

ORDER BELOW EXH. 45 IN R.C.S. NO. 63 OF 2013
PREM AND ANOTHER VS SUBHASH AND OTHERS

01. The present application is filed by the defendant nos. 1, 2 and 4 stating that, the present suit is filed by the plaintiff no.2 on behalf of plaintiff no.1, who is admittedly minor at the time of presentation of suit. At the time of institution of suit, it was necessary for the plaintiff no.2 to file an application for appointment of guardian/next friend on behalf of minor plaintiff no.1 as per Order 32 Rule (2). But the plaintiff no.2 failed to do so, therefore plaint be taken off the file.

02. The plaintiff No.2 filed her say and submitted that, the application filed by the defendants is false and therefore may be rejected. In fact the plaintiff no.1 is minor and is under guardianship of his natural mother i.e. plaintiff no.2. Therefore, there is no necessity to file another separate application. Therefore, application may be rejected.

03. Heard both sides. After perusal of record it is seen that, admittedly the plaintiff no.1 is minor, the plaintiff no.2 is natural mother of the plaintiff no.1. The present suit is filed for partition and separate possession. I have also gone through the provision of Order 32 Rule 2, it states that, where suit is instituted without next friend, plaintiff to be taken off the file. Admittedly, after perusal of plaint, it is seen that, the plaintiff no.2 did not mention that, the suit is filed in the interest of minor and the plaintiff no.2 has no adverse interest against the minor. But it is a technical part. But the plaintiff at the outset shows that, the suit is filed by the plaintiff no.2 as a guardian and natural mother as the plaintiff no.1 is minor. The suit is already registered. The say of the plaintiff no.2 shows that, the plaintiff no.2 is ready to file separate application. Hence, I am of the opinion that, the suit should not be failed on the basis of these technicalities. Hence, I

pass following order :-

ORDER

01. The application is rejected.
02. No order as to costs.

Place :- Renapur.
Date :- 07 /03/2019.

Sd/- 07 /03/2019
(Omprakash M. Mali.)
Civil Judge, J.D., Renapur.