

doubt if it would not have then been in order, as all orders of the Government are issued through its accredited officers. We do not know and no evidence has been given to prove what authority Mr. Cassells had to sign for Mr. Stephenson. I am not sure if the prosecution cannot prove that proper sanction has been accorded by Government *dehors* the letter under consideration, but no such material being before us, we have no alternative but to quash the proceedings based on a document which does not satisfy the requirements of the law.

E. H. M.

*Rule absolute.*

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 OZULLAH  
 v.  
 BENI  
 MADHAB  
 CHOWDHURI.  
 SUHRAWARDY  
 J.

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### ORIGINAL CIVIL.

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*Before Greaves J.*

HARI NARAIN DAS (AN INFANT), *In re*.\*

1922  
 July 12.

*Minor—Guardian—Hindu, governed by Mitakshara School of Hindu Law—  
 Undivided property—Jurisdiction.*

On an application by a Hindu, governed by Mitakshara School of Hindu Law, for being appointed guardian of his minor son and for leave to sell the minor's undivided share in the ancestral property :—

*Held*, that the High Court under its general jurisdiction and apart from the Guardians and Wards Act (VIII of 1890) had power to appoint a guardian.

*In re Manilal Hurgovan* (1) followed.

#### CHAMBER APPLICATION.

THIS was an *ex parte* application by one Laluram Das, a Hindu governed by the Mitakshara School of Hindu Law, for being appointed a guardian of the person and property of his infant son Hari Narain Das

\* Application in Original Civil.

(1) (1900) I. L. R. 25 Bom. 353.

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and for leave to sell the minor's share in the ancestral property. The grounds were that the applicant and the minor were members of a joint Mitakshara family and as such were owners of the premises No. 16, Cowie Lane in the town of Calcutta. The applicant had entered into a contract for sale of the said premises for a sum of Rs. 16,650 while the market value was below Rs. 10,000, and the purchaser would not complete the purchase unless a sanction was obtained from Court for sale of the minor's share. Further the property was mortgaged for a sum of Rs. 5,000, which was spent in building a two-storeyed house on the same property, and repayment of the same had become imperative.

*Mr. T. Chatterjee*, for the applicant. A guardian can be appointed for a Mitakshara infant in special cases. In this case it would be for considerable benefit of the infant to have a guardian appointed and leave to sell his share granted. The property if sold to this purchaser would bring much higher price than the market value: *In re Manilal Hurgovan* (1).

GREAVES J. This is an application by one Luluram Das, the father of the infant Hari Narain Das, that he may be appointed guardian of the person and property of Hari Narain Das and that he may be given liberty to sell and convey the undivided half share of No. 16, Cowie Lane, for the purpose of paying off the moneys due under the mortgage now subsisting on the property.

The infant is governed by the Mitakshara School of Hindu Law. He is the only child of his father and he has no separate property of his own. There is a mortgage on 16, Cowie Lane, of Rs. 5,000 or thereabouts and certain costs have, I understand, also

to be paid. An offer has been made to purchase the property for a sum of Rs. 16,650 and I am told and it so appears in the petition that this is considerably above the real value of the property, the real value it is said being something in the neighbourhood of Rs. 10,000. The purchaser insists that an order of the Court should be obtained sanctioning the sale before he completes the purchase and I understand that he is not prepared to complete the purchase unless such order is made.

It is not the practice of this Court, where persons are governed by the Mitakshara School of Hindu Law, to make orders of this nature and in *Sham Kuar v. Mohanunda Sahoy* (1), Mr. Justice Macpherson and Mr. Justice Ameer Ali, sitting on the Appellate Side of this Court, refused to make an order under the Guardians and Wards Act appointing a guardian of the property of a minor who was a member of a joint Mitakshara family owning no separate estate. The person who was in that case sought to be appointed guardian was not the *karta* of the family and clearly he could not have taken possession of any of the property of the minor, and it was not suggested by the applicant that he could do so but it was suggested that he might be appointed in order to watch the interest of the minor. In these circumstances, as I have already stated, the application was refused but I am asked to make the order on the authority of *In the matter of Manilal Hurgovan*, a minor (2). The Bombay Court in that case held that under its general jurisdiction and apart from the Guardians and Wards Act the Court had power to appoint a guardian of the property of a minor who was a member of a joint Hindu family and where the minor's property was an undivided share in the

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(1) (1891) I. L. R. 19 Calc. 301. (2) (1900) I. L. R. 25 Bom. 353.

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family property but the order was only made in the special circumstances of the case and Sir Lawrence Jenkins in delivering the judgment of the Court stated at p. 357: "We make the appointment in this case because the person applying to be appointed the guardian is also the manager of the family to which the minor belongs and thus we do not introduce into the family any element of possible disturbance. I can hardly imagine a case in which it would be right to grant such an application unless the applicant were the manager and it is expressly on this ground that we make the appointment in this case." Sir Lawrence Jenkins points out also in his judgment that the Bombay Court in numerous cases had made such appointments. The facts in the case before me are practically identical with those that arose in the Bombay case to which I have just referred: the father there, as here, was the *karta*: there, as here, was an only child: there, as here, the ground of the application was that a far better price could be obtained if the leave of the Court had been obtained than if the *karta* sold merely as manager of the joint family. In the circumstances and for the reasons stated in the case to which I have referred, I am prepared to make the order here but I make it only on the condition that after the mortgage is discharged and the different costs and charges in respect of the property are also paid, one-half of the sale-proceeds is invested by the guardian for the benefit of the infant. Accordingly I appoint the applicant the guardian of the person and property of Hari Narain Das and give him liberty to sell and convey the undivided share of 16, Cowie Lane, which constitutes the only immoveable property belonging to the estate of the infant. Out of the minor's half share of the sale proceeds he will

discharge a moiety of the mortgage and pay a moiety of the costs referred to in the petition and a moiety of the costs of the sale and after deducting the costs of this application he will invest the balance of the share accruing to the minor in trust securities for the minor's benefit and in his name. The guardian undertakes that after the mortgage is discharged and the costs and charges in respect of the property are paid, one half of the sale-proceeds will be invested by him for the benefit of the minor Hari Narain Das and in the minor's name and he must report to the Court that this has been done and give security for one year's income of the investment.

The costs of this application will be as between attorney and client and will come out of the share. Certified for counsel.

Attorney for the applicant : *B. B. Banerjee.*

N. G.

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GREAVES J.