

[107] **IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Reserved on 12.08.2024

Pronounced on 23.08.2024

Ajit Singh and others ...Appellants

...Appellants

versus

Risal Singh and anotherRespondents

....Respondents

Coram : **HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Abhilaksh Grover, Advocate and
Mr. Tarun Jain, Advocate
for the appellants.

Mr. M.L. Sarin, Senior Advocate with
Ms. Hemani Sarin, Advocate
for LR of respondent No.1.

Ms. Nidhi, Advocate
for LR of respondent No.1(iii).

PANKAJ JAIN, J. (ORAL)

[1] Defendants are in appeal.

[2] For convenience, parties are hereinafter referred by their original positions in the civil suit i.e. appellants as defendants and the respondents as plaintiff.

[3] Plaintiff filed suit for possession by way of pre-emption. It was claimed by the plaintiff that Smt. Vedo sold land in dispute to defendant Nos.1 to 5 on 10.08.1990 for a sale consideration of Rs.70,000/-. Plaintiff being co-sharer in the suit land, has a superior right to pre-empt the sale deed in favour of the defendants. Out of the defendants, only defendant No.1 was major. Defendant Nos.2 to 5 were minors at the time of filing of the suit.

Trial Court vide order dated 13.01.1992, appointed Shri O.P. Panwar, Advocate, as guardian of the minors to represent them. Suit filed by the plaintiffs was decreed by the trial Court, holding him co-sharer in the suit property. In appeal preferred by the defendants, the judgment and decree passed by the trial Court stands affirmed.

[4] Counsel for the appellant, while assailing the impugned judgment and decree passed by the Courts below, as raised solitary contention based upon Order 32 Rule 3. While referring to sub Rules 3 to 6 incorporated under Order 32 Rule 3 in substitution to sub Rules 3 & 4.

[5] Mr. Grover, submits that the procedure prescribed therein is mandatory. As per sub Rule 3, plaintiff was required to file alongwith plaint list of relatives of the minor, who *prima facie* are most likely to be capable of acting as guardians for the suit for minor defendant and interms of sub Rule 6, no order should have been passed on the application without notice to the father or other natural guardian of the minor. He thus submits that the mandatory procedure having not been followed in the present case, the judgment and decree passed by both the Courts below deserve to be set aside.

[6] In order to support his contention, he places reliance upon **‘Gurpreet Singh versus Chatterbhuj Goel’, reported as 1992 AIR Punjab and Haryana 95** and **‘Asha Rani versus Amrit Lal’, 1977 AIR Punjab and Haryana 28.**

[7] Counsel further submits that written statement filed by the

agitated. In appeal, application seeking amendment of the written statement on behalf of the defendants was filed. Thus, serious prejudice having been caused to the interest of the minors, the proceedings against them contested by Court appointed guardian deserves to be set aside.

[8] *Per contra*, learned Senior counsel appearing for the respondents submits that from the memo of parties of the plaint, it is evident that the minors were impleaded through defendant No.1-Daya Kishan, their brother, who was major at the time of filing of the suit. He appeared before the Court and suffered a statement that he does not want to act as guardian of the minors, it is in these circumstances that the Court was left with no other option but to appoint Court guardian. He further relies upon Full Bench Judgment of this Court in case titled as '**Amrik Singh etc. versus Karnail Singh etc**', reported as 1974 PLR 744, to submit that once it is evident from the record that the minor was being adequately represented, plea claiming non-compliance provisions of Order 32 Rule 3 cannot be accepted. In support of his submissions, he relies upon '**Manohar Lal versus National Building Material Supply, Gurgaon**', AIR 1969 (SC) 1267, '**Kehar Singh versus Balraj Singh and others**', 1991, PLJ, 154, '**Siddalingamma versus MamthaShenoy**', 2002(1) RCJ 9, '**Amrik Singh etc. versus Karnail Singh etc.**', 1974 PLR 744 and '**Shyam Sunder and others versus Ram Kumar and another**', 2001 (8) SCC 24.

[9] In order to appreciate the rival contentions of the counsel representing the parties, it will be apt to peruse Order 32 Rule 3, 4, 5 & 6,

which reads as under:-

*ORDER XXXII
SUITS BY OR AGAINST MINORS AND
PERSONS OF UNSOUND MIND*

1. *Minor to sue by next friend.-*

Every suit by a minor shall be instituted in his name by a person who in such suit shall be called the next friend of the minor.

²*[Explanation.- In this Order, "minor" means a person who has not attained his majority within the meaning of section 3 of the Indian Majority Act, 1875 (9 of 1875) where the suit relates to any of the matters mentioned in clauses (a) and (b) of section 2 of that Act or to any other matter.]*

2. Ins. by Act 104 of 1976, s. 79 (w.e.f. 1-2-1977).

2. *Where suit is instituted without next friend, plaint to be taken off the file.-*

(1) Where a suit is instituted by or on behalf of a minor without a next friend, the defendant may apply to have the plaint taken off the file, with costs to be paid by the pleader or other person by whom it was presented.

(2) Notice of such application shall be given to such person, and the Court, after hearing his objections (if any) may make such order in the matter as it thinks fit.

2 A. *Security to be furnished by next friend when so ordered.-*

(1) Where a suit has been instituted on behalf of the minor by his next friend, the Court may, at any stage of the suit, either of its own motion or on the application of any defendant, and for reasons to be recorded, order the next friend to give security for the payment of all costs incurred or likely to be incurred by the defendant.

(2) Where such a suit is instituted by an indigent person, the security shall include the court-fees payable to the Government.

(3) The provisions of rule 2 of Order XXV shall, so far as may be, apply to a suit where the Court makes an order under this rule directing security to be furnished.]

3. Ins. by Act 104 of 1976, s. 79 (w.e.f. 1-2-1977).

3. *Guardian for the suit to be appointed by Court for minor defendant.-*

(1) Where the defendant is a minor the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit for such minor.

(2) An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff.

(3) Such application shall be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in controversy in the suit adverse to that of the minor and that he is a fit person to be so appointed.

*(4) Order shall be made on any application under this rule except upon notice 1*** to any guardian of the minor appointed or declared by an authority competent in that behalf, or, where there is no such guardian 2[upon notice to the father or where there is no father, to the mother, or where there is no father or mother, to other natural guardian] of the minor, or, where there is 3[no father, mother or other natural guardian], to the person in whose care the minor is, and after hearing any objection which may be urged on behalf of any person served with notice under this sub-rule.*

¹[(4A) *The Court may, in any case, if it thinks fit, issue notice under sub-rule (4) to the minor also.*]

³[(5) *A person appointed under sub-rule (1) to be guardian for the suit for a minor shall, unless his appointment is terminated by retirement, removal or death, continue as such throughout all proceedings arising out of the suit including proceedings in any Appellate or Revisional Court and any proceedings in the execution of a decree.*]

1. The words "to the minor and" omitted by s. 79, *ibid.* (w.e.f. 1-2-1977).

2. Subs. by s. 79, *ibid.*, for certain words (w.e.f. 1-2-1977).

3. Ins. by Act 16 of 1937, s. 2.

¹[3A. ***Decree against minor not to be set aside unless prejudice has been caused to his interest.-***

(1) No decree passed against a minor shall be set aside merely on the ground that the next friend or guardian for the suit of the minor had an interest in the subject-matter of the suit adverse to that of the minor, but the fact that by reasons of such adverse interest of the next friend or guardian for the suit, prejudice has been caused to the interests of the minor, shall be a ground for setting aside the decree.

(2) Nothing in this rule shall preclude the minor from obtaining any relief available under any law by reason of the misconduct or gross negligence on the part of the next friend or guardian for the suit resulting in prejudice to the interests of the minor.]

1. The words "to the minor and" omitted by s. 79, *ibid.* (w.e.f. 1-2-1977).

Punjab. – *In Order XXXII, in rule 3, for sub-rules (3) and (4), substitute the following sub-rules, namely:-*

"(3) The plaintiff shall file with his plaint a list of relatives of the minor and other persons, with their address, who prima facie are most likely to be capable of acting as guardian for the suit for a minor defendant. The list shall constitute an application by the plaintiff under sub-rule (2) above.

(4) The Court may at any time after institution of the suit call upon the plaintiff to furnish such a list, and in default of compliance, may reject the plaint.

(5) Any application for the appointment of a guardian for the suit and any list furnished under this rule shall be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in controversy in the suit adverse to that of the minor and that each person proposed is a fit person to be so appointed.

(6) No Order shall be made on any application under this rule except upon notice to any guardian of the minor appointed or declared by an authority competent in that behalf, or, where there is no such guardian, upon notice to the father or other natural guardian of the minor or, where there is no father or other natural guardian, to the person in whose care the minor is, and after hearing any objection which may be urged on behalf of any person served with notice under this sub-rule:

Provided that the Court may, if it sees fit, issue notice to the minor also.

[Vide Notification No. 95-G, dated 25th February, 1925 and Notification No. 566-G, dated 24th November, 1927.] "

[10] Careful perusal of the aforesaid provision would reveal that the plaintiff while filing a suit against the minors is required to file list of relatives of the minors and other persons, with their addresses, who *prima facie* may be capable of acting as guardian for the suit for a minor defendant. For the appointment of guardian for a minor defendant in a suit order may be passed upon application in the name and on behalf of minor or by the plaintiff. Court can also call upon the plaintiff to furnish list as contemplated under sub Rule 3. Before passing of the order on any application under the rule, order shall be passed upon notice to the father or other natural guardian of the minor.

[11] The aforesaid provision came up for consideration before Full Bench of this Court in '**Amrik Singh's** case (supra). Chief Justice D.K. Mahajan, speaking for the Full Bench held as under:-

“24. After going through the case law cited before me, I have come to the conclusion that each case must be settled on its own facts and it would not be appropriate to lay down any general rule. The crux of the matter is that it has to be seen whether the minor was effectively represented in the litigation. If he was, then the non-compliance with the provisions of Order 32, Rule 3, which are mandatory, would not render the decision void. But if the non-compliance has caused prejudice to the minor or he was not effectively represented, the decision will be void, i.e., the minor can either ignore it or avoid it. This approach is in consonance with justice because where the matter has been properly contested and no prejudice has been caused to the minor, it will be sheer injustice to the other side to re-open the matter again. Litigation is a very expensive affair and the general principle of law is that it should not be encouraged. In this view

of the matter, so far as the facts of the present case are concerned, there can be no two opinions that the minors were effectively represented and no prejudice has been caused to them. Their interests were effectively safeguarded by their brothers, who were co-defendants with them and whose interests were identical. They contested the suit on all conceivable grounds. The learned counsel for the minors has been unable to bring to our notice any evidence or any contention which would enable us to hold that a wrong decree was obtained.”

Thus, the test laid down by the Full Bench is :-

i) Whether minor was adequately represented or not?

[12] Same question cropped-up before the Division Bench of this Court in ‘**Gurpreet Singh’s** case (supra). The Division Bench observed as under:-

“3. An additional factor which weighed with the Court while declining the relief of specific performance, was that Col. Sukhdev Singh had not been appointed the guardian for the minor appellant in terms of O. 32, R. 3, Civil Procedure Code, and as such, Col. Sukhdev Singh was not competent to defend the suit on behalf of the defendant/appellant. On the reasoning adopted by the learned trial Court it was held that the plaintiff-respondent was not entitled to the decree for specific performance. Dissatisfied with the decree of the trial Court, the respondent preferred an appeal to this Court. The learned single Judge endorsed the findings of the trial Court that the default in complying with the agreement dated 4th June, 1979 had been committed by the appellant defendant. On the question of the non-compliance with the provisions of O.32, R. 3, [C.P.C.](#) the learned single Judge held that Col. Sukhdev Singh, though not formally appointed as the guardian, had conducted the cases for the appellant effectively and fought the litigation to the best of his ability and with tenacity. It was held that the non-compliance with the aforesaid provisions of the Civil

Procedure Code was an irregularity and as such, was required to be ignored in terms of O. 32, R. 3A, [C.P.C.](#) as no prejudice has been suffered by the appellant. The learned single Judge also held that the reasons recorded by the trial Court in denying the relief of specific performance were not germane. The learned single Judge allowed the appeal and decreed the suit. Against the decree of the learned single Judge, the present letters patent appeal has been filed. ”

And

“8. The primary attack on behalf of the appellant to the judgment of the learned single Judge however is that as Col. Sukhdev Singh, guardian of the minor appellant, had not been appointed to act as such by complying with the procedure laid down under O. 32, Rr. 3 and 4, Civil Procedure Code, the suit was therefore not competent and should have been dismissed on that short ground. This argument had been considered and accepted by the trial Court, but the learned single Judge, in appeal, upset this finding holding that the appellant was effectively represented in the suit by his father and guardian Col. Sukhdev Singh and the omission of the Court to make formal order of appointment of Col. Sukhdev Singh as guardian ad litem had not caused any prejudice to the minor and, as such, the suit was competent. The matter has to be examined in the light of the provisions of O.32, Rr.3 and 4 [of the Code of Civil Procedure](#), which reads as under:--

"(1) Where the defendant is a minor, the Court, on being satisfied of the fact of his minority, shall appoint a person to be guardian or the suit for such minor;

(2) An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff.

(3) Such application shall be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in controversy in the suit adverse to that of the minor and that he is a fit person to be so appointed.

(4) No order shall be made on any application under this rule except upon notice to any guardian of the minor appointed or declared by an authority competent in that behalf, or, where there is no such guardian, (upon notice to the father or where there is no father, to the mother, or where there is no father or mother; to other natural guardian) of the minor, or, where there is (no father, mother or other natural guardian), to the person in whose care the minor is, and after hearing any objection which may be urged on behalf of any person served with notice under this sub-rule."

Sub-rule (3) of R. 4 reads as under:

"No person shall without his consent (in writing) be appointed guardian for the suit, but the Court may presume such consent to have been given unless it is expressly refused."

It will be seen from the provisions of O. 32, R.3, Civil Procedure Code, that the legislature had advisedly provided special protection for minors and persons of unsound mind as they being unable to look after their own interest, require special care. R. 3 specifically provides that for the appointment of a guardian, an application has to be made and such application must be supported by an affidavit giving the details mentioned in sub-rule (3). Sub-rule (4) of R. 3 provides that no order shall be made on the application filed under R. 3 unless a notice has been served on the guardian, if any, and where there is no such guardian, on the father or on mother or on various other persons mentioned in sub-rule (4) of R. 3. Sub-rule (3) of R. 4 stipulates that no person is to be appointed guardian without his consent in writing (and the underlined portion which is an amendment made by the State of Punjab) provides that the Court may presume such consent unless it is expressly refused. The inflexible rule therefore is that it is incumbent on the plaintiff suing a minor defendant to file an application in Court for the appointment of a guardian and the subsequent steps that are to be taken are within the purview or province of the Court. We are of the view of that if an application is not made as provided by O.32, R. 3 any guardian who may have acted for the minor, would not be clothed with the requisite authority to act as such. The consent that can be

presumed is only if an application has been made, and notice issued to the proposed guardian. ”

9. Mr. Sarin, learned Senior Advocate, appearing for the respondent has also placed reliance on the provisions of Rule 3A Order 32 of the Civil Procedure Code, which reads as under:

“(1) No decree passed against a minor shall be set aside merely on the ground that the next friend or guardian for the suit of the minor had an interest in the subject-matter of the suit adverse to that of the minor, but the fact that by reason of such adverse interest of the next friend or guardian for the suit, prejudice has been caused to the interests of the minor, shall be a ground for setting aside the decree”

*He has argued that the case was admirably fought right up to the Supreme Court by Col. Sukhdev Singh and all possible steps were taken by him to defend the interest of the minor. On this reasoning, he asserts, that no prejudice has been suffered by the minor appellant and, as such, a valid decree could be passed in favour of the plaintiff-respondent. He has placed primary reliance on the Full Bench judgment of this Court reported as **Amrik Singh v. Karnail Singh, AIR 1974 Punjab and Haryana 315**. He has also relied upon **Walian v. Banke Behari Pershad Singh, ILR 1. 1903 (Calcutta) 1021** **Bhagbat Sahu v. Parbati Samal, AIR 1982 Orissa 186**, and **Anandram v. Madholal, AIR 1960 Rajasthan 189**.*

10. *We are however of the view that all these authorities are distinguishable on facts and do not support the case of the respondent. In Amrik Singh's case (supra) the facts were that Amrik Singh and Vir Singh minor defendants were sued through their real brother Satnam Singh as their guardian. An application was made under Order 32, Rule 3 CPC, praying that Satnam Singh aforementioned be appointed as guardian of the minors. It was also mentioned that Ajit Singh brother, Mangal Singh father, Tirath Kaur mother and an officer of the Court were liable to be appointed as guardian of the minor. Satnam Singh refused to act as guardian and thereafter the Court appointed one Madan Gopal Advocate as guardian of the minor defendants. It was in this situation that the Full Bench came to*

the conclusion that the minors had been effectively represented and no prejudice had been caused to them. The Full Bench observed as under:

"The crux of the matter is that it has to be seen whether the minor was effectively represented in the litigation. If he was, then the non-compliance with the provisions of Order 32 Rule 3, which are mandatory, would not render the decision void. But if the non-compliance has caused prejudice to the minor or he was not effectively represented, the decision will be void, ie., the minor can either ignore it or avoid it. This approach is in consonance with justice because where the matter had been properly contested and no prejudice has been caused to the minor, it will be sheer injustice to the other side to reopen the matter again. Litigation is a very expensive affair and the general principle of law is that it should not be encouraged. In this view of the matter, so far as the facts of the present case are concerned, there can be no two opinions that the minors were effectively represented and no prejudice has been caused to them. Their interests were effectively safeguarded by their brothers, who were co-defendants with them and whose interests were identical."

The reliance placed on Anandram's case (supra) is also misplaced. In this case, the minor defendant was effectively represented by his father, who was also one of the defendants, and the Court held that no prejudice had been suffered by the minor in the defence of his case. Moreover, in this case plaintiff had in fact presented an application in the trial Court for the appointment of a guardian ad litem and it was the Court which committed the default in not passing a formal order. On this premise it was held that the mere fact that no formal order of appointment of the guardian having been made, would not invalidate the suit. "

[13] Applying the aforesaid ratio to the present case, this Court finds that from the memo of parties appended to the plaint, it is evident that the minors were impleaded through their real brother-defendant No.1, who was major at the time of filing of suit. It must be noticed here that defendant

blood relation, his interest was also similar to that of other defendants. After defendant No.1 suffered a statement, expressing his unwillingness to act as guardian of rest of the defendants, court appointed a guardian. Suit was being contested by defendant No.1 as well as minors through guardian appointed by the Court. The plea proposed by amendment in written statement filed by minor was raised by defendant No.1 in written statement filed by him. The same has been dealt by the Court below. Thus, it cannot be said that the guardian appointed by Court acted to the prejudice of the appellants. Not only were they being represented adequately, defendant No.1 having common interest with that of appellants fought the lis effectively.

[14] Thus, in terms of the law laid down by the Full Bench of this Court in ‘Amrik Singh’s case (supra) *abid* this Court finds that the arguments raised by Mr. Grover, counsel for the appellants *sans* merits and deserves to be rejected.

[15] No other point has been argued.

[16] In view of the above, finding no merits and the same is ordered to be **dismissed**.

(PANKAJ JAIN)
JUDGE

23.08.2024
'R. Sharma'

Whether speaking/ reasoned	:	Yes/No
Whether reportable	:	Yes/No