

Gursaran Lal Vs. Seral Kumar

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Court : Allahabad

Decided On : Sep-07-1955

Reported in : AIR1956All136

Judge : Randhir Singh, J.

Acts : Contract Act, 1972 - Sections 11; [Partnership Act, 1932](#) - Sections 6; [Legal Practitioners Act, 1879](#) - Sections 13

Appeal No. : Second Appeal No. 107 of 1949

Appellant : Gursaran Lal

Respondent : Seral Kumar

Advocate for Def. : Harish Chandra, Adv.

Advocate for Pet/Ap. : K.S. Verma, Adv.

Disposition : Appeal dismissed

Judgement :

Randhir Singh, J.

1. This is a defendant's second appeal arising out of a suit brought by the respondent for the recovery of Rs. 955/10/- on the allegation that the plaintiff had advanced various sums of money to the defendant on the defendant promising to pay the money back with a half share in the profits of the business in which the money was to be invested by the defendant. The suit was brought by the plaintiff through his father as his next friend.

The defendant contested the suit on several grounds taut mainly on the ground that the transaction was entered into between the plaintiff father and the defendant and that the plaintiff had therefore no right to maintain the suit for the recovery of the money.

The trial Court found that the plaintiff's [father, who was a lawyer, had advanced money belonging to the plaintiff' to the defendant who wanted money for carrying on some contract business in the Municipal Board and that under the terms of the loan the defendant was to repay the money together With a half share in the profits to be earned by the defendant in the shape of interest.

The suit was decreed by the trial Court for Rs. 882/14/10 with costs. The defendant

then went up in appeal and a cross-objection was also filed on behalf of the plaintiff. The lower appellate Court agreed with the finding of the trial Court and dismissed the appeal. The cross-objection instituted by the plaintiff was, however, allowed and the defendant was held liable for Rs. 993/14/10. The defendant has now come up in second appeal.

2. The only point which has been raised on behalf of the appellant in this case is that on the own showing of the plaintiff the contract of loan was entered into by a minor and as such was void & unenforceable. Three cases have been cited by the learned Counsel for the appellant in support of this contention, and they are -- 'Ma Hint v. Hashim Ebrahira Meter', AIR 1919 PC 129 (A). 'Mr Sarwarjan v. Pakhruddin Mahomed', 39 Ind App 1 (PC) (B) and -- 'Ramakrishna Reddiar v. Chidambara Swamigal AIR 1928 Mad 407 (C). In all these reported cases the question involved was wholly different. In '39 Ind App 1 (PC)(B) and 'AIR 1928 Mad 407 (C)', the powers of a guardian qua the property of the minor were the subject of discussion. In 'AIR 1919 PC 129 (A)', a promote had been executed not by the guardian on behalf of the minor but in the name of the minor and it was held that a suit could not be brought on the basis of such promote. It would thus appear that none of these three cases has any application to the facts of the present case.

3. In the present case the plaintiff's father acting as guardian of the minor advanced certain sums of money to the defendant who needed it for the purpose of carrying on a contract business and it was agreed that in lieu of interest the defendant was to pay to the plaintiff a half share in the profits of the business. Such a contract cannot be said to be void or invalid.

It is always open to the guardian of a minor to advance money belonging to the minor to other persons for earning profits for the minor. The contention that the plaintiff had become a partner in the business had been repelled by both the Courts below and has evidently no force.

The mere fact that a person shares in the profits and advances money to another person who carries on business would not make him a partner in the business and this has been clearly indicated in Section 6, Partnership Act also. The plaintiff was, therefore, rightly held not to be a partner in the business. It was a suit for the recovery of money advanced as a loan and the view taken by the Court below on this point was correct.

4. It has further been argued on behalf of the appellant that the plaintiff's father was a legal practitioner and he could not invest his money in business and he therefore sued the defendant on behalf of his son as guardian. The question as to whether the money belonged to the plaintiff or his father was a question of fact and the trial Court found on the evidence adduced by the parties that the money in fact belonged to the minor.

There can be no presumption that money advanced by a legal practitioner on behalf of his son would in all circumstances belong to him. It would be a question of fact in each case and if on the evidence it is found that the money did not belong to the father but to the son a loan could evidently be advanced by the father on behalf of the minor son.

5. No other point has been pressed in arguments.

6. As a result the appeal fails and is dismissed with costs to the respondent. The stayorder is discharged.

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