

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR No.3351 OF 2016 (O&M)
DATE OF DECISION : 11TH MAY, 2016

Rajvir Kaur

.... Petitioner

Versus

Sehajpreet Singh (minor)
through next friend & uncle Malkit Singh & another

.... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

1. Whether Reporters of the local papers may be allowed to see the judgment ? Yes
2. To be referred to the Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest? Yes

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Present : Mr. M. J. S. Bedi, Advocate for the petitioner.

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DARSHAN SINGH, J.

CM No.9924-CII-2016

The application is allowed as prayed for.

CR No.3351 OF 2016

1. The present revision petition has been preferred against the order dated 17.03.2016 passed by learned Civil Judge (Senior Division), Talwandi Sabo, vide which Malkit Singh has been allowed to pursue the suit on behalf of the minor plaintiff-Sehajpreet Singh and parties have been ordered to maintain status quo regarding the suit property.

2. I have heard Mr. M. J. S. Bedi, Advocate learned counsel for the petitioner and carefully gone through the paper book.

3. Learned counsel for the petitioner contended that the suit on behalf of minor plaintiff-Sehajpreet Singh has been filed by Malkit Singh alleging himself to be the next friend of the plaintiff. He contended that

father of the plaintiff has already died. Petitioner-Rajvir Kaur is the mother of the minor-plaintiff, who is the natural guardian of the plaintiff. He contended that in the presence of mother of the plaintiff, Malkit Singh the uncle of the plaintiff, cannot act as the next friend and the learned Trial Court has wrongly granted the permission to Malkit Singh to pursue the suit on behalf of the minor plaintiff.

4. I have duly considered the aforesaid contentions. Minor Sahajpreet Singh-plaintiff has filed suit through his next friend Malkit Singh, who happens to be the cousin of his father. The suit has been filed for declaration that the plaintiff is owner in possession of the suit land detailed and described in the headnote of the plaint, on the basis of Will dated 07.01.2012 executed by late Baljeet Singh the father of the plaintiff and the plaintiff is entitled to get the entries of ownership changed in his name in the revenue record. He has also challenged the mutation of inheritance of late Baljeet Singh in favour of the plaintiff and petitioner/defendant No.1 to be illegal and not binding on the rights of the plaintiff. The plaintiff has also challenged the Will dated 07.01.2012 allegedly executed by the deceased Baljeet Singh in his favour and that of petitioner/defendant No.1-Rajvir Kaur. So, the real dispute in the suit is between the minor plaintiff Sehajpreet Singh and petitioner/defendant No.1-Rajvir Kaur his mother. The present suit has been filed by the minor through Malkit Singh, his next friend, who happens to be his uncle being the cousin of his father. The learned trial Court in the impugned order, while allowing the application to pursue the suit by Malkit Singh the next friend on behalf of Sehajpreet Singh, has categorically mentioned that he is under his care and custody as father of Sehajpreet Singh had already died and his mother has contracted

second marriage. He also has no adverse interest against the minor-plaintiff. So he was allowed to pursue the suit on behalf of the minor-plaintiff.

5. Order 32 Rule 1 the Code of Civil Procedure 1908 (hereinafter called 'CPC') provides that the suit on behalf of the minor is to be filed through the next friend, whereas, as per the provisions of Order 32 Rule 3 CPC where the minor is defendant the Court shall appoint a proper person to be the guardian of the minor for the purpose of the suit. The distinction between the next friend and the guardian is broadly akin to the one between legal representatives on the one hand and the legal heir on the other hand. The role of the legal representative in a proceeding is limited to the one of enabling the Court to conclude the proceedings in the event of the death of the party to the said proceedings. The legal heir, on the other hand, would inherit and succeed to the estate of the predecessor, which cannot be limited to the dispute in proceedings. Similarly, the next friend can do nothing more than keep the grievance of the minor-plaintiff before the court and seek adjudication whereas the guardian can take certain decisions by himself in the interest of the minor before or after filing of the suit. Any person, who is of sound mind and has attained majority may act as next friend of minor, provided the interest of that person is not adverse to that of minor. In the case of ***Minor Mangalam @ Badrakali & others Versus Sudalaimuthu, 1991(1) HLR 17*** the minor has challenged the alienation by their parents, the suit was filed by him through his maternal uncle as next friend by obtaining the leave of the Court to act as next friend the Division Bench of Hon'ble Madras High Court has held that the suit instituted by the next friend on behalf of minors is maintainable.

6. In the instant case, this fact cannot be disputed that the minor plaintiff-Sehajpreet Singh has filed the suit claiming himself to be the sole owner of the estate left by his father Baljeet Singh on the basis of the Will. He has challenged the mutation of the land in favour of respondent No.1- Rajvir Kaur his mother. So the real dispute in the suit is between minor plaintiff-Sehajpreet Singh and his mother Rajvir Kaur the present petitioner/defendant No.1. Even though Rajvir Kaur may be the mother of the minor-plaintiff but once she has got conflicting interest against the minor then how she can act as a guardian/next friend of the minor in the suit filed by the minor plaintiff/respondent No.1 against her. She has already contracted the second marriage after leaving the minor plaintiff. On the other hand, the petitioner has not brought on record any material to show that Malkit Singh has any interest adverse to the minor plaintiff.

7. Thus, I do not find any illegality in the permission granted by the learned Trial Court to Malkit Singh, his uncle (cousin brother of the father of the minor) to act as his next friend. The opposition by the petitioner is totally misconceived and does not appears to be bonafide, when admittedly, she has the interest adverse to the minor in the present suit as the relief sought in the suit is against her.

8. Consequently, the present revision petition is without any merits and the same is hereby dismissed with costs of ₹10,000/- to be deposited with District Legal Service Authority, Bathinda.

11th MAY, 2016
'raj'

(DARSHAN SINGH)
JUDGE