

ORIGINAL CIVIL.

Before Lord-Williams J.

TARUNCHANDRA GHOSH, *In re*.*

1929

May 8.

Jurisdiction—Application by father for being appointed guardian of person and property of infant—Whether High Court (Original Side) can grant guardianship certificate for person and property of infant not a European British subject residing outside limits of Ordinary Original Jurisdiction—Power of Court of Chancery in England—Guardians and Wards Act (VIII of 1890), s. 3—Letters Patent of 1865, cl. 17—Letters Patent of 1862, cl. 16—Indian High Courts Act, 1861 (24 & 25 Vic., c. 104), s. 9—East India Company Act (21 Geo. III, c. 70), cl. 25.

A male infant, 4 years of age, living with his father, mother and grandmother, in the suburbs of the town of Calcutta, they being his only near relatives, was held entitled, as the result of a partition suit, to 1/21st share of certain moveable and immoveable properties. A defined share consisting of debentures and shares in certain companies was allotted to him on division, the same being directed to be held during his minority by his father, his guardian *ad litem*, in the said suit. The parties were Hindus, governed by the Dayabhaga School of Hindu law. On an application, made by the father to the High Court in its Original Jurisdiction, for being appointed a guardian of the person and the property of the infant, there being no opposition on the part of any other relation of the infant,

held that, by virtue of clause 17 of the Letters Patent of 1865 read with clause 16 of the Letters Patent of 1862 and section 9 of Statute 24 & 25 Vic., c. 104, the powers of the Supreme Court were to be exercised by the High Court, subject to the provisions of the Letters Patent establishing it. The Charter of the Supreme Court (Statute 21 Geo. III, c. 70) gave that Court all the powers of the Court of Chancery in England and provided by clause 25 thereof that the Supreme Court should be authorised to appoint guardians and keepers for infants and their estates according to the order observed in that part of Great Britain called England. Since section 3 of the Guardians and Wards Act, 1890, saved this jurisdiction of the Chartered High Courts, this Court has power to make the order asked for.

In the matter of Bittan (1), *In re the Estate of H. G. Meakin, deceased* (2) and *In Re Shannon* (3) referred to.

In the matter of Srish Chunder Singh (4) distinguished.

APPLICATION.

The petition stated that the infant Tarunchandra Ghosh resided with his father, mother and grandmother at 23, Beniapur Lane, in the suburbs of the town of Calcutta. There were no other near relations.

*Application in Ordinary Original Civil Jurisdiction.

- (1) (1877) I. L. R. 2 Calc. 357. (3) (1870) 2 N. W. P. H. C. R. 79.
 (2) (1896) I. L. R. 21 Bom. 137. (4) (1893) I. L. R. 21 Calc. 206.

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On the 18th August, 1927, one Jagatchandra De instituted a suit for partition, being No. 1965 of 1927, on the Original Side of the High Court, claiming as his own share 5/7th share of certain moveable and immovable properties against, among others, the infant and the applicant herein. Prabhatchandra Ghosh, the father of the infant, was appointed guardian *ad litem* to defend the suit on behalf of the infant, by an order, dated 21st November, 1927. A preliminary decree for partition was passed on the 9th July, 1928, by which the infant was held entitled to 1/21st equal share of the moveable and immovable properties. Mr. C. K. Sircar, to whom a writ of commission had been issued, made his return on the 12th March, 1929, which was confirmed on the 26th March, 1929, in a final decree. The properties exclusively allotted to the infant, consisting of debentures and shares in certain companies having their registered offices in Calcutta, of the total value of Rs. 7,870, were in the possession of Jagatchandra De. In order to obtain possession thereof and to administer them, Prabhatchandra Ghosh, the father, applied for a certificate of guardianship and it was stated that there was no opposition on the part of any other person.

Mr. J. C. Sett, for the applicant. Clause 17 of the Letters Patent of 1865 confers the same jurisdiction on the High Court in respect of the persons and estates of infants within the Bengal Division of the Presidency of Fort William as was vested in the Supreme Court. The latter had power to appoint guardians in respect of the persons and properties of infants within the Bengal Division of the Presidency of Fort William. Such power has been specifically reserved to the High Court under section 3 of the Guardians and Wards Act, 1890.

In *In the matter of Srish Chunder Singh* (1), Sale J. refused to appoint a guardian of the person and property of a minor, who was living outside the

limits of the Ordinary Original Civil Jurisdiction of this Court, not because the minor was resident outside the jurisdiction of this Court, but because there were other matters which could not be conveniently disposed of on an application. In that case, there was a testamentary guardian already appointed under the will of the testator and the appointment of another guardian on the application involved the removal of the testamentary guardian, and that is why the order was not made. The observation made by Mr. Justice Sale in that case that he was not aware of a guardian being appointed of the person and the properties of a minor other than a European British subject living outside the local limits of the Ordinary Original Civil Jurisdiction of this High Court is in the nature of an *obiter dictum* and was not necessary for the determination of the matter before him. The Letters Patent of 1865 do not make any distinction between a European British subject and an Indian British subject, nor is there any such distinction made by the Charter establishing the Supreme Court.

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LORT-WILLIAMS J. Section 3 of the Guardians and Wards Act, 1890, provides that nothing in this Act shall be construed to take away any power possessed by any High Court established under 24 & 25 Vict. By that Statute, High Courts were established in the place of the Supreme Courts and Sudder Courts, which had hitherto existed and, under section 9, it was provided that they should exercise all such powers as should be granted by Letters Patent and, save as by such Letters might be otherwise directed, the said High Courts should have and exercise all jurisdiction vested in any of the Courts so abolished, *i.e.*, the Supreme and Sudder Courts. Under clause 17 of the Letters Patent of 1865, it was provided that the High Court should have the like power with respect to infants and others within the Bengal Division of the Presidency of Fort William as was vested in the said High Court immediately before the publication of those presents. The power therein referred to was

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contained in clause 16 of the Letters Patent of 1862, which ordained that the Court should have the same jurisdiction over infants as was then vested in the Supreme Court. The power vested in the Supreme Court was contained in the Charter establishing that Court, which gave that Court all the powers of the Court of Chancery and by clause 25 thereof it was provided that the Supreme Court should be authorised to appoint guardians and keepers for infants and their estates according to the order observed in that part of Great Britain called England. There is no restriction, therefore, in the powers granted to either the Supreme Court or the High Court which limits the exercise of guardianship jurisdiction to the town of Calcutta or to European British subjects, and I am of opinion that, even if any such limitation exists, it does not apply, where the person who is outside the limits of the Ordinary Original Jurisdiction or who is not a European British subject desires to avail himself of the jurisdiction of the Court and there is no opposition thereto.

The Court of Chancery has power to appoint a guardian on petition without suit and to appoint a guardian for an infant residing abroad. The Indian High Courts now exercise both these powers. *In the matter of Bittan* (1), *In re the Estate of H. G. Meakin, deceased* (2).

The only cases directly upon the point are *In re Shannon* (3), in which it was decided that the High Court had power to appoint a guardian, even when the minor resided outside and had no property within the limits of its Ordinary Original Civil Jurisdiction and the case of *In the matter of Srish Chunder Singh* (4), in which Mr. Justice Sale decided that he had no such power. In the latter case, however, the learned Judge arrived at this conclusion, for the sole reason, as he says in his judgment, that he was not aware of any instance in which the Court had exercised jurisdiction in the case of an infant residing outside the

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Ordinary Original Civil Jurisdiction and who was other than a European British subject. Moreover, the facts of that case are distinguishable, because there were already in existence testamentary guardians whom the learned Judge was asked to displace, and the case was strongly contested by them. There is no opposition in this case and I am satisfied that the Court has jurisdiction to make the order asked for.

Application allowed.

Attorney for the applicant: *B. N. Dutt.*

R. K. C.

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