

**Shiv Saran Dass Bhagwan Dass Vs. Smt. Satbhirawan Trust, Delhi and ors.**

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**Court :** Punjab and Haryana

**Decided On :** Jul-15-1960

**Reported in :** AIR1961P& H17

**Judge :** Shamsheer Bahadur, J.

**Acts :** [Guardians and Wards Act, 1890](#) - Sections 7 and 13; Code of Civil Procedure (CPC) - Sections 141

**Appeal No. :** F.A.F.O. No. 23-D of 1959

**Appellant :** Shiv Saran Dass Bhagwan Dass

**Respondent :** Smt. Satbhirawan Trust, Delhi and ors.

**Advocate for Def. :** Mastan Chand Malhotra, Adv.

**Advocate for Pet/Ap. :** G.S. Vohra, Adv.

**Judgement :**

Shamsheer Bahadur, J.

1. This appeal is directed against the order of the District Judge, Delhi, who refused to appoint the appellant Shiv Saran Dass guardian of his minor son, Om Prakash. In pursuance of the will executed by Shrimati Sat Bharanwan on 22-4-1957, the minor had to be maintained by a trust appointed by her, Shiv Saran Dass presented an application under Section 7 of the Guardians and Wards Act alleging that the minor was not being properly maintained and asked for his own appointment as guardian. Written statement was filed on behalf of the two trustees, Sant Ram Ghai and Gobind Ram on 4-12-1958.

The proceedings were adjourned for recording the statements of the parties to 12-12-1958 on which date one joint statement of the two trustees and a statement of the petitioner were taken down. The case was then adjourned for orders on 2-1-1959. On 2-1-1959, the learned Judge wanted to rehear the arguments in the case and adjourned the case to 9-1-1959. The order impugned in this appeal was passed by the learned District Judge on 13-1-1959.

2. Shiv Saran Dass, father of the minor, has come in appeal to this Court and it has been contended by his learned counsel that there has been no proper determination of the issues arising in this case. It appears that the learned Judge has decided the whole dispute or what he considered to be the point in dispute on first impressions after a perusal of the pleadings. No issues were framed nor had any evidence been

adduced. There is no statement of the appellant to show that he had foregone his right to produce evidence. Under Section 141 of the C. P. C., 'the procedure provided in this Code in regard to suits shall be followed, so far as it can be made applicable, in all proceedings in any Court of Civil jurisdiction.'

There can be no manner of doubt that the procedure of the Code is to be followed in proceedings under the Guardians and Wards Act. Moreover, Section 13 of the Guardians and Wards Act requires that 'on the day fixed for the hearing of the application, or as soon afterwards as may be the Court shall hear such evidence as may be adduced in support of or in opposition to the application'. In my view the recording of the statements of the parties is not a compliance with the requirements of law. From a perusal of the pleadings, it seems to me that it was not a case in which the panoply of judicial procedure could have been lightly dispensed with, The learned Judge has laid emphasis on the mala fides with which the petitioner in his opinion was actuated. It is not possible to draw this conclusion from the pleadings of the parties and I do not think that this ground has been made out from the material which has been placed on record.

3. The learned counsel for the respondents submits that Om Prakash is no longer a minor and that the entire property which was bequeathed to him by the will of Shrimati Sat Bharanwan has been handed over to him. This is a matter which is not admitted and requires investigation. I feel constrained to allow this appeal and set aside the order of the learned District Judge and remand the case for decision in accordance with law. The parties have been directed to appear before the District Judge, Delhi, on 5-8-1960. The costs would abide the event.

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