

AD- 3
Ct No.16
21.04.2025
(SSS)

RVW 30 of 2016
In
SA 22 of 2016

Nirmal Mudi
Vs.
Manahar Mudi and Ors.

Mr. Bhudeb Chatterjee,
Mr. Rajendra Banerjee,
Mr. Souvik Ganguli

....For the Review Applicant.

1. Learned Counsel appearing for the appellant/review applicant argues in connection with the review application that the coordinate bench which dismissed the second appeal under Order XLI Rule 11 of the Code of Civil Procedure did not take into consideration a germane aspect which was evident from the materials on record, as such, giving rise to an error apparent on the face of the said order.
2. It is contended that although the premise of the plaintiff/appellant's case in the suit was that the signature of the plaintiff was made by false personification, fact remains that the plaintiff was also a minor at the relevant point of time when such

signature was effected, which also gives rise to an additional question as to whether due to such minority of the plaintiff, the signature could have conferred any right at all on the transferee or have any effect in the eye of law.

3. Learned Counsel further argues that even if the minority of the plaintiff/appellant at the relevant point of time was not specifically pleaded, the evidence led by the parties in the suit bears out the said fact clearly. As such, it is submitted that both the courts below committed a perversity in not taking into consideration such aspect of the matter. Hence, the non-consideration of such perversity by the coordinate while dismissing the second appeal under Order XLI Rule 11 of the Code tantamounts to an error apparent on the face of the records.

4. Learned Counsel also relies on Section 9 of the Indian Evidence Act, 1872 to argue that facts necessary to explain or introduce a fact in issue or a relevant fact are also considered to be relevant facts, having a material bearing on the case.

5. However, with respect, we are unable to accede to the contentions of the appellant/review applicant for the following reasons.

6. First, for a fact to come within the purview of Section 9 of the Indian Evidence Act, the said fact is to be relevant to explain or introduce another fact,

which is “in issue in the suit” in the first place. As such, for the said second degree issue to be relevant, the “another fact” (the first-degree fact) had to have a foundation in the pleadings. It is well-settled that there cannot be any proof beyond the pleadings.

7. The alleged minority of the appellant does not automatically come as a sub-set of the blanket pleading that the signature was obtained by false personification, but had to be pleaded separately and categorically, being a different species of the genus of a challenge to a signature than impersonation.

8. Since there were no pleadings at all or even any iota of foundation or independent assertion in the plaint pleadings that the plaintiff’s signature did not confer or pass any title since the plaintiff was a minor at the relevant point of time, we do not find that any *ex facie* error was committed by the coordinate Bench in dismissing the appeal under Order XLI Rule 11 in the teeth of concurrent findings of facts of both the courts below to the effect that there was no false personification, which was the only premise of the case of the plaintiff/appellant in his pleadings.

9. As such, we find that the parameters of Order XLVII of the Code of Civil Procedure are not satisfied in the present case and as such, the review cannot be entertained.

10. Accordingly, RVW 30 of 2016 is dismissed without, however, any order as to costs.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)