Before Mr. Justice Mitter and Mr. Justice Field.

IN THE MATTER OF THE PETITION OF NOORJEHAN BEGUM, SAKHAWAT ALLY AND OTHERS *v.* NOORJEHAN BEGUM.*

1884 *January 7.*

Act XL of 1858, ss. 10, 12 and 21—Bengal Act IX of 1879 s. 10—Cancellation of Certificate.

Where an application is made under the provisions of s. 21 of Act XL of 1858 to have a certificate granted under that Act recalled and a fresh certificate granted to another, the applicant should set forth in his petition a sufficient cause for such course being taken, and the Court should thereupon proceed to enquire *judicially* whether such sufficient cause is established.

When the estate of a minor consists in whole or in part of land or any interest in land, and when such application is made, the Court can only proceed to act in accordance with the provisions of s. 12 of Act XL of 1858, and has no jurisdiction to grant another certificate to any fit person, such a course being confined to cases in which the property is of the description indicated by s. 10.

COLONEL HEDAYUT ALI, Khan Bahadoor, died some time in the year 1881 leaving two widows, Noorjehan Begum and Goordustan Begum, a daughter Mussamut Amirunissa, an infant son and three daughters, also infants under the age of eighteen years. Noorjehan Begum, on the 4th October 1882, applied to the Court under the provisions of Act XL of 1858 and obtained a certificate appointing her guardian of the persons of the minor children and the administration of the property of her deceased husband. On the 5th May 1888 Amirunissa applied under the provisions of s. 21 of Act XL of 1858 to have the certificate, which had been granted to Noorjehan, cancelled, and to have a fresh certificate granted to her appointing her the guardian of the persons and the manager of the estate of the minors in the place of Noorjehan. On the same day Noorjehan presented a petition to the Court praying that the estate of the minors might be placed under the management of the Court of Wards.

The District Judge thereupon, after making what he termed "a somewhat prolonged enquiry, local and otherwise, himself," held that Amirunissa was not a fit and proper person to take charge of

* Appeals from Original Order Nos. 227 and 228 of 1883, against the order of J. Pasford, Esq., Officiating Judge of Patna, dated the 22nd and 23rd June 1883.

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the persons of the minors, nor to manage their property, and rejected her petition, and he directed the Court of Wards, under the provisions of s. 10, Beng. Act IX of 1879, to have the estate of the late Colonel Hedayut Ali taken under its management together with the persons of the minors.

Against that order Mussamut Amirunissa now appealed to the High Court, and while the appeal was pending in the High Court, the Court of Wards refused to take charge of the minors or undertake the management of the estate.

Mr. *Abul Hossein*, Munshi *Mohamed Yusoof* and Baboo *Saligram Singh* for the appellant.

Moulvie *Serajul Islam* for the respondent Noorjehan who did not prefer any appeal against the order.

The judgment of the High Court (Mitter and FIELD, JJ.) was as follows:—

FIELD, J.—In this case Noorjehan Begum, the widow of Lieutenant-Colonel Hedayut Ali, deceased, obtained a certificate on the 4th of October 1882, granted under the provisions of the Minors' Act XL of 1858. On the 26th of May 1883, a petition was presented by Amirunissa Begum under the provisions of s. 21 of the Act. This section provides that the Civil Court for any sufficient cause may recall any certificate granted under the Act, and may also for any sufficient cause remove any guardian appointed by the Court. It is clear that any person applying under this section ought to set forth in his or her petition a sufficient cause for recalling the certificate, and that the Court to which such petition may be presented ought to proceed to enquire judicially whether such sufficient cause is established. In the case before us the District Judge, after stating that he had ascertained by a prolonged personal enquiry that there were dissensions amongst the members of the family of the late Colonel Hedayut Ali, which rendered it undesirable for his widow Noorjehan Begum to continue as manager of the property, and that none of the other members of the family were competent to manage, proceeded to apply, under s. 10, Beng. Act IX of 1879, to the Court of Wards to have the estate of Colonel Hedayut Ali taken under the management of such Court of

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Wards. Although the Judge does not in so many words say that he *recalls* the certificate previously granted on 4th October 1882, it is clear that he must have intended to do so, as otherwise he could not have applied to the Court of Wards, regard being had to the express language of s. 21, Beng. Act XL of 1858, and s. 10, Beng. Act IX of 1879. It is objected in appeal before us that the Judge had no power to recall the certificate without holding a proper judicial enquiry, and that he was not justified in acting upon the personal enquiry which he states in his judgment that he had made.

The difficulty which we experience in dealing with this objection is caused by the fact that Noorjehan Begum, to whom the certificate had been granted, has not appealed against the order of the Judge. She is however represented before us, and her vakeel has stated that the reason of her not appealing was that she was satisfied that the management of the estate should be taken over by the Court of Wards. A copy of the order of the Court of Wards has been placed before us, from which it appears that the Court have declined to assume charge of the Estate, and it is represented to us on behalf of Noorjehan Begum that in consequence of the Court of Wards having so declined the charge she is now anxious that the certificate granted to her should not be recalled. It was pressed upon us that we should leave the District Judge to exercise his discretion in granting a certificate to some other suitable person; but unfortunately the state of the law appears to preclude the District Judge from the exercise of any such discretion. Section 10, Act XL of 1858 provides that "If the estate of the minor consist of movable property or of houses, gardens or the like, the Court may grant a certificate to the public curator appointed under s. 19, Act XIX of 1841, or, if there be no public curator, to *any fit person* whom the Court may appoint for the purpose." No public curator has been appointed in these provinces under this section: and in in a case to which it applies the Judge may appoint *any fit person*, a case, that is, where the estate of the minor consists of movable property, or of houses, gardens or the like. But this section can have no application to the present case. Section 12 clearly applies, which provides that—"If the estate of the minor con-

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sist, in whole or in part, of land or any interest in land, the Court may direct the Collector to take charge of the estate, and thereupon the Collector shall appoint a manager of the property." In the present case a part of the estate consists of land, and the District Judge could only proceed under s. 12. As the law stood before the passing of Beng. Act IX of 1879, the Collector had no option but to obey the mandate of the Civil Court. Section 10 of the Court of Ward's Act IX (B.C.) of 1879 however expressly provided that it should be at the discretion of the Court of Wards to take charge of the person or property of a minor or refuse to do so. Unfortunately this Act, in allowing the Court of Wards this discretion did not provide what course was to be pursued, if the Court of Wards refused to take charge of the person or property of the minor. This case, inasmuch as it was not contemplated by Act XL of 1858, was not provided for by that Act. Let us now turn to s. 21 of Act XL of 1858, which is as follows: "The Civil Court for any sufficient cause may recall any certificate granted under this Act, and may direct the Collector to take charge of the estate, or may grant a certificate to the public curator, *or any other person as the case may be.*" It is clear that these last words have reference to the previous provisions of the Act to which reference has already been made, and that a Civil Court when it recalls a certificate has no jurisdiction to grant another certificate to *any fit person* in cases in which s. 12 applies, that is, in cases in which a minor's estate consists, in whole or in part, of land. No doubt the Court would have jurisdiction to deal with any application made under the earlier section of the Act, but the Court has not itself the power of selecting a fit person. If therefore the order of the District Judge, which virtually recalls the certificate granted to Noorjehan Begum, be allowed to stand, the property will be without a manager, and the District Judge will have no jurisdiction to select a proper person to manage the property, unless some one comes forward and makes an application under s. 3. We think it is not desirable that the estate of the late Lieutenant-Colonel Hedayut Ali should be left in this condition. We think, therefore, that the proper order to make in this case is to set aside the order of the District Judge of the 23rd June, and to direct

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him to proceed to make upon the proper materials a judicial enquiry upon the petition filed under s. 21 of the Act; and before proceeding to such enquiry he should call upon the petitioner to amend her petition by stating distinctly the sufficient cause alleged for the recall of the certificate.

MITTER, J.—The petition of appeal in this case, which is alleged to be on appeal against the District Judge's order of the 22nd of June 1883, mixes up with the matter of that order a further matter concerned with the order of the 23rd June with which we have just dealt. It appears to us that as so much of the certificate as appointed Noorjehan Begum guardian of the children was never set aside, and as she therefore continues to be the guardian and entitled to the custody of the minors, the Judge was correct in directing the minors to return to her custody. We, therefore, decline to interfere with this portion of the Judge's order.

Appeal allowed in part and order varied.

Before Mr. Justice Tottenham and Mr. Justice Norris.

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January 24.

BOIDO NATH MASHANTA AND OTHERS (DEFENDANTS) *v.* J. W. LAIDLAY AND OTHERS (PLAINTIFFS).*

Enhancement of rent, Suit for—Service of Notice of Enhancement—Bengal Act VIII of 1869, s. 14.

Service of notice of enhancement under s. 14 of Bengal Act VIII of 1869 must be made strictly in the manner provided by that section. *Chunder Monee Dossee* v. *Dhuroneedhur Lahory* (1) followed.

When a tenure was held by a Hindu and three Santhals, and it was shown that service of the notice of enhancement had been personal on the latter, but only on the son of the former, who was an adult and living with his father as a member of a joint Hindu family, *Held*, that this was not sufficient service on the Hindu tenant.

Quære.—Whether, if it had been shewn that the notice, though served on the son had come into the hands of the father, that would not amount to a sufficient service of the notice.

THIS was a suit for arrears of rent at an enhanced rate after an alleged service of notice of enhancement. The only material

* Appeal from Appellate Decree No. 288 of 1883, against the decree of W. F. Meres, Esq., Officiating Judge of Midnapore, dated the 31st August 1882, affirming the decree of Baboo Sham Chand Roy, Munsiff of Gurbetta, dated the 20th September 1881.

(1) 7 W. R., 2.