

CIVIL REVISION.

Before Graham and Mitter J.J.

JYOTIPRASAD LALA

v.

PYARILAL LALA.*

1929

July 8.

Receiver—Receiver appointed during pendency of application for appointment of guardian of minor, whether can sell minor's property—Guardians and Wards Act (VIII of 1890), s. 12—Code of Civil Procedure (Act V of 1908), s. 141; O. XL, r. 1.

A receiver appointed by the court, during the pendency of an application for the appointment of guardian of a minor, for the temporary custody and protection of his property, can sell the minor's property.

Such sale cannot be deemed *ultra vires* of section 12 of the Guardians and Wards Act (VIII of 1890).

Section 141 of the Civil Procedure Code (Act V of 1908) empowers the court to appoint a receiver in an application and a receiver, when appointed in guardianship proceedings, has power under Order XL, rule 1 to sell property of which he is receiver if it is necessary for the protection of the interests of the minor.

CIVIL RULE, obtained by the petitioner, Jyotiprasad Lala.

One Ramprasad Lala died, leaving behind him a minor son, Parmananda Lala, and properties of considerable value, including a *goldari* and a jewellery and bullion business. Chhotaylal Lala, the brother-in-law of the minor, and Pyarilal Lala, his maternal uncle, made an application to the District Judge for their appointment as guardians of the person and property of the minor, the case being numbered as Act VIII Case No. 40 of 1927. Thereafter, they applied for the appointment of a receiver and, on their application being granted, a local pleader was appointed receiver of the minor's properties, pending the disposal of the guardianship case. Chhotaylal and Pyarilal then withdrew their petition for their appointment as guardians and one Jyotiprasad, another relative of the minor, applied to

* Civil Revision, No. 266 of 1929, against the order of K. C. Nag, District Judge, Hooghly, dated Feb. 16, 1929.

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be appointed as the guardian of the person and property of the minor, and his case was numbered as Act VIII Case No. 24 of 1928. Chhotaylal's wife, the sister of the minor, also made a similar application and her case was numbered as Act VIII Case No. 43 of 1928. This was directed to be tried along with the other case and the receiver appointed in the previous case was ordered to continue. Jyotiprasad then applied for permission to continue the *goldari* and the jewellery and bullion business of the minor on his behalf, as the closing of the business, he alleged, would cause the minor a loss of a valuable property and, on the receiver's report, the court, on the 28th January, 1929, recorded the remark "It is extremely necessary that the interest of the minor should be protected and if possible some suitable arrangement should be made for continuance of the *karbar*." But at the final hearing of Jyotiprasad's application and, after hearing both sides, the District Judge rejected it, by his order dated 16th February, 1929, and directed the receiver to sell the stock-in-trade of the business to pay some debts due by the minor's estate. Against this order, the petitioner moved the High Court and obtained this Rule.

Mr. Rupendrakumar Mitra, for the petitioner.

Dr. Bijankumar Mukherji, for the receiver.

Mr. Abul Quasim, for the opposite party No. 2.

GRAHAM J. This Rule is directed against an order of the District Judge of Hooghly, dated the 16th February, 1929, directing a receiver to let a godown at a suitable monthly rent and also to sell some iron-safes, and some gold and silver ornaments, and bullion and to apply the sale-proceeds towards the payment of debts due from the minor's estate. It appears that a receiver was appointed by the court in this case and there is controversy between the parties as to whether the properties of the minor should be sold or not or whether the petitioner should be allowed to continue the *karbar*. It has been argued on behalf of the petitioner that, inasmuch as no guardian has

yet been appointed, the learned District Judge had no jurisdiction to order the sale of the minor's properties by the receiver. In support of that contention, reference has been made to section 12 of the Guardians and Wards Act and it was urged that it would be straining the language of that section, and that it would go contrary to the scheme of the Act to hold that the court has power to make an order for sale in such circumstances as obtain in the present case. Section 12 empowers the court to make such order for the protection of the properties of the minor as it thinks fit. The discretion which is conferred upon the court by this section is a wide one, and there can be no doubt that it has the power to appoint a receiver, and the receiver, when appointed, must, having regard to the provisions of section 141 of the Code of Civil Procedure, be deemed to have all powers of a receiver under the Code. Those powers would include the power to sell, where the adoption of such a course is deemed to be necessary for the protection of the interests of the minor. No objection is taken to the order, in so far as it directs the letting of the godown at a monthly rental, but so far as it orders the properties to be sold it is strongly objected to and is claimed to be without jurisdiction. In my judgment, the order cannot be deemed to be *ultra vires* of section 12 of the Act, and, as it is a matter of the discretion of the court, I do not think that we should be justified in interfering with an interlocutory order of this description. In my judgment, the Rule must be discharged with costs—hearing-fee being assessed at one gold mohur.

MITTER J. I agree.

A. A.

Rule discharged.

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