

APPELLATE CIVIL.

Before Mr. Justice Maclean and Mr. Justice O'Kinealy.

IN THE MATTER OF THE PETITION OF IMAM BUKSH:

IMAM BUKSH *v.* THACKO BIBEE.*

Mahomedan Law—Minor—Guardian of property—Certificate of Guardianship.

1883

January 4.

Under the Mahomedan law the brother of the mother of a female minor, whose parents are dead, is entitled, in preference to a mere stranger, to the guardianship of the property of the minor, unless it be shown that he is in some way unfit to take charge of such property.

THE facts of this case are thus stated in the judgment appealed from: "According to the evidence, and to the undisputed statement of the several parties, the minor, her father and mother having predeceased her, became the grantee under a *heba*, or deed of gift, from Nizamudin, her paternal grandfather, of a certain estate. On the death of that paternal grandfather, the applicant Imam Buksh came to Court under Act XL of 1858 for a certificate to administer the minor's estate. This application is opposed by the widow of Nizamudin, the co-wife of the minor's paternal grandmother. She, Thacko Bibee, repudiates the alleged hibbanamah, and claims to be herself sole heir to the estate of Nizamudin, to the exclusion of the minor, on the ground that the latter is excluded by the fact that her father, who would otherwise have been one of Nizamudin's heirs, predeceased him. The applicant Imam Buksh proposes that the female guardian of the minor's person shall be his wife. The Collector interposes, and objects to the application of Imam Buksh on the ground that he, being in the direct succession to the minor, is not a fit person to administer her estate, or to have charge through his wife, of her person, and the Collector has recommended a third person, a respectable Mahomedan lady, as both administratrix and guardian." The District Judge then appointed the lady recommended by the Collector, and dismissed the application of Imam Buksh. The latter appealed to the High

* Appeal from Original Order No. 216 of 1882, against the order of J. P. Grant, Esq., Judge of the 24-Pergunnahs, dated the 12th May 1882.

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Court, on the ground that the learned Judge was wrong in giving the guardianship of the person and property of the minor to a stranger as against Imam Buksh a near relative.

Mr. *Twidale* and *Moonshee Serajul Islam* for the appellant.

Baboo Unnoda Prosad Banerjee and *Baboo Amarendro Nath Chatterjee* for the respondents.

The judgment of the Court (*MACLEAN* and *O'KINEALY, JJ.*) was delivered by

MACLEAN, J.—The appellant before us applied to the district Court of the 24-Pergunnahs for a certificate of administration, under Act XL of 1858, to the property of an infant, *Chota Bari Bibee*, granddaughter of one *Nizamudin*. The petitioner's position is that of a brother of the infant's deceased mother.

There appears to be some opposition on the part of one *Thacko Bibee*, widow of *Nizamudin*; but her case does not affect the question before us. She disputes the title of the infant to the property of *Nizamudin*. That question, of course, has to be decided elsewhere.

The Collector, we are informed, was the first who moved the Civil Court to appoint a guardian for the minor, and he also appears to have suggested to the Judge the appointment of a lady called *Kulsoom Bibee*, who is in no way connected with the minor by any relationship. The District Judge, adopting certain objections made by the Collector to the appointment of the appellant, has refused him a certificate, and granted one to the Collector's nominee, *Kulsoom Bibee*. Hence this appeal.

The law in this matter is perfectly clear, that is, if any person establishes a right by virtue of a will or deed to take charge of the property of a minor, that person shall have a certificate of administration. There being no person so entitled, or any person so entitled being unwilling to undertake the trust, it is in the discretion of the Court to entrust any near relative of the minor, who is willing to take up the trust, with the charge of the property. Failing the person who is entitled to a certificate, and failing any near relative who is willing and fit to undertake the trust, the Court may make other

provisions. Therefore the only question we have to consider is, has it been shown that Imam Buksh, who is undoubtedly a near relative, is unfit to take charge of the property of the minor. The only ground of unfitness suggested is that he is in the direct succession to the minor. That is an objection which, of course, might apply in other cases, such as to a father who claims the custody or charge of the property of a son or daughter. That is not, in our opinion a sufficient ground for refusing a certificate to the charge of the property. In fact, there may be cases in which some one interested in the succession is the very best person to defend the minor's interests. However, in the present case, we think that the alleged disqualification imputed to Imam Buksh is not sufficient to deprive him of the certificate he asks for. We have no doubt that the lady named by the Collector is in every way suitable, but we do not think that her claim should have precedence over that of the minor's mother's brother. We therefore direct that the certificates issued to Kulsoom Bibee be re-called, and a fresh certificate of administration issued to Imam Buksh.

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With reference to the guardianship of the minor's person and maintenance, it is not necessary for us to make any order here, as we are not in a position to state who should be the proper guardian of her person. We direct the District Judge to make the necessary orders.

The appellant is entitled to his costs, which he will recover from the Collector and Kulsoom Bibee.

Appeal allowed.