
(1926) 07 PAT CK 0006
In the Patna High Court

Mina Mahto and Others

APPELLANT

Vs

Doman Mahto and Others

RESPONDENT

Date of Decision : 09-07-1926

Acts Referred:

Citation : AIR 1926 Patna 564 : 97 Ind. Cas. 152

Hon'ble Judges : Kulwant Sahay, J

Bench : Single Bench

Judgement

Kulwant Sahay, J.—The petitioners were defendants" Nos. 13, 14 and 15 in a partition suit instituted by the plaintiffs in the Court of the Subordinate Judge of Hazaribagh. That were minors and were represented by their father Teka Mahto, who was himself a defendant (No. 2) in the suit. A preliminary decree was made in September, 1915. Against this decree the defendants preferred an appeal to the High Court. The present petitioners were also appellants and were represented by their father Teka Mahto, Teka Mahto died in 1917 and Ramdayal Mahto, another defendant in the suit, applied to be appointed as the next friend and guardian of the present petitioners in the appeal in the High Court and he was so appointed, by this Court, the appeal was finally dismissed by this Court on the 28th May, 1918, and in the decree prepared by this Court, the present petitioners were described as minors represented by Ramdayal Mahto. After the dismissal of the appeal, the matter went back to the Court below and a final decree was made on the 4th October, 1920, the decree being prepared and; signed on the 18th January, 1921. In this final decree Teka Mahto is named as defendant No. 2 and the present petitioners, defendants Nos. 13 to 15, were described as minors represented by Teka Mahto. The, description was apparently taken from the preliminary decree prepared by the Subordinate Judge in September, 1915, ignoring the description of the, parties as given in the decree of the High Court. The plaintiffs filed an appeal against this final decree to this Court which was First Appeal No. 112 of 1921. In the memorandum of appeal Teka Mahto was stated to be one of the respondents" and the present petitioners were also made respondents and were stated to be under the guardianship of

Teka Mahto. The description in the memorandum of appeal was apparently taken from the final decree prepared in January, 1921. Notice of the appeal being issued, the peon reported that Teka Mahto and Ramdayal Mahto were dead. The Court ordered that the Deputy Registrar might be appointed guardian ad litem of the present petitioners. The appellants paid the guardian's cost and the Deputy Registrar was so appointed. The appeal was, however, finally dismissed by this Court for non-payment of the printing costs in April, 1922. The plaintiffs then applied for delivery of possession in execution of the final decree made by the Subordinate Judge. Thereupon the present petitioners made an objection to the effect that the final decree was not binding upon them inasmuch as they were not in the final decree as represented by Teka Mahto" and that Teka Mahto was dead long before the final decree. As soon as this objection was made, the plaintiffs made an application for amendment of the final decree by describing the present petitioners as minors represented by Ramdayal Mahto as their guardian. The learned, Subordinate Judge has allowed this amendment and the petitioners have come in revision against this order.

2. It is clear that the amendment made by the learned Subordinate Judge is correct. It is contended on behalf of the petitioners that it was the duty of the plaintiffs to make an application before the Subordinate Judge after the disposal of the appeal against the preliminary decree to appoint a guardian for the present petitioners in place of Teka Mahto. In my opinion it was not necessary for the plaintiffs to make any such application. In the appeal pending in the High Court an application had already been made for the appointment of a guardian of the present petitioners and Ramdayal was appointed guardian and in the decree made by this Court in the appeal against the preliminary decree the name of Ramdayal Mahto appeared as guardian of the present petitioners. That decree was the preliminary decree in the suit. The learned Subordinate Judge seems to be of opinion that it was the duty of Ramdayal to make an application again in the Court of the Subordinate Judge before the final decree was made for his appointment as guardian of the minors. I think it was neither the duty of the plaintiffs nor of the defendants to make any such application. An application had already been made in the High Court and an Order had been made appointing Ramdayal as guardian of the minor. This appointment continued until the disposal of the suit. Ramdayal died after the final decree was prepared by the Subordinate Judge. The appointment of the Deputy Registrar as guardian ad litem in the appeal filed by the plaintiffs against the final decree is of no consequence, so far as the matter of the amendment of the decree is concerned. The Deputy Registrar was appointed guardian ad litem after the death of Ramdayal and at that time there was, properly speaking, no guardian of the present petitioners. The appointment of the Deputy Registrar in the appeal against the final decree will in no way affect the order of amendment made by the learned Subordinate Judge.

3. In my opinion there is no substance in this application. The application is dismissed with costs one gold mohur.