

Before Mr. Justice Burkitt and Mr. Justice Dillon.

IMTIAZ-UN-NISSA (APPLICANT) v. ANWAR-UL-LAH (OPPOSITE PARTY).*

1898
May 16.

Act No. VIII of 1890 (Guardian and Wards Act) section 47—Appeal—

Order refusing to direct the removal of a guardian.

Where an applicant for a certificate of guardianship applied for a two-fold relief, namely, that the existing guardian might be removed and that she herself might be appointed guardian, and her application was dismissed, it was held that no appeal would lie from the order of dismissal, such order being an order refusing to direct the removal of a guardian. *Mohima Chunder Biswas v. Tarini Sunker Ghose* (1), *Pakhwanti Dai v. Indra Narain Singh* (2) and *In re Bai Harkha* (3) referred to.

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

Mr. *Amiruddin*, for the appellant.

Maulvi *Ghulam Mujtaba*, for the respondent.

BURKITT and DILLON, JJ:—In this case a preliminary objection to the hearing of this appeal is raised by Maulvi *Ghulam Mujtaba* for the respondent. His objection is that though under section 47 of the Guardian and Wards Act, No. VIII of 1890, an appeal is given by clause (8) of that section against an order directing the removal of a guardian, no appeal is given against an order refusing to direct the removal of a guardian.

To understand this case certain facts and dates must be set out. On the 10th of April 1897, a certificate of guardianship of the person and property of the minors was granted to the respondent Muhammad Anwarullah. On the 26th of April 1897, the appellant Musammât Imtiazunnissa, mother of the minors, applied to the Court, asking that she might be appointed guardian of their persons and property, and by a further application dated the 23rd June 1897, she alleged that she had no knowledge of the appointment on the 10th of April of Anwarullah, and prayed that his appointment as guardian, made on the 10th of April, might be cancelled, and she herself be appointed as guardian. The District Court in its proceedings on this application removed

* First Appeal No. 19 of 1898 from an order of F. E. Taylor, Esqr., Additional Judge of Moradabad, dated the 27th November 1897.

(1) I. L. R., 19 Calc., 487.

(2) I. L. R., 23 Calc., 201.

(3) I. L. R., 20 Bom., 667.

1898

IMTIAZ-UN-
NISSAv.
ANWAR-
UL-LAH.

Anwarullah, (it is said, with his consent) from the office of guardian of the persons of the minors and appointed Musammat Imtiazunnissa in his place, but refused to discharge or remove Anwarullah from the office of guardian of the property. That is the order which is now in appeal before us.

It was ingeniously argued by the learned counsel for the appellant, that the appeal was one under clause (a) of section 47, and that by it, the refusal to appoint Musammat Imtiazunnissa as guardian was called in question. That argument, however, is, in our opinion, unsound. Before an order could be passed appointing Musammat Imtiazunnissa guardian of the property of the minors it would have been necessary to remove Anwarullah from that office. The appeal must be considered to be one against the Judge's order refusing to remove Anwarullah from the office of guardian of the property of the minors. Against such an order, we are of opinion, no appeal lies. In this opinion we are supported by the case of *Mohima Chunder Biswas v. Tarini Sunter Ghose* (1) where it is distinctly laid down that no appeal lies against an order of the District Judge refusing to remove a guardian. To the same effect is the case of *Pakhwanti Dai v. Indra Narain Singh* (2). That case is very much on all fours with this case, inasmuch as in it the District Judge cancelled that portion of the certificate of guardianship appointing the respondent guardian of the persons of the minors. And lastly there is the case of *In re Bai Hartha* (3) which was also a case in which, after the appointment of a guardian of the property, the mother of the minors sought to have the appointment cancelled. The District Judge refused to interfere with the appointment, and the High Court held that no appeal lay from the order of refusal. Following the above cases, with all of which we are in full accordance, we hold that in this case no appeal lies to this Court. We therefore reject the appeal with costs.

Appeal dismissed.

(1) I. L. R., 19 Calc., 487.

(2) I. L. R., 23 Calc., 201.

(3) I. L. R., 20 Bom., 667.