

(1926) 03 PAT CK 0015
In the Patna High Court

Ramgobind Singh

APPELLANT

Vs

Sital Singh

RESPONDENT

Date of Decision : 15-03-1926

Acts Referred:

Citation : AIR 1926 Patna 489 : 96 Ind. Cas. 273

Hon'ble Judges : Adami, J

Bench : Single Bench

Judgement

Adami, J.—The opposite party sued the petitioner on a hand note dated the 30th April, 1923. The suit was instituted on the 15th June, 1925. On the 20th July, 1925, the petitioner produced a medical certificate, before the Court of Small Causes signed by the Civil Surgeon, certifying that the petitioner on that date was between the ages of 17 and 19. The certificate was not produced by the petitioner himself but on his behalf, and the Court directed that the petitioner should himself appear before it, and he appeared on the 27th July. The Court, after looking at him and examining his appearance came to the conclusion that he had reached the age of majority. The 17th August was fixed for the hearing but the petitioner did not file his list of witnesses till the 8th August. Among the names of witnesses shown on his list was that of the Civil Surgeon. On the 10th August the summonses were returned unserved for want of time. On the 17th August the plaintiff's witnesses were examined and in defence the petitioner and his elder brother gave evidence. The defence then seems to have closed, for no petition for further time for summonses on witnesses was asked for, but the Court gave time in order that the parties might have a chance of examining an expert in thumb impressions who had sent in a report on the thumb impression on the hand note in suit. The expert was not examined in Court. On the 5th October, after the vacation, the petitioner filed a petition asking for the examination of the Civil Surgeon but his petition was rejected. He again made a petition on the 7th October but that was again rejected, and on the 26th October, the Court, having heard arguments passed judgment in the case.

2. The learned Small Cause Court Judge stated that he could not rely upon the report of the Finger Print expert although it was in the plaintiff's favour because the expert had not been examined.

3. Now in the first place, if the Court could not use his report, no mention of it ought to have been made in the judgment much less ought it to have been stated that the report was in favour of either of the parties. The judgment proceeds to the effect that the evidence on the plaintiff's side satisfied the Court as to the due execution of the pro-note and a bond in which the passing of consideration under the pro-note was mentioned, and the Court found that the plaintiff had proved his case.

4. Now the Court had noticed in the written statement of the defendant-petitioner that he claimed to be a minor. Further, the Court had seen the report of the Civil Surgeon showing that he was a minor in 1925. It was not sufficient for the Court by just looking at the defendant to come to a conclusion that he was not a minor at the time when the Court saw him, much less that he was not a minor two years before. If there was any doubt as to the minority, that question ought to have been made an issue in the case and the Court ought to have decided whether it was a case in which a guardian ought to have been appointed. In my mind, after considering the materials before me, it is doubtful whether the defendant was a minor or not. If he was a minor, the decree of the Court of Small Causes is of no avail, for no guardian is appointed.

5. With regard to the failure to secure the attendance of the Civil Surgeon, I think that the defendant himself was to a certain extent, responsible for it. He was very late in filing his list of witnesses. At the same time the evidence of the Civil Surgeon was necessary for the purpose of determining whether the defendant was a minor and it would have helped the Court if it had complied with the request of the defendant to take the evidence of the Civil Surgeon.

6. The case is one in which, I think, the Court below should be asked to determine the important question whether the defendant was in fact a minor when the pro-note was executed.

7. I must set aside the decree and direct that the lower Court do give the defendant-petitioner an opportunity of proving whether he is a minor after framing an issue on the point. At the same time the Court may find it convenient to secure the evidence of the expert on thumb impressions in order that a satisfactory decision may be come to in the case.

8. The application is allowed, and the directions I have given above should be followed.

9. The costs of this application will follow the result in the lower Court.