compensation from Jagir Commissioner in lieu of their rights to maintenance.

6. Suit No.76/1961 came to be decided vide judgment and decree dated 6.9.1962. What was judgment and decree? Neither party knows. However, lack of knowledge of said fact becomes irrelevant for the reason in appeal No.205/63 against the judgment and decree dated 6.9.1962 a compromise

took place between Banney Singh and Gopal Singh on the one hand and

Amar Singh on the other hand. In the compromise appellate decree Banney Singh and Gopal admitted having received compensation from Jagir

Commissioner and in lieu of their rights in the lands owned by their grand-father agreed to take as khatedars land comprised in khasra No.206 (new

No.1089) measuring 14 bigha and 7 biswa and land comprised in khasra No.1115 admeasuring 15 bigha. The compromise decree is dated 16.4.1964.

7. Thereafter, Banney Singh and Gopal Singh filed a suit for partition of the lands of their grand-father in the year 1971 and did not disclose about the

compromise decree dated 16.4.1964. Amar Singh opposed the suit and filed a counter claim to be declared khatedar of the lands belonging to Roop

Singh save and except land comprised in khasra Nos.1089 and 1115.

8. Amar Singh also filed a suit in the year 1976 for being declared a khatedar of the lands owned by his father except the land which was given to

Banney Singh and Gopal when the compromise took place on 16.4.1964.

9. On 23.5.1986 suit filed by Banney Singh and Gopal Singh was dismissed and the suit filed by Amar Singh was decreed. It is obvious that the reason

was the compromise between the parties which took place on 16.4.1964 resulting in appeal no.205/63 being disposed of pursuant to the compromise.

10. Banney Singh and Gopal filed two appeals before the revenue appellate authority which held that the decree dated 16.4.1964 was a nullity because

no guardian was appointed by the Court for Gopal Singh. Further challenge by Amar Singh before the Board of Revenue resulted in the decision taken

by the revenue appellate authority being set aside and the decree of trial court restored.

11. The only issue which was argued before the learned Single Judge was the

effect of guardian of Gopal Singh not being appointed when Banney Singh for himself and as the next friend of Gopal Singh instituted the suit. The learned Single Judge has held that the estate was well represented and thus the decree dated 16.4.1964 was not a nullity.

12. Now, if the plaintiff is a minor he sues through the next friend and where the minor is a defendant a guardian is appointed. When Banney Singh filed suit No.76/1961 for partition he impleaded his younger brother Gopal as a co-plaintiff and acted as the next friend of Gopal Singh. As noted above, the nature of the judgment and decree dated 6.9.1962 disposing of suit no.76/1961 is not known to any party but in appeal Banney Singh continued to enforce the interest of his younger brother Gopal Singh. The reason is obvious. Banney Singh and Gopal Singh claimed through their father Rewat and both had complete identity of interest. Banney Singh did not have any interest adverse to that of Gopal. The question therefore of appointing anybody as guardian of Gopal Singh does not arise. This is the view taken by the Board of Revenue as also the learned Single Judge.

13. We agree.

14. The argument that the mother being alive was the natural guardian has been noted by the learned Single Judge with the answer that not necessarily the natural guardian should be the next friend or the guardian of a minor in a suit. The learned Single Judge has correctly held that where the minor is effectively represented by a person who is capable to act as the next friend or the guardian of the person, absence of a formal order to said effect does not render a decree void.

15. Banney Singh and Gopal Singh had complete identity of interest and that is why there is no infirmity in the compromise decree when Banney Singh entered into the compromise for himself as well as his brother Gopal Singh.

16. The appeals are dismissed.

17. No costs.