

1914  
 March, 28.

## APPELLATE CIVIL.

*Before Mr. Justice Muhammad Raftiq and Mr Justice Piggott.*

ASGHAR ALI (APPLICANT) v. AMINA BEGAM AND OTHERS (OPPOSITE PARTIES).  
 AND HAMID ALI KHAN (APPLICANT) v. AMINA BEGAM AND OTHERS  
 (OPPOSITE PARTIES).\*

*Muhammadan law—Act No. VIII of 1890 (Guardians and Wards Act), sections 9 and 39—Application for appointment as guardian of minor girl—Qualifications for applicant.*

*Held* that the husband of a minor girl's sister is not, under the Muhammadan law, entitled to be appointed a guardian of the person or property of the minor.

*Held* also that the Guardians and Wards Act, 1890, contemplates that an applicant for guardianship should reside within the jurisdiction of the court to which he makes the application.

THE facts of this case were as follows :—

One Abdul Ghafur died some time ago leaving six daughters, namely, Anwari, Hasina, Abkari, Asghari, Masiha and Amina. Hasina died after her marriage leaving two children, Aziz-ur-Rahman, and Musammat Habib Fatima. Musammat Anwari and the two children of Hasina are minors. On the 14th of March, 1913, Asghar Ali applied to the District Judge of Moradabad to be appointed guardian of the person and property of the said three minors. No one objected to the application of Asghar Ali with regard to the minors, Aziz-ur-Rahman and Musammat Habib Fatima. But as regards the application relating to Musammat Anwari Begam, her two married sisters, Akbari Begam and Amina Begam filed objections and stated that Musammat Anwari was living then and had all along since the death of their mother lived with Musammat Akbari Begam. It was further stated in their objection that the personal wishes of the minor, Musammat Anwari Begam, were that she should be allowed to remain with her sister, Musammat Akbari Begam. It may be noted that Musammat Anwari's date of birth as given in the application of Asghar Ali is June, 1898, so that she is now almost 16 years of age. On the 23rd of June, 1913, Hamid Ali Khan, the husband of Musammat Akbari Begam, also applied to be made a guardian of the person and property of Musammat Anwari. Both the applications were dismissed by the District Judge and both the applicants appealed to the High Court.

\* First Appeals Nos. 159 and 215 of 1913 from orders of Saiyid Muhammad Ali, District Judge of Moradabad, dated the 16th of May, 1913.

Maulvi *Muhammad Ishaq*, for the appellants.

The Hon'ble Dr. *Tej Bahadur Sapru*, for the respondents.

MUHAMMAD RAFIQ and PIGGOTT, JJ.—The two appeals Nos. 159 and 215 of 1913 are connected and have arisen out of the following circumstances. One Abdul Ghafur died some time ago leaving six daughters, namely, Anwari, Hasina, Akbari, Asghari, Masiha and Amina. Hasina died leaving two children, Aziz-ur-Rahman, and Musammat Habib Fatima. Musammat Anwari and the two children of Hasina are minors. On the 14th of March, 1913, Asghar Ali applied to the District Judge of Moradabad to be appointed guardian of the person and property of the said three minors. No one objected to the application of Asghar Ali with regard to the minors, Aziz-ur-Rahman and Musammat Habib Fatima. But as regards the application relating to Musammat Anwari Begam, her two married sisters, Akbari Begam and Amina Begam, filed objections and stated that Musammat Anwari was living then and had all along since the death of their mother lived with Musammat Akbari Begam. It was further stated in their objection that the personal wishes of the minor, Musammat Anwari Begam, were that she should be allowed to remain with her sister, Musammat Akbari Begam. We may note that Musammat Anwari's date of birth as given in the application of Asghar Ali is June, 1898, so that she is now almost 16 years of age. On the 23rd of June, 1913, Hamid Ali Khan, the husband of Musammat Akbari Begam, also applied to be made a guardian of the person and property of Musammat Anwari. Both the applications were dismissed by the District Judge, and both the applicants have come up to this Court in appeal. The appeal of Hamid Ali Khan must fail on the ground that he is not entitled to be appointed a guardian of his sister-in-law, either of her person or property under the Muhammadan law. The appeal of Asghar Ali must also fail, but on another ground. He admittedly lives in the district of Meerut, and according to him Musammat Anwari Begam also ordinarily resides with him in that district. If so, the application with respect to the guardianship of the person of the minor should have been made to the District Judge of Meerut, and that with respect to the guardianship of the property of the minor either to the District Judge of Meerut or Moradabad. But having

1914

ASGHAR ALI  
v.  
AMINA  
BEGAM.

1914  
 ASGHAR ALI  
 v.  
 AMINA  
 BEGAM.

regard to the provisions of section 9 of Act VIII of 1890 the District Judge of Moradabad might very well have refused to entertain that application. We might also refer to clause (h) of section 39 of the same Act, which shows that the Legislature contemplates that an applicant for guardianship should reside within the jurisdiction of the court to which he makes the application. We, therefore, think that the application of Asghar Ali should not have been made to the District Judge of Moradabad. We dismiss his appeal. But the dismissal of his appeal or the rejection of the application by the District Judge of Moradabad will not stand in his way, if he chooses to make a proper application according to law in a court which has jurisdiction to entertain it. As the objection as to the want of jurisdiction was not taken by the objectors in the court below we think that the costs in the application of Asghar Ali should be borne by the parties. In the case of Hamid Ali Khan we make no order as to costs.

*Appeal dismissed.*

*Before Mr. Justice Muhammad Rafiq and Mr. Justice Piggott.*

SUBHAG SINGH (OBJECTOR) v. RAGHUNANDAN SINGH (APPLICANT).<sup>\*</sup>  
 Act No. VIII of 1890 (*Guardians and Wards Act*), Chapter II—*Appointment of guardian—Procedure—Evidence—Admissibility of qanungo's report as to fitness of applicant.*

Three persons applied to the District Judge to be appointed guardian of the person and property of a minor. The District Judge asked the Collector to say which one of the three persons was the fittest to be appointed guardian. A report was called for by the Collector from the girdawar qanungo, who reported in favour of the respondent. The District Judge, thereupon, appointed him as guardian of the person and property of the minor.

*Held*, that the report of the qanungo could not be treated in law as evidence, and that it was the duty of the District Judge to have called upon the different claimants to give evidence and to decide on that evidence.

THE District Judge of Ghazipur, having before him three applicants for appointment as guardian of a certain minor, made a reference to the Collector of the district asking him whether he was inclined to take the property of the minor under the management of the Court of Wards, and if not, to say which one of the three persons, viz. Raghunandan Singh, Har Shankar

<sup>\*</sup> First Appeal No. 140 of 1913 from an order of Sri Lal, District Judge of Ghazipur, dated the 12th of April, 1913.