

*Before Mr. Justice Niamat-ullah*

KUNDAN LAL (APPLICANT) *v.* BHAGWATI SARAN AND  
ANOTHER (OPPOSITE PARTIES)\*

1934  
September,  
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*Guardians and Wards Act (VIII of 1890), sections 31, 33, 34—  
Transfer by guardian without permission of Judge—Powers of  
Judge in such cases—Position of the transferee—Whether  
Judge can cancel the transfer or order the guardian to make  
another transfer—Jurisdiction.*

Where a guardian appointed under the Guardians and Wards Act makes a transfer of the minor's property without obtaining the permission of the District Judge, the latter has no power to cancel it in the sense that the transfer becomes inoperative by force of that order. Any question as regards the validity of the transfer is to be determined by a competent court in a regular suit. It is open to the District Judge to form the opinion that the transfer is invalid, and acting on that view he may grant permission to the guardian to execute another transfer on more advantageous terms; but it is not his proper function to order the guardian to execute any transfer. There is no provision in the Guardians and Wards Act which empowers the District Judge to exercise disposing power over the minor's property which is under the management of the guardian; it is the function of the guardian to deal with the property of the minor and to administer it. Of course the guardian may obtain the advice of the Judge under section 33 of the Act, and the Judge can make orders under section 43 regulating the conduct or proceeding of the guardian; but that does not mean that the Judge can himself deal with the minor's property and do everything which the guardian might do.

Mr. *Jagdish Swarup*, for the applicant.

Dr. *N. P. Asthana* and Mr. *B. N. Sahai*, for the opposite parties.

NIAMAT-ULLAH, J.:—This is an application in revision against an order passed by the Officiating District Judge, Agra, in a matter under the Guardians and Wards Act. Mst. Shyam Dei was appointed guardian of the property of her minor son, Hari Shankar, who owned certain landed property. She executed a lease in favour of Kundan Lal and others the applicants in this revision, in respect of that property at an annual

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rent of Rs.895. The term of the lease was seven years. It was executed on the 7th of February, 1932. A few months afterwards, one Bhoj Raj, who is alleged to be on bad terms with Kundan Lal, made an application to the District Judge intimating that Bhagwati Saran, the opposite party in this revision, was willing to pay for the same land an annual rent of Rs.950-3-8 for a term of five years. The application also drew the attention of the District Judge to the fact that the lease in favour of Kundan Lal was given without the permission of the District Judge, required by section 31 of the Guardians and Wards Act. The District Judge issued a notice to the guardian and to Kundan Lal and others and passed the following order on the 15th of July, 1933, which is challenged in revision:—"The lease in favour of Kundan Lal and others is cancelled, if Bhagwati Saran is willing to take the lease at Rs.950-3-8 for five years on the same conditions as Kundan Lal and also the arrears of rent purchased by him. The lease will be granted to him provided he deposits the profit in advance every year and also the arrears of rent purchased by Kundan Lal. The draft to be filed. The cancellation will take effect from the date the new lease is registered. The proceedings taken by Kundan Lal before the cancellation will be valid."

It is quite clear that the learned Officiating District Judge is of opinion that he can exercise judicial authority in relation to third persons in proceedings under the Guardians and Wards Act. If the lease executed by the guardian in favour of the applicants (Kundan Lal and others) is voidable, the same not having been executed with the permission of the District Judge, the latter has no power to cancel it in the sense that the lease becomes inoperative by force of that order. It may be that the District Judge can express an opinion as regards the validity or otherwise of the lease for the purpose of determining the action which should be taken in the interest of the minor. The holder of a

lease executed by a guardian without the permission of the District Judge may have effective defences against the claim by or on behalf of the minor to have the lease cancelled. Any question as regards the validity of the lease is to be determined by a competent court in a regular suit. It is certainly open to the District Judge to form the opinion that the lease is invalid, and acting on that view he may grant permission to the guardian to execute another lease on more advantageous terms. I may point out that the Officiating District Judge has ordered the guardian to execute the lease. His proper function is to grant permission to execute one if it is asked for. There is no provision in the Guardians and Wards Act which empowers the District Judge to exercise disposing power over the minor's property under the management of a lawful guardian. It is the function of the guardian to deal with the property of the minor and to administer it. The guardian may obtain the advice of the District Judge under section 33 of the Guardians and Wards Act. The District Judge may also make an order under section 43 regulating the conduct or proceeding of any guardian appointed or declared by the court. The learned Officiating District Judge seems to have been of opinion that he can deal with the minor's property and do everything which the guardian might do, besides cancelling an instrument executed by the latter.

While it was open to the learned Judge to invite the guardian to make an application for permission to execute another lease in favour of the opposite party, he had no power to declare that the cancellation of the lease already executed in favour of the applicant is to "take effect" from a certain date and that it shall be valid till that date arrives. The new lessee will take his chance of succeeding against the old lessee in proper proceedings, and any opinion expressed by the District Judge cannot affect the rights of one or the other.

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For the reasons stated above I set aside the order of the District Judge challenged in revision. It will, of course, be open to the District Judge to pass such order on the application of the guardian or otherwise which is justified by the provisions of the Guardians and Wards Act. The parties shall bear their own costs.

## REVISIONAL CRIMINAL

Before Mr. Justice Rachhpal Singh

MEHARBAN SINGH AND OTHERS v. BHOLA SINGH\*

1934  
September,  
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*Criminal Procedure Code, section 145(4) proviso—Application within a few days of dispossession—Preliminary order passed after delay, so as to be more than two months after the dispossession—Whether applicant entitled to benefit of section.*

On a correct interpretation of the proviso to sub-section (4) of section 145 of the Criminal Procedure Code the result is that a person who has been forcibly dispossessed more than two months before the date of the preliminary order passed under sub-section (1) can not derive any benefit under section 145. Where the Magistrate finds that the dispossession took place more than two months before the date of the preliminary order, then the only course open to him is to maintain the possession of the other party. This may, no doubt, be hard upon a man who applies within a few days after his forcible dispossession but has to be deprived of his speedy remedy under section 145 simply because the court to which the application was made did not make a preliminary order for a long time, but this is the only conclusion to be drawn from the language of the section.

Messrs. *K. D. Malaviya* and *Babu Ram Avasthi*, for the applicants.

*Mr. G. S. Pathak*, for the opposite party.

The Assistant Government Advocate (*Dr. M. Waliullah*), for the Crown.

*RACHHPAL SINGH, J.*:—This is a reference by the learned Sessions Judge of Farrukhabad recommending that an order passed by a Magistrate of first class in that district, directing that one *Bhola Singh* be put in posses-

\*Criminal Reference No. 564 of 1934.