

ORIGINAL CIVIL.

Before Costello J.

1931

July 3.

In re BIJAYKUMAR SINGH BUDER.*

*Guardian—Power of High Court to appoint guardian —Inherent jurisdiction
—Mitáksharâ joint family—Guardians and Wards Act (VIII of 1890).*

Under its inherent jurisdiction, the High Court has power to appoint a guardian of a minor member of a family governed by the *Mitáksharâ* School of Hindu law.

In *re Hari Narain Das* (1) and *Narsi Tokersey and Company v. Sachin-dranath Gajanan Gidh* (2) followed.

Gharibulla v. Khalak Singh (3) explained and distinguished.

In the matter of *Govind Prasad* (4), *In re Manilal Hurgovan* (5) and *Sri Thakur Ram Krishna Muraji v. Ratan Chand* (6) referred to.

EXPARTE APPLICATION by *Mitáksharâ* father.

The facts of the case appear fully from the judgment.

K. P. Khaitan for the applicant. Under Act XL of 1858, the High Court had no power to appoint a guardian of a minor coparcener of a *Mitáksharâ* family. *Gharibulla v. Khalak Singh* (3).

Under the Guardians and Wards Act of 1890, there are numerous decisions of the Indian High Courts to the effect that the court has no power to appoint a guardian of a minor belonging to a *Mitáksharâ* family: *Virupaksháppá v. Nilgangává* (7), *Bindaji v. Mathurabai* (8), *Jhabbu Singh v. Ganga Bishan* (9), *Sham Kuar v. Mohanunda Sahoy* (10). But in

*Application.

(1) (1922) I. L. R. 50 Calc. 141.

(2) (1929) I. L. R. 54 Bom. 75.

(3) (1903) I. L. R. 25 All. 407 ;
L. R. 30 I. A. 165.

(4) (1928) I. L. R. 50 All. 703.

(5) (1900) I. L. R. 25 Bom. 353.

(6) (1931) I. L. R. 53 All. 190 ;
L. R. 58 I. A. 173.

(7) (1894) I. L. R. 19 Bom. 309.

(8) (1905) I. L. R. 30 Bom. 152.

(9) (1895) I. L. R. 17 All. 529.

(10) (1891) I. L. R. 19 Calc. 301.

the recent case of *Ram Krishna Muraji v. Ratan Chand* (1), the Privy Council has left the point open.

Under the Letters Patent, the High Court clearly has power to appoint a guardian even of a minor member of a joint *Mitákshará* family: In re *Hari Narain Das* (2), *Narsi Tokersey and Company v. Sachindranath Gajanan Gidh* (3), *Jairam Luxmon* (4), In re *Jagannath Ramji* (5), In re *Manilal Hurgovan* (6), In the matter of *Govind Prasad* (7).

1931
In re
*Bijaykumar
Singh Buder.*

COSTELLO J. This is an application under the Guardians and Wards Act, 1890; it also invokes the inherent powers of the Court under clause 17 of the Letters Patent of this Court. The matter was originally heard in Chambers but as it raised a point of some importance it was adjourned to Court for further argument.

The petitioner is a man named Rupchand Buder of No. 11, Duff Street in the city of Calcutta. He is a Hindu governed by the *Mitákshará* School of Hindu law. The application is that he should be appointed guardian of the persons and property of his three sons, all of whom are minors. The petitioner makes the application for the purpose of putting himself into the position of being able to confer as far as possible an unassailable title upon the purchaser of a house No. 19, Shambhu Mallik Lane, which is joint family property belonging to the petitioner and his three minor sons.

It has been held in several cases in the various High Courts of India and by the Judicial Committee of the Privy Council that there is no power in the court under the provisions of the Guardians and Wards Act of 1890 any more than there was under its precursor, Act XL of 1858, to appoint the *kartá* of a joint Hindu family to be the guardian of the

(1) (1931) I. L. R. 53 All. 190 ;
L. R. 58 I. A. 173.

(4) (1892) I. L. R. 16 Bom. 634.

(2) (1922) I. L. R. 50 Calc. 141.

(5) (1893) I. L. R. 19 Bom. 96.

(3) (1929) I. L. R. 54 Bom. 75.

(6) (1900) I. L. R. 25 Bom. 353.

(7) (1928) I. L. R. 50 All. 709.

1931

In re
*Bijaykumar
 Singh Buder.*
 Costello J.

property of a minor son. I need not refer in detail to all the cases. Sir Arthur Wilson giving judgment in the Privy Council in the case of *Gharib-ulla v. Khalak Singh* (1) said:—

“It has been well settled by a long series of “decisions in India that a guardian of the property “of an infant cannot properly be appointed in respect “of the infant’s interest in the property of an “undivided *Mitâksharâ* family. And in their “Lordships’ opinion those decisions are clearly right, “on the plain ground that the interest of a member “of such a family is not individual property at all, “and that therefore a guardian, if appointed, would “have nothing to do with the family property.”

In my opinion, however, this observation of Sir Arthur Wilson must be interpreted in the light of the facts which were then under review by their Lordships of the Judicial Committee. An examination of the case shows that it was one in which a certificate of guardianship had been obtained by a lady in connection with the property of her two minor sons under the provisions of Act XL of 1858. It follows that the judgment of the Privy Council in the case of *Gharib-ulla v. Khalak Singh* (1) does not necessarily mean that their Lordships were holding that the inherent powers of a High Court in India in the matter of an appointment of a guardian were no longer in existence. This view of the matter was adopted by Mr. Justice Kemp in the case of *Narsi Tokersey and Company v. Sachindranath Gajanan Gidh* (2). In the course of his judgment his Lordship said: “There can be no doubt that under the “Guardians and Wards Act VIII of 1890 no guardian “can be appointed of a minor coparcener’s interest in “the joint property where there is any adult “coparcener alive. This has been laid down in the

(1) (1903) I. L. R. 25 All. 407, 416 ; (2) (1929) I. L. R. 54 Bom. 75, 76,
 L. R. 30 I. A. 165, 170, 77.

“cases of *Kajikar Lakshmi v. Maru Devi* (1), *Bindaji v. Mathurabai* (2), and the Privy Council case of *Gharib-ulla v. Khalak Singh* (3).”

His Lordship continued:—“In the Privy Council case, a certificate of guardianship which was throughout the case assumed to be of the property was granted under section 8 of Act XL of 1858 to the mother as guardian of a minor coparcener.”

Then his Lordship quotes the passage from the judgment which I have already read. On page 77 his Lordship said:—

“Further, the cases show that where the guardian is appointed under the inherent jurisdiction of the High Court such an appointment is valid. In re *Jagannáth Ramji* (4). Mr. Justice Starling held that the High Court had power to appoint a guardian of the person or property of minor coparceners whether such minors possessed property or not.”

It seems to me that I ought to follow the decision of Mr. Justice Kemp, particularly having regard to the fact that several years previously Mr. Justice Greaves in this Court had already decided—on the authority of the case of *Manilal Hurgovan* (5)—that this High Court, under its general jurisdiction, and apart altogether from the Guardians and Wards Act, still had power to appoint a guardian of a minor member of a family governed by the *Mitákshará* School of Hindu law. See *In re Hari Narain Das* (6). In between that case and the Bombay case decided by Mr. Justice Kemp there had been a case in the Allahabad High Court [In the matter of *Govind Prasad* (7)], where Mr. Justice Boys and Mr. Justice Iqbal Ahmad also decided that the High Court had jurisdiction by virtue of its Letters Patent to appoint guardians even to minor members of a joint

1931

In re
*Bijaykumar
Singh Buder.*

Costello J.

(1) (1908) I. L. R. 32 Mad. 139.

(2) (1905) I. L. R. 30 Bom. 152.

(3) (1903) I. L. R. 25 All. 407 ;
L. R. 30 I. A. 165.

(4) (1893) I. L. R. 19 Bom. 96.

(5) (1900) I. L. R. 25 Bom. 353.

(6) (1922) I. L. R. 50 Calc. 141.

(7) (1928) I. L. R. 50 All. 709.

1931

In re
*Bijaykumar
 Singh Buder.*
 Costello J.

Hindu family though they thought that the court should be reluctant to exercise that power. I ought perhaps to refer to the recent case of *Ram Krishna Muraji v. Ratan Chand* (1). A question as to whether a member of a joint Hindu family can be appointed a certificated guardian of the property of the minor member and whether an order permitting a certificated guardian to mortgage the ward's property was there raised but not decided. But in that case, the matter had gone to the Judicial Committee of the Privy Council on appeal from a judgment of the High Court of Allahabad reversing the judgment and decree of the Subordinate Judge of Cawnpore. It is probable, therefore, that the appointment of a certificated guardian referred to in that case must have been made under the specific statutory authority and not under the inherent jurisdiction of a Chartered High Court. The case of *Ram Krishna Muraji v. Ratan Chand* (1), therefore, does not overrule the decisions in the cases of *Govind Prasad* (2) and *Narsi Tokersey and Company* (3).

It would, I think, be a matter for regret if one found oneself forced to the conclusion that the powers of this Court in the matter of guardianship were exercisable only under the terms of the Guardians and Wards Act, 1890, and never otherwise. Being of opinion, however, that this is not the effect of the authorities, I hold that the Court can accede to this application under the second of its two aspects, namely, that which invokes the inherent jurisdiction of the Court and I, accordingly, make an order that the petitioner Rupchand be appointed guardian of the persons and property (or estate as it is called in one of the cases) of his three minor sons Bijaykumar Singh Buder, Bimal Singh Buder and Dharendra Singh Buder, upon giving security to such extent as the Registrar shall think necessary and that, after

(1) (1931) I. L. R. 53 All. 190 ;
 L. R. 58 I. A. 173.

(2) (1928) I. L. R. 50 All. 709.

(3) (1929) I. L. R. 54 Bom. 75.

giving such security, he be at liberty to sell and convey on behalf of himself and his sons the house situate at No. 19, Shambu Mallik Lane.

The cost of one Chamber Summons and one day in Court will be paid out of the family fund.

Application granted.

Attorneys for appellant: *Khaitan & Co.*

S. M.

1931

In re
*Bijaykumar
Singh Buder.*

Costello J.