

entitled to a share equal to that of her sons. Thus she would be entitled to a third share in the property.

The case of *Kanhaiya Lal v. Gaura* (1) has been brought to our notice. In this case the grandsons of one Nain Sukh, by his only son Chhunni, claimed a partition between themselves. The question was whether Nain Sukh's widow (the grandmother of the claimants for partition) was entitled to a share. It was held that she was. The case of *Sheo Narain v. Janki Prasad* (2) was distinguished. But we need not consider that case. It may or may not support the case of the plaintiff before us. We are of opinion that on the text quoted in the Full Bench case aforesaid, the plaintiff is entitled to the share claimed.

We allow the appeal, set aside the decree of the court below and decree the plaintiff's claim for a third share. The contesting defendant will pay the appellant's costs in both the courts.

Appeal allowed.

Before Mr. Justice Lindsay and Mr. Justice Ashworth.

TASKIN FATMA (APPLICANT) *v.* MUHAMMAD MUNIM
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Act No. VIII of 1890 (Guardians and Wards Act), sections 33 and 43—Distinction between provisions of the two sections—Effect of guardian filing a suit on behalf of his ward without obtaining consent of court.

The guardian of a minor Muhammadan girl, with the consent of the District Judge, entered into certain arbitration proceedings with the object of settling disputes between his ward and her brothers. An award was made and a decree in accordance therewith followed. Subsequently the girl married, being still a minor, and her husband was appointed her

*First Appeal No. 107 of 1927, from an order of E. T. Thurston, District Judge of Budaun, dated the 4th of March, 1927.

(1) (1924) I.L.R., 47 All., 127.

(2) (1912) I.L.R., 34 All., 505.

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certified guardian. The husband then applied to the District Judge for permission to institute a suit on behalf of his wife to get the arbitration proceedings and the decree based thereon set aside. The Judge refused permission.

Held that no appeal lay from such order. But there was nothing in the Guardians and Wards Act to prevent a guardian from filing a suit on behalf of his ward without the consent of the Judge; only, in such a case the guardian would not have the protection afforded by sub-clause (3) of section 33 of the Act.

THIS was an appeal against an order made by the District Judge of Budaun on the 4th of March, 1927.

The facts of the case were briefly as follows:—Musammat Taskin Fatma was a minor, the daughter of one Ghafur Bakhsh, deceased. At the date of these proceedings, she was married to Qayum Bakhsh, who, after becoming her husband, was appointed by the District Judge of Budaun as the guardian of her person and property.

Before Qayum Bakhsh married this minor girl her guardian in the court of the District Judge was her uncle Sattar Bakhsh, and while Sattar Bakhsh was acting as guardian under the court, he, with the consent of the District Judge, entered into certain arbitration proceedings in order to settle disputes between the sons of the deceased Ghafur Bakhsh and this girl Musammat Taskin Fatma, regarding the division of the property. Admittedly an award was passed, and that award was subsequently made a rule of the court.

In the month of August, 1926, after Qayum Bakhsh had been appointed guardian of his wife, he presented a petition to the District Judge, asking for the court's permission to institute a suit on behalf of his wife for the purpose of having the award and the decree which had been passed, set aside on the ground of fraud and collusion. The District Judge refused the permission asked for, hence this appeal.

Dr. Kailas Nath Katju, Munshi Shiva Prasad Sinha and Maulvi Shah Zamir Alam, for the appellant.

Mr. A. M. Khwaja, Babu Peary Lal Banerji and Maulvi Mushtaq Ahmad, for the respondents.

THE judgement of the Court (LINDSAY and ASHWORTH, JJ.), after reciting the facts as above, thus continued :—

It is apparent from the record, which is before us, that Qayum Bakhsh behaved in the most indiscreet manner and incurred the displeasure of the District Judge for what we must admit to be very good reason. When the application was put before the learned Judge he directed its consideration to be postponed, because at the time he thought that the husband of the girl and the other members of the family were angry with each other, and that if their anger were allowed to cool, matters might be amicably arranged. He passed an order on the 10th of September, 1926, postponing consideration of the application. Then on the 4th of March, 1927, he passed the order which is now under appeal. All that the order says is as follows :—

“It is sufficiently clear from the events subsequent to my order of the 10th of September, 1926, and from the conduct of the applicant that the application was made *malâ fide*. I dismiss it.”

We understand the applicant mentioned in this order to be not the minor herself but her guardian Qayum Bakhsh.

This order is attacked here on various grounds, and it is said that the application for leave to file a suit on behalf of his minor wife ought to have been allowed by the court on the ground that it was for the interest of the lady that such a suit should be brought.

It appears to us that there is a misunderstanding about the nature of the proceedings in the court below and

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of the effect of the order which was passed by the Judge on the 4th of March, 1927, and which is sought to be set aside by this appeal.

There are certain provisions of the Guardians and Wards Act, which lay down that a guardian is not allowed to do certain acts on behalf of his ward without the leave of the court first obtained. But we are not aware of any provision of the Act which makes it necessary for a guardian appointed under the Act to ask for the court's permission before he files a suit on behalf of his ward.

There is of course section 33, which gives a guardian appointed by the court the right to approach the court and ask for its opinion, advice or direction on any present question respecting the management or administration of the property of his ward. Then the section goes on to say that the court, if it thinks necessary, may cause notice of such an application to be served on all persons interested. Sub-section (3) declares that if a guardian states in good faith the facts in his petition to the court, and if he acts upon the opinion, advice or direction given by the court, he shall be deemed, so far as regards his own responsibility, to have performed his duty as guardian in the subject-matter of the application. So far as the matter covered by section 33 is concerned, if he has stated the facts to the court in good faith, and if he acts upon the opinion, advice or direction given by the court, he will not be held responsible thereafter on any claim to be made against him by his ward.

When this application was presented by the minor's guardian to the District Judge, no section was quoted under which the application purported to be made, but we have come to the conclusion that there could have been no other section except section 33 under which such an application was entertainable. Section 43 of the Act has been mentioned, with the suggestion that it may be

supposed that the order made by Mr. Thurston on the 4th of March, 1927, was an order under section 43. If it was an order under section 43, it would be appealable under section 47. But we do not think that the order is one under section 43. The application does not at all appear to have been under that section, nor can we treat the order of Mr. Thurston as one regulating the conduct or proceedings of the guardian appointed or declared by the court. The order, therefore, is not one under section 43 and is not appealable. All that can be said is that it was passed apparently in a proceeding taken under section 33, and that it must be taken that the court was of opinion that the suit which the guardian proposed to file was a suit which should not be brought. That order will not prevent the guardian from bringing the suit, if he is so advised, but in bringing the suit he acts at his own risk and will not be entitled to the indemnity which is conferred upon guardians acting with the advice of the court under sub-section (3) of section 33. Dr. *Katju* has undertaken on behalf of the guardian that any suit which he proposes to file is to be conducted at the expense of the guardian himself. We make a note of this undertaking, and place it on record in order that it may bind the guardian in any future proceedings in which the question of indemnity for costs may arise. We must hold, therefore, that no appealable order was passed by the court below. We, therefore, dismiss the appeal. We leave the parties to pay their own costs.

Appeal dismissed.

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