
(1982) 07 AHC CK 0028

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 4883 of 1977

Kalloo and Others

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 13-07-1982

Acts Referred:

Citation : AIR 1983 All 272 : (1982) AWC 658

Hon'ble Judges : K.P. Singh, J

Bench : Single Bench

Advocate : Prakash Chandra, for the Appellant; S.K. Singh, for the Respondent

Final Decision : Allowed

Judgement

K.P. Singh, J.—By means of this writ petition the Petitioners have prayed for quashing the judgment of the learned Members, Board of Revenue, dated 17-8-1977 in Second Appeal No. 319 (z) of 1970-71 Jalaun--Kalloo v. Smt. Brij Rani etc.

2. It appears that the second appeal has been decided in terms of a compromise dated 20-6-1975. The Petitioner Kalloo gave an application in the second appeal on 21- -1977 with the allegations that he had become major and the compromise filed on his behalf was fraudulent and not binding upon him. He also expressed that he had become major and he knew well about his good and evil and that he was not willing to accept the compromise entered into by his mother (see Annexure 6 attached with the writ petition).

3. The learned Counsel for the Petitioners contends before me that the second appellate court did not apply its mind to the application 21-2-1977 and has decided the claims of the parties in terms of the compromise which was challenged by the Petitioners. He has also attacked the compromise on the ground that no valid permission was sought by the guardian of the minors for entering into the compromise. He has also challenged that the compromise in the circumstances of the present case can never be for the benefit of the minors.

According to him the compromise relates to the plots which were not subject matter of the suit.

4. The learned Counsel for the contesting opposite parties has tried to support the impugned judgment of the second appellate court. According to him the Petitioners have failed to show that the compromise was entered into by means of any fraud or coercion etc., hence the compromise was validly recognized by the second appellate court.

5. I have considered the contentions raised on behalf of the parties. In my opinion, this writ petition deserves to be allowed. When the Petitioner Kalloo had brought to the notice of the second appellate court that he had become major and he knew about his good and evil, it was required of the second appellate court to examine the question whether the Petitioner Kalloo should be permitted to prosecute the appeal in his own right in the circumstances of the present case after giving due notice to the guardian of the minors and to the Respondents. The learned Counsel for the Petitioners has drawn my attention to the ruling reported in 1966 P&H 471 Daulat Ram v. Surinder Kumar, wherein a Division Bench of that Court has referred several cases and has arrived at the following conclusion in paragraph 4 of the reported judgment:

I am in respectful agreement with the aforesaid settlement of the law. I am not prepared to hold that merely because proceedings could be lawfully carried on by the quondam guardian in a litigation in which the minor is involved would confer on the quondam guardian power to enter into a contract on behalf of a minor who had ceased to be a minor when the contract was entered into. It is not disputed before us that a decree by consent is a decree passed on the basis of a contract I am, therefore, clearly of the view that the learned Single Judge was right in his view that the consent decree, in the circumstances of the present case, will not bind the minor...

6. Thus before the aforesaid observation the Division Bench has relied upon the following recital in the reported case-(1930) 8 Mysore Law Journal 492:

...Whatever may be the effect of a decree obtained after adjudication on merits in a suit of a party who, though a minor at the time of filing the suit, had attained majority, was not brought on record as major before the decree was passed, it cannot be said that a decree passed on the consent of next friend or guardian ad litem is binding on him unless he was brought on record as major and he is a party to the consent. In this case though the first Plaintiff was a minor at the time Original Suit No. 35/45-46 was filed, he had attained majority by the time his mother purporting to act as his next friend consented to the compromise. His mother could not act as the next friend after he attained majority and she was in no way his agent to bind him by her consent. The decree passed on such a compromise cannot be binding on the first Plaintiff, and as the decree was against him has to be set aside.

7. In the present case I find that before the second appellate court Kalloo

Petitioner had asserted that he had become major, hence the compromise entered into on his behalf by his mother would not bind him. The second appellate court has not addressed itself to this aspect of the matter and has passed the decree in terms of the compromise. To my mind, the second appellate court has acted illegally in recognising the compromise which was challenged by Kalloo Petitioner before it, hence the decree passed by the second appellate court deserves to be quashed.

8. As regards the other contentions raised on behalf of the Petitioner it would be sufficient to indicate that the second appellate court will reexamine the claims of the Petitioners when the case goes back to it for redetermination of the second appeal.

9. In the result, the writ petition succeeds and the impugned judgment of the second appellate court dated 17-8-1977 is hereby quashed and the second appellate court is directed to decide the second appeal afresh taking into consideration all points raised on behalf of the Petitioners-Appellants. Parties are directed to bear their own costs.