

Due to all the reasons stated above, I am constrained to hold that no order for the execution of the decree can be passed in the present case in view of section 37 of the Act. Issue No. 3 is consequently decided in favour of the judgment-debtor and against the decree-holder. In this view of the matter, it is not necessary to give any separate decision in Execution First Appeal 35 of 1963. The decree-holder cannot proceed to attach any property of the judgment-debtor. The result is that both the appeals are accepted and the execution application filed by the decree holder is dismissed. In the circumstances, the parties will bear their own costs.

HARBANS SINGH, J.—I agree.

B.R.T.

REVISIONAL CIVIL

*Before Mehar Singh, C.J.*

LAL SINGH AND ANOTHER,—*Petitioners.*

*versus*

MST. CHHOTTO—*Respondent.*

Civil Revision No. 30 of 1966.

January 3, 1967.

*Guardians and Wards Act (VIII of 1890)—S. 33—Order for delivery of possession of land or money due to minor to his guardian—Whether can be made—Joint property—Remedy of the guardian—Whether to obtain partition and then exclusive possession.*

*Held*, that any opinion, advice or direction that the Guardian Court can give under section 33 of the Guardians and Wards Act, 1890, can only be on any question respecting the management or administration of the property of the ward. Delivery of possession of land from the possession of a third party is obviously not anything connected with the management or administration of the property of a ward, nor is a direction for payment of money to the guardian of the ward. In case of joint property the guardian can obtain partition and after partition have exclusive possession of the property of the minor.

*Petition under Section 115 of the Code of Civil Procedure, for revision of the order of Shri Harish Chandra Gaur, Guardian Judge, Barnala, dated 7th October, 1965, ordering that the respondents should deposit the amount received*

Lal Singh, etc. *v.* Mst. Chhotto (Mehar Singh, C.J.)

*by him as the mortgage amount on behalf of the minors, and dismissing the objections of the respondents.*

J. S. WASU, ADVOCATE, for the Petitioners.

S. P. GOYAL, ADVOCATE, for the Respondent.

#### JUDGMENT

MEHAR SINGH, C.J.—One Man Singh died leaving behind his widow, Chhoto, and two minor children from her, Maghar Singh *alias* Darshan Singh and Banso *alias* Harbans Kaur, and another son named Gurjant Singh from another wife. Lal Singh is the brother of Man Singh, deceased.

On an application by Chhoto, she was appointed guardian of the person and proerty of her minor son and daughter by an order dated August, 13, 1964, of the Guardian Court, Copy annexure 'A.2'. After that Lal Singh, uncle of the minors, and Gurjant Singh, step-brother of the minors seem to have realised a certain amount as mortgage money by redeeming a mortgage in which the two minors also had interest.

Chhoto, then made an application under section 33 of the Guardians and Wards Act, 1890 (Act VIII of 1890) for delivery of possession of the property of the two minors from their uncle, Lal Singh and step-brother Gurjant Singh, and also payment of the minors' share of the mortgage money received by those two persons. The trial Court has in its order of October 7, 1965, accepted this prayer of Chhoto and passed an order that she be delivered symbolical possession of the land, of the share of the two minors, along with the minors' uncle Lal Singh and their step-brother Gurjant Singh, and further that Lal Singh and Gurjant Singh do pay to her a sum of Rs. 733.33 Paise as minors' share of the mortgage money recovered by those two persons. This revision petition is against that order of the Gurdian Court, Barnala.

There is only one argument that is urged by the learned counsel for the applicant, to which the learned counsel for the opposite side is unable to give any adequate reply, that the order of the Guardian Court is without jurisdiction because no such order could have been passed by the Court under section 33 of Act VIII of 1890. Sub-section (1) of section 33 of that Act says :—

“A guardian appointed or declared by the Court may apply by petition to the Court which appointed or declared him for

its opinion, advice or direction of any present question respecting the management or administration of the property of his ward."

It is immediately apparent that any opinion, advice or direction that the Guardian Court can give under section 33 can only be on any question respecting the management or administration of the property of the ward. Delivery of possession of land from the possession of a third party is obviously not anything connected with the management or administration of the property of ward, nor is a direction for payment of money to the guardian of the ward. The learned Judge was of the opinion that Lal Singh and Gurjant Singh are not strangers to the minors because the first is their uncle and the second their stepbrother, but for the matter of rights to property they still are strangers to the minors.

In so far as the land is concerned, the order seems to be innocuous. The reason is this, that on the death of Man Singh, the share of the land of the minors came to them, and the possession of the co-sharers, that is to say, Lal Singh and Gurjant Singh, of the whole of the joint land is obviously possession for all the co-sharers including of course the minors. On the appointment of guardian of the property of the minors, the guardian obtains the right from the Court to the management of the land of the minors, and in that she can obtain partition of that land and then after partition have exclusive possession of the land of the share of the minors. For this an order of the type as passed by the learned Judge was really not necessary. So far as the order against Lal Singh and Gurjant Singh to pay money to the guardian of the minors is concerned, such an order is not an order concerning the management or administration of the property of the minor wards and is obviously without jurisdiction not falling within the scope of section 33 of Act VIII of 1890.

In the view as above the order of the Guardian Court is set aside, but, in the circumstances of the case, there is no order in regard to costs.

B.R.T.

FULL BENCH

*Before Mehar Singh, C.J. Harbans Singh and Daya Krishan Mahajan, JJ.*

RANJIT SINGH ALIAS AJIT SINGH,—Appellant.

*versus*

GARJA SINGH, AND OTHERS,—Respondents.

Regular Second Appeal No. 730 of 1964.

May 15, 1967.

*Custom—Non-ancestral property—Adoption deed reciting adoptee would have rights like a natural son—Adoption in fact not proved—Adoption deed—Whether*