

1877

DAIA' CHAND  
v.  
SARFRAZ ALI.

I would affirm the lower appellate Court's decree, and dismiss the appeal with cost.

SPANKIE, J.—I am of the same opinion.

*Appeal dismissed.*

1877

*May 8.*

## APPELLATE CIVIL.

*Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Oldfield.*

NEHALO (APPELLANT) v. NAWAL AND OTHERS (RESPONDENTS).\*

*Act IX of 1861, ss. 1, 5—Fresh application—Guardian—Minor—Power to appoint—Previous orders not conclusive.*

A Court is not precluded from entertaining a fresh application for the guardianship of a minor under s. 1 of Act IX of 1861, by the circumstance that a previous application of the same sort has been refused.

In the year 1872 one Ram Dyal applied to the Judge of Meerut, under Act IX of 1861, for the custody and guardianship of a female minor, alleging that the maternal uncle, with whom the minor then resided, was not a fit and proper person to have charge of her. The Judge refused to grant Ram Dyal's application, and Ram Dyal did not appeal from this order.

The present application to the Judge was made by Musammât Nehalo, wife of the minor's first cousin, praying that the Court would appoint the petitioner guardian of the minor, and remove the minor from the custody of persons who were arranging an improper marriage for her. The Judge rejected the petition, holding that he had no power to deal with the subject-matter of it, under Act IX of 1861, as that Act applied only to minors respecting whose custody or guardianship the Court had passed no order, whereas an order had been passed rejecting Ram Dyal's application in 1872, with respect to the guardianship of the minor in question. The Court considered that it was thus precluded, under the terms of s. 6, Act IX of 1861, from entertaining any fresh application, whilst the order on Ram Dyal's application remained undisturbed.

\* Miscellaneous Regular Appeal, No. 17 of 1877, from an order of H. W. Dashwood, Esq., Judge of Meerut, dated the 4th December, 1876.

The petitioner appealed to the High Court.

Pandit *Nand Lal*, for appellant.

Babu *Aprokash Chander Mukerji*, for respondent.

ORDER.—We consider that this application can be entertained under the terms of s. 1, Act IX of 1861, and we reverse the Judge's order, and direct him to enquire into the application and pass an order according to law. The costs will abide the result.

1877

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 NEHALO  
v.  
NEWAL.

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 APPELLATE CIVIL.
 

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1877  
May 18.

*Before Mr. Justice Spankie and Mr. Justice Oldfield.*

**BALLABH DAS (PLAINTIFF) v. SUNDER DAS AND OTHERS (DEFENDANTS)\***

*Hindu Law—Destruction of character of joint undivided family property by introduction of stranger in blood as auction-purchaser—Assent of co-parceners no longer necessary to constitute valid gift.*

The introduction of a stranger in blood, as auction-purchaser of a portion of the rights and interests of an undivided Hindu family, breaks up the constitution of such family as undivided, and destroys the character of such property as joint and undivided family property: and a gift subsequently made by the remaining members of the original undivided Hindu family of their rights to a third person, without the assent of the auction-purchaser, is not invalid by reason of the principle of Hindu law which requires the assent of co-parceners in an undivided Hindu family, to give validity to such a gift.

THIS was a suit for partition and possession of half a garden with joint possession over half a well and for the maintenance of possession over eight biswas of *lakhraon* land (*i. e.*, planted with trees affording shade to roads). The whole of the above property belonged originally in equal shares to Birj Das and Brindaban Das (defendants Nos. 2 and 3) on the one side, and to Jumna Das and Har Gobind Das on the other, as their ancestral property. In April, 1866, Sunder Das, defendant No. 1, became the purchaser at an auction-sale of the half share of Jumna Das and Har Gobind Das and obtained possession under the said sale of half the garden and well. In January, 1874, Birj Das and Brindaban Das made a verbal gift of their share of the property to the plaintiff who

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\* Special Appeal, No 1129 of 1876, from a decree of M. Brodhurst, Esq., Judge of Benares, dated the 21st June, 1876, reversing a decree of Babu Pramoda Charn Banerji, Munsif of Benares, dated the 21st December, 1873.