

1920

MUHAMMAD
ISMAIL KHAN
v.
HAMIDA
KHATUN.

The Act of 1899 was repealed by Act No. IV of 1912; a clause corresponding to section 2, sub-section (2), is to be found in it and similar provisions drawing sharp distinctions between disqualified proprietors and those persons who of their own request had made over the management of their estate to the Court of Wards. The same restriction on the power of making a will is continued as regards disqualified proprietors. Deciding as we do that Haji Yakub Khan ceased to be a disqualified proprietor by virtue of Act III of 1899, it follows that he had a full right to make a will. We might add that in 1910 the Board of Revenue took the same view (R. 163); a view shared later by the Collector in 1916, (R. 235). Accordingly the point of law urged by the appellant fails.

[After discussing the facts of the case their Lordships dismissed the appeal and the objections with costs.]

Appeal dismissed.

Before Mr. Justice Piggott and Mr. Justice Walsh.

BINDO (APPLICANT) v. RADHE LAL (OPPOSITE PARTY).*

1920
April, 14.

Act No. VII of 1889 (Succession Certificate Act), section 19—Certificate granted ex parte without notice having been served on the opposite party—Remedy available to opposite party—Appeal—Proof of service of notice.

The widow of a Hindu applied for a succession certificate for the collection of certain debts due to her deceased husband. She named, amongst others, as a party likely to be interested in the proceedings, one Radhe Lal, a brother of the deceased. Attempts were made to serve notice of the application on Radhe Lal, but apparently without success, and ultimately the application was heard *ex parte* and a certificate granted to the widow. Radhe Lal then appeared and filed an appeal against the grant alleging that he had in fact received no notice of the application and that he had a good objection to the granting of a certificate to the widow, inasmuch as the deceased and himself were members of a joint Hindu family.

Held that the appellant was entitled to come to court by way of appeal and was not bound to file an application to revoke the certificate.

Held also, that the fact that a registered notice is returned endorsed "refused" is not by itself evidence that it was tendered to the person to whom it was addressed.

THE facts of this case are sufficiently stated in the judgment of the Court.

* First Appeal No. 126 of 1919, from an order of Jagat Narain, District Judge of Aligarh, dated the 15th of March, 1919.

Munshi *Gulzari Lal*, for the appellant.

Munshi *Panna Lal*, for the respondent.

PIGGOTT and WALSH, JJ.:—On the death of one Matra Mal, his widow Musammāt Bindo applied for a succession certificate for the collection of certain debts. She named two persons, Radhe Lal and Bhikari Das, as brothers of the deceased; but we note that Radhe Lal is described as son of Hulas Rai and Bhikari Das as son of Durga Das. She also named one Thakur Das, as paternal uncle of the deceased. Notices issued to Radhe Lal and Bhikari Das went to Bombay for service and eventually the court recorded an order expressing its opinion that the service effected was sufficient and proceeded to deal with the case *ex parte*. The application was not opposed and a certificate was granted as prayed. Radhe Lal now comes to this Court in appeal. He says he has a defence on the merits, the fact being that Matra Mal was his brother and died as a member of a joint undivided Hindu family with himself. He says moreover that, while his residence is at Hathras in the Aligarh district, he carries on business in Bombay, and was, at the time when attempts were made to serve him with notice in Bombay, travelling about the country on his business. He denies that any notice ever reached him at Bombay. There is really no evidence that he was properly served. The Court of Small Causes at Bombay, to which notice was twice sent for service, twice returned the notice with an affidavit by the serving officer to the effect that he could not find Radhe Lal at the address given. Another notice was sent by registered cover and this came back with the word "refused" endorsed on the said cover. There is really no evidence as to who wrote this word "refused," and we cannot agree with the court below that it raises any definite presumption that this registered cover was tendered to Radhe Lal and was refused by him. We do not think that he had any possible motive for refusing it, if it had really reached him. We think that in view of the question raised by Radhe Lal's objection this case ought to go back for inquiry. With reference to an objection that has been raised by the respondent we are content to say that we are satisfied that an appeal lies under section 19 of Act No. VII of 1889, and it was not absolutely incumbent upon Radhe Lal to

1920

 BINDO
 v.
 RADHE LAL.

1920

BINDO
v.
RADHE LAL.

make an application to the court below to revoke the certificate itself. We set aside the order under appeal and send the case back to the court below for disposal on the merits after Radhe Lal has been given an opportunity of supporting his objection. Incidentally we note that Radhe Lal now gives his address as "in the town of Hathras," but that Mr. *Gulzari Lal*, who has represented him in this Court, undertakes to accept service on his behalf of any notice that may be issued.

Order set aside and cause remanded.

Before Mr. Justice Tudball and Mr. Justice Sulaiman.

ANWAR ALI KHAN AND ANOTHER (APPLICANTS) v. DARA SHAH
KHAN AND OTHERS (OPPOSITE PARTIES).*

Act No. VIII of 1890 (Guardians and Wards Act), sections 39, 47, 48—Application to remove guardian appointed by the court and to appoint applicants instead—Application dismissed—Appeal.

No appeal lies from an order refusing to remove a guardian appointed under the provisions of the Guardians and Wards Act, 1889.

THIS was an appeal against an order passed by the District Judge of Bareilly under the following circumstances. Musammam Nurjahan Begam was a minor born in 1910. On the 17th of July, 1918, the minor's maternal grandmother was appointed guardian of the person and property of the minor. Subsequently, the minor was married to one Atahar Muhammad Khan, a boy of some thirteen years of age. After this the father-in-law, Muhammad Anwar Ali Khan, and the husband applied to the District Judge asking that Musammam Nazir Begam, the grandmother, might be removed from her position as guardian and Anwar Ali Khan, appointed guardian of the property and the two applicants jointly guardians of the person of the minor. On the 20th of June, 1919, the District Judge dismissed this application. The applicants thereupon appealed to the High Court.

Maulvi Mukhtar Ahmad, for the appellants.

Babu Sital Prasad Ghosh, for the respondents.

TUDBALL and SULAIMAN, JJ. :—This is an appeal against an order passed by the District Judge of Bareilly refusing to remove a guardian from her post. A preliminary objection is raised that no appeal lies. We think there is considerable force in this argument. Section 47 of the Guardians and Wards Act

* First Appeal No. 129 of 1919, from an order of H. E. Holme, District Judge of Bareilly, dated the 20th of June, 1919.

1920

April 15.