
(1951) 02 GAU CK 0006
In the Gauhati High Court
Case No : Civil Revision No. 120 of 1949

Sarat Kalita and others

APPELLANT

Vs

Dharma Ram Deka and others

RESPONDENT

Date of Decision : 05-02-1951

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : AIR 1952 Guw 44

Hon'ble Judges : T.V. Thadani, C.J; Ram Labhaya, J

Bench : Division Bench

Advocate : B.N. Chaudhury, for the Appellant; D.N. Medhi, for the Respondent

Final Decision : Allowed

Judgement

Thadani, C.J.—This is a revision application under S. 115, Civil P.C., directed against an order of the learned District Judge, L. A. D., dated 20-9-49, by which he granted permission to the certificated guardian, one Dharma Ram Deka, appointed in Misc. case No. 89 of 1941 to sell certain lands belonging to the minors.

2. We propose to set aside the order of the learned District Judge as we think he has exercised jurisdiction with material irregularity. In matters relating to permission for the sale of property belonging to a minor, a Court, under the Guardians and Wards Act, has a special responsibility to discharge. It must satisfy itself that the permission sought, and given, is in the interests of the minor. Nowhere in the order has the learned District Judge said that the sale of the property is in the interests of the minor. Indeed we think the learned Judge has disposed of the guardian's application for permission to sell the property in a very casual manner.

3. In paragraph 5 of the guardian's application, the guardian had stated that he had borrowed a sum of Rs. 1197-12-6 pies, a statement which was not supported by any documentary evidence. The order of the learned Judge does

not show that he had directed his mind to the question whether the guardian had, in fact, borrowed the aforesaid amount. Again, in paragraph 6, the guardian had stated that the price, namely, Rs. 500, at which the property measuring 4 bighas odd was sought to be sold, was high price. The learned District Judge, acting upon the affidavit of one Gopal Ch. Deka, came to the conclusion that the price Rs. 500 offered was good price. We do not think in matters affecting the sale of a minor's property, a Judge acting under the Guardians and Wards Act should be content merely to rely upon an affidavit or affidavits. It is his duty to satisfy himself independently of affidavits, for instance, by calling for evidence as to the market value of the land sought to be sold, before he comes to a conclusion as to the value of the property.

4. We find from the record of this case that the certificated guardian had in the past failed to perform his duties satisfactorily as a guardian. In the revision petition before us, a large number of facts have been stated--facts which are prima facie borne out by the record. Having regard to these facts, we think the duty of the learned District Judge was all the greater to scrutinise very carefully the application for permission to sell the minor's property.

5. As the order of the learned District Judge granting permission to the certificated guardian to sell the minor's property is based upon little or no inquiry at all as to the statements made by the petitioner in paragraphs 5 and 6--a procedure which we consider very materially irregular in the exercise of his jurisdiction as a Judge under the Guardians and Wards Act we set aside the order granting permission to the guardian and remand the petition to the learned Judge to hold a further and better inquiry into the matter bearing in mind the history of the case, the facts in relation to which are stated with sufficient clarity in the revision petition made before us, and upon such fresh enquiry, to pass such orders as he deems fit. The order granting permission to the certificated guardian, dated 29-9-49, is set aside. The application is allowed. The costs of the application will be costs in the cause. The Rule is accordingly made absolute.

Ram Labhaya, J.

6. I agree.