

possession, until Magh or Phagun following the death of the plaintiff's father in October 1879. Magh and Phagun were respectively the January and February following the death. We must look to what was the position of affairs when Jagan Nath died. Jagan Nath had been carrying on an extensive business, he likewise had a zamíndári, and the kharíf rents would fall due in November and December, and it is not pretended on behalf of the plaintiff that she, or anyone on her behalf, took possession on the death of her father. At the time when her father died Ram Dyal was living with him and Makhan Lal was living next door. In our opinion the probabilities are that Ram Dyal and Makhan Lal immediately on the death of Jagan Nath took possession of his mercantile business and entered into occupation of his lands, shops and zamíndári. One of the witnesses relied on by the plaintiff says that Makhan Lal and Ram Dyal took possession of the houses and shops immediately on the death of Jagan Nath.

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We think the circumstances make it probable that they did take possession, and the evidence on the part of the defendants that possession was so taken is more reliable than the evidence on behalf of the plaintiff.

We hold the suit time-barred at the time when it was instituted and we dismiss this appeal with costs.

Appeal dismissed.

Before Mr. Justice Burkitt.

JHABBU SINGH (APPLICANT) v. GANGA BISHAN (OBJECTOR). *

*Act No. VIII of 1890 (Guardian and Wards Act) — Joint Hindu family —
Appointment of guardian of property of minor.*

1895

May 1.

It is not competent to a Court under Act No. VIII of 1890 to appoint a guardian of the property of a minor who is a member of a joint Hindu family. *Virupakshappa v. Nilgangava* (1) and *Sham Kuar v. Mohanunda Sahoy* (2) referred to.

* First Appeal No. 9 of 1895, from an order of H. F. D. Pennington, Esq., District Judge of Fatehgarh, dated the 9th January 1895.

(1) I. L. R., 19 Bom., 309.

(2) I. L. R., 19 Calc., 301.

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THE facts of this case sufficiently appear from the judgment of the Court.

Mr. *Roshan Lal* and Mr. *Hudson* for the appellant.

Munshi *Madho Prasad* for the respondent.

BURKITT, J.—In this case it is admitted that the appellant and the father of the minor were the sons of one father, though by different mothers. I do not comprehend what the learned Judge of the Court below means when he describes them as “foster brothers.” The status of the family at present is that of a joint Hindu family possessed of property as such. The presumption of law to that effect is particularly strong in the case of brothers. No allegation of severance or partition between the brothers was made by the respondent. The only thing he said was that they were not on good terms with one another, and occupied separate houses, a matter which is quite consistent with their constituting a joint and undivided family. The minor having taken his father’s position in the family, and there being no allegation of any partition or severance after the death of the minor’s father, it is clear that the minor and his uncle, the appellant, are members of a joint undivided family possessed of property as such.

It is not alleged that the minor possesses any property or any interest in any property other than his interest in the joint property of the family. That being the case, I am of opinion that under the Guardian and Wards Act (VIII of 1890) the Court below had no power to appoint a guardian of the minor’s property. It was so held by a Full Bench of the Bombay High Court in the case of *Virupakshappa v. Nilgangava* (1) and by the Calcutta High Court in the case of *Sham Kuar v. Mohanunda Sahoy* (2).

In the rule of law laid down by those Courts, and in the reasons given for it, I fully and without reserve concur. Adopting that rule, I, as far as the present appeal is concerned, allow the appeal and discharge the order appointing the respondent, Ganga Bishan, to be guardian of the property of the minor. But at the same

(1) I. L. R., 19 Bom. 309.

(2) I. L. R., 19 Calc., 301.

time I see no reason for varying that part of the order which appoints Ganga Bishan to be the guardian of the person of the minor. That portion of the order of the lower Court will stand. As appellants have partly succeeded and partly failed, I make no order as to costs.

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Order modified.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Banerji.

KALAVATI (PLAINTIFF) v. CHEDI LAL AND OTHERS (DEFENDANTS).*

1895.
May 2.

Civil Procedure Code, s. 462—Minor—Circumstances necessary to make a compromise by a guardian or next friend on behalf of a minor binding on the minor.

In order to make an agreement or compromise to which s. 462 of the Code of Civil Procedure applies a lawful agreement or compromise, it is necessary that the next friend or guardian should ask the Court to consider the proposed terms of the agreement or compromise, and before making the agreement or entering into the compromise should obtain permission from the Court to enter into the agreement or compromise proposed. The Court should record the fact that such application was made to it; that the terms of the proposed agreement or compromise were considered by the Court; and that, having regard to the interests of the minor, the Court granted leave to the making of the agreement or compromise.

From the mere fact that the Court passed the decree in accordance with the compromise it cannot be inferred that any of those steps preliminary and necessary to the making of the decree have been taken by the Court.

THE facts of this case sufficiently appear from the judgment of the Court.

Mr. D. N. Banerji, Muoshi Ram Prasad and Babu Durga Charan Banerji for the appellant.

Babu Jogindro Nath Chaudhri for the respondents.

EDGE, C. J., and BANERJI, J.—This is an appeal from the decree of the Subordinate Judge of Aligarh. The plaintiff, who is a minor, is, through her guardian, the appellant. The respondents are defendants in the suit. The parties, after the suit had been instituted, agreed to a compromise. They filed the compromise in the

* First Appeal No. 126 of 1894, from a decree of Babu Ganga Saran, Subordinate Judge of Aligarh, dated the 28th February 1894.