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personal debt he attaches and sells only the right of the coparcener to effect a partition, and as in the present case the coparcener who created the debt is dead, and as a dead man cannot effect a partition, the decree-holder has no remedy. The fallacy underlying this argument is that it omits to take notice of what is well established, that the decree-holder attaches and sells the undivided interest of the coparcener in the family property and it is only after he has done this that he proceeds to ascertain and realise the interest by effecting a partition.

Bajpai, J.

I, therefore, agree with the view that the decree-holder is entitled to attach the undivided interest of Rameshwar Das in the joint family property, and answer the question referred to us in the affirmative, subject to the reservation proposed by the learned CHIEF JUSTICE.

BY THE COURT:—As the whole question has not been referred to us and it is possible that there are other points as well undisposed of, we simply answer the question referred to us in the affirmative subject to this reservation that the word "share" referred to therein means the undivided interest of the son which is estimated in the application as being half at the present moment.

APPELLATE CIVIL

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March, 14

Before Mr. Justice King and Mr. Justice Iqbal Ahmad

NAROTAM (APPLICANT) *v.* TAPESRA AND ANOTHER (OPPOSITE PARTIES)*

Guardians and Wards Act (VIII of 1890), section 10—Appointment, as guardian, of a person other than the applicant—Willingness of such person need not be intimated by signed and attested declaration—Jurisdiction.

Once an application has been filed in accordance with the provisions of section 10 of the Guardians and Wards Act, and notices of the application are issued to the persons interested in accordance with section 11, the jurisdiction of the Judge

*First Appeal No. 82 of 1933, from an order of Kanhaiya Lal Nagar, Judge, Small Cause Court of Benares, dated the 8th of April, 1933.

under the Act comes into play and it is open to the Judge, as a result of the inquiry initiated on the application and of the examination of the cases put forward by the persons interested, to appoint a person other than the applicant as guardian of the minor, provided the person so appointed has intimated his willingness to act as a guardian; and it is not essential that such willingness should be intimated in the manner mentioned in clause (3) of section 10, namely by a signed declaration attested by two witnesses.

Mr. *Mansur Alam,* for the appellant.

Mr. *Gadadhar Prasad,* for the respondents.

KING and IQBAL AHMAD, JJ.:—This appeal is directed against an order of the court below appointing Mst. Tapesra as guardian of the person of Mst. Piyari, minor. Mst. Tapesra is the own sister of Mst. Piyari. Sita Ram, the father of Tapesra and Piyari, died in the year 1931. Narotam, the appellant before us, professes to be the real brother of the maternal grandmother of Mst. Piyari. He filed an application in accordance with the provisions of section 10 of the Guardians and Wards Act to be appointed guardian of the person of Mst. Piyari. The application was opposed by Mst. Tapesra and by another woman named Mst. Sahodra. The learned Judge, after consideration of the evidence in the case, came to the conclusion that Narotam and Sahodra were not fit persons to be appointed guardian of the minor. He held that Tapesra was the most suitable person to be appointed guardian and accordingly passed the order appealed against.

The first contention raised by the learned counsel for the appellant is that, as Tapesra had not filed an application to be appointed a guardian, the learned Judge of the court below had no jurisdiction to appoint her guardian of the minor. In support of this contention our attention has been drawn to sections 7, 8, 10 and 11 of the Guardians and Wards Act. Section 7 provides that where the court is satisfied that it is for the welfare of a minor that an order should be made

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appointing a guardian of his person or property or both, the court may make an order accordingly. It is provided by section 8 that an order appointing a guardian under section 7 of the Act shall not be made except on the application of the person desirous of being, or claiming to be, the guardian of the minor, or of the Collector of the district or other local area within which the minor ordinarily resides or in which he has property, or of the Collector having authority with respect to the class to which the minor belongs. Section 10 prescribes the contents of an application under section 8 by a person other than the Collector. Section 11 then provides that if the court is satisfied that there is ground for proceeding on the application, it shall fix a day for the hearing thereof, and cause notice of the application and of the date fixed for hearing to be served on the persons enumerated in that section.

It is argued by the learned counsel that as Mst. Tapesra had not filed an application in accordance with section 10 of the Act, nor had intimated her willingness to act as guardian by a declaration signed by her and attested by two witnesses as provided by clause (3) of section 10, the learned Judge had no jurisdiction to appoint Mst. Tapesra as guardian. In our judgment, there is no force in this contention. It is true that a Judge is not authorised by law, in the absence of an application for the appointment of a guardian, to pass an order appointing the guardian of a minor. But once an application has been filed in accordance with the provisions of rule 10, the jurisdiction of the Judge under the Guardians and Wards Act comes into play, and it is open to the Judge, as a result of the inquiry initiated on the application for the appointment of a guardian, to appoint a person other than the applicant as guardian of the minor, provided the person so appointed has intimated his willingness to act as a guardian. It may be that it would be more

in conformity with law that such willingness be communicated to the court by means of an application in accordance with the provisions of section 10 of the Act. But the absence of such an application by the person appointed guardian by the court is no bar to the jurisdiction of the court to appoint him guardian. The object of section 11 of the Act is to give an opportunity to all the persons having an interest in the minor, of being heard before an order appointing a guardian is passed. Once an application is made under section 10 and notices of the application are issued to the persons mentioned in section 11, all the interested parties have the opportunity of putting their case before the court; and then the Judge has jurisdiction to appoint such person as guardian of the minor who in his opinion, in accordance with the provisions of section 17 of the Act, should be appointed. It is not disputed in the present case that all the persons interested in the matter of the appointment of a suitable guardian of Mst. Piyari were before the court below and did adduce all the evidence that they wanted to produce. The objection of the learned counsel is at best a technical objection and, in the absence of a definite provision in the Act to the effect that a Judge has no jurisdiction to appoint a person as guardian of the minor who has not filed an application in accordance with the provisions of section 10 of the Act, we are not prepared to give effect to that contention. The view that we take is in consonance with the view taken in *Sundarmani Dei* v. *Gokulanand* (1).

On the merits, in our judgment, the learned Judge arrived at a correct conclusion. [The judgment then dealt with the evidence in the case.]

In a matter like the present this Court is reluctant to interfere with the exercise of discretion by the District Judge and in the present case no cogent reasons have been assigned to induce us to set aside the order passed

(1) (1912) 18 C.W.N., 160.

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by the court below and to appoint Narotam as guardian of the minor.

We accordingly affirm the decision of the court below and dismiss this appeal with costs.

Before Sir Shah Muhammad Sulaiman, Chief Justice, and Justice Sir Lal Gopal Mukerji

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COLLECTOR OF MEERUT (DEFENDANT) *v.* CHAUDHARY RISAL SINGH (PLAINTIFF)*

Court of Wards Act (Local Act IV of 1912), sections 17, 20—"Claims, including decrees for money"—Claims for unascertained amounts—Claim by a co-sharer for settlement of accounts and share of profits—Failure to notify claim to Collector—"Good and sufficient cause" for such failure—Interpretation of statutes—Marginal note.

The words, "claims, including decrees for money", in section 17 of the Court of Wards Act, 1912, have a wide scope and would, *prima facie*, include all claims in respect of which a decree for money may be sought, whether the amount is an ascertained sum or not. Having regard to the purpose of section 17 and the policy underlying the Act, these words should be given their ordinary and unrestricted meaning, and the mere fact that the expression "claim for money" has been used in the restricted sense of claims for ascertained sums in some other enactments does not necessitate the restriction of its meaning in the Court of Wards Act also. So, a claim by a co-sharer for settlement of accounts and share of profits, under section 227 of the Agra Tenancy Act, is included within the scope of section 17 of the Court of Wards Act and is required to be notified to the Collector.

The marginal note to section 20 of the Court of Wards Act, suggesting that the competent court mentioned in the body of the section is the "civil court" alone, can not control the section itself so as to make it inapplicable to suits cognizable by the revenue court. The benefit of the proviso to section 20 can, therefore, be given to a suit brought under section 227 of the Agra Tenancy Act, if good and sufficient cause for failure to notify the claim to the Collector is shown.

In view of the fact that section 17 was not free from ambiguity, that there was no previous ruling on the point, and

*Second Appeal No. 42 of 1930, from a decree of Raghunath Prasad, District Judge of Meerut, dated the 18th of May, 1929, confirming a decree of Syed Maqbool Ahmad Sahab, Assistant Collector, First Class, of Meerut, dated the 22nd of December, 1927.