

&
SLP(C)No. 12754-12755 OF 1997

ITEM No.2

Court No. 5

SECTION XIA
A/N MATTER

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No.12754-12755/1997

(From the judgement and order dated 25/6/96 & 14/02/1997 in
CRP 204/92 & RP 259/96 of The HIGH COURT OF KERALA AT ERNAKULAM)

M V DANIEL

Petitioner (s)

VERSUS

M V BABY (DEAD) & ORS.

Respondent (s)

(With Appln(s). for c/delay in filing SLP and
substitution of L.Rs of the deceased respondent)
(With office report)
(For Final Disposal)

Date : 27/11/2001 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE V.N. KHARE
HON'BLE MR. JUSTICE ASHOK BHAN

For Petitioner (s) Mr. Romy Chacko, Adv.

For Respondent (s) Mr. R Venkataramani, Sr.Adv.
Mrs K.Sarada Devi,Adv.

UPON hearing counsel the Court made the following
O R D E R

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I.A. Nos. 4-5 allowed.

Leave granted.

The appeals are dismissed. There shall be no order
as to costs.

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(Alka Dudeja)
Court Master

(S. Krishnan)
Court Master

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 8072-8073 OF 2001@@
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(Arising out of S.L.P.(C) Nos. 12754-12755/97)

M.V. Daniel ... Appellant

Vs.

M.V. Baby (Dead) and Ors. ... Respondents

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.....L.....I.....T.....T.....T.....T.....T.....J
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Leave granted.

The appellant herein was the plaintiff in Suit No. 469/86 for recovery of possession of land measuring 14 cents. In the said suit, respondents were impleaded as defendant Nos. 1-3. Defendant Nos. 1 and 2 are the parents of defendant No. 3. The said suit was decreed ex-parte. Subsequently, the appellant put the decree in execution. In the said proceedings the respondents - judgment debtor took an objection that since defendant No. 3 was a minor on the date of filing of the suit, therefore, the decree is void and cannot be executed. The said objection of the respondents was upheld by the executing court. Consequently, the execution proceedings were struck off. A revision petition was filed before the High Court but the same was dismissed. It is against the said judgment of the High Court, the appellant-decree-holder has come to this Court.

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We have heard learned counsel for the parties. We are of the view that where a suit is filed against a minor without appointing a guardian ad litem and@@

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subsequently a decree is passed by the Court, it is open to the minor to object before the executing court that such a decree is void. In the present case, what we find is that defendant No. 3 was minor on the date of filing of the suit. It is not disputed that no guardian was appointed for defendant No. 3. In that view of the matter, the decree passed by the Court against defendant No. 3 was void and it could not have been executed against defendant No. 3. We are, therefore, in agreement with the view taken by the High Court.

Consequently, the appeals fail and are dismissed accordingly. There shall be no order as to costs.

.....L.....I.....T.....T..T....T.....T.....T.....J
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.....J.
(V.N. KHARE)

.....J.
(ASHOK BHAN)

NEW DELHI
NOVEMBER 27, 2001.