MISCELLANEOUS CIVIL

Before Mr. Justice C. M. King, Chief Judge

CHANDRAPAL SINGH (APPELLANT) *v.* SARABJIT SINGH AND ANOTHER (RESPONDENTS)* 1937 *February*, 7

Guardian and Wards Act—Hindu Law—Joint Hindu family—Coparceners minors—Guardian appointed—One coparcener attains majority—Guardianship, whether ceases—Major coparcener, whether can be appointed guradian of minor coparcener.

Where a joint Hindu family consists of coparceners who are all minors, the coparceners forming one group, the Court has jurisdiction to appoint a guardian of the property of that group as a whole. But when, subsequently, one of that group arrives at the age of majority, the guardianship of the person appointed by the Court ceases and the Court is bound to hand over the joint family property to the adult coparcener as *karta* of the family, notwithstanding the fact that other coparceners are minors. The coparcener who has attained majority cannot be appointed guardian of the minor coparceners. *Jagannath Prasad* v. *Chunni Lal* (1), *Gharib-ul-lah* v. *Khalak Singh* (2), *Mahanand* v. *Dasrath Misra* (3), *Balbir* v. *Chedi Lal* (4), and *Ram Chandra Vasudeo* v. *Krishna Rao Vasudeorao Deshpande* (5), relied on.

Messrs. *Kedar Nath Tandon* and *Randhir Singh*, for the appellant.

KING, C.J.:—This is an appeal against an order passed by the learned Subordinate Judge of Malihabad appointing the appellant Chandrapal Singh as guardian of the person and property of his minor brothers.

Lachman Singh died leaving three minor sons and a widow. The District Judge appointed the widow Musammat Ram Dei as guardian of the person and property of her minor sons on the 11th of September, 1924. The eldest son Chandrapal Singh attained majority on

*Miscellaneous Appeal No. 4 of 1934, against the order of Pandit Brij Kishen Topa, Subordinate Judge of Malihabad at Lucknow, dated the 7th of October, 1933.

(1) (1933) A.I.R., All., 180. (2) (1903) L.R., 30 I.A., 165.
(3) (1918) 46 I.C., 815. (4) (1925) A.I.R., Oudh, 642.
(5) (1908) I.L.R., 32 Bom., 259.

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the 16th of March, 1933, and he made an application for a declaration that he had attained majority. This declaration was made as prayed. Subsequently, when notice was issued to Musammat Ram Dei the guardian in connection with a certain application, she stated that she had no objection to allowing Chandrapal Singh to manage the whole property and she applied to be discharged from guardianship. The learned Subordinate Judge removed Musammat Ram Dei from guardianship but he appointed Chandrapal Singh as guardian of the person and property of his minor brothers and directed him to file accounts each year.

For the appellant it is contended that this order is illegal as the Court had no jurisdiction to appoint Chandrapal Singh as guardian of the property of his two minor brothers when the three brothers formed a joint Hindu family.

In support of this proposition several authorities have been relied upon. The case of *Lala Jagannath Prasad* v. *Chunni Lal* (1), is certainly in the appellant's favour. In this case it was held by a Bench of the Allahabad High Court that if a Hindu family remains joint, it is not open to the District Judge to appoint a certified guardian for the minor members of that family for their shares of joint family property. It was held that it was contrary to Hindu law that there should be a guardian certified by the Judge for a joint Hindu family, where there is an adult member. On the attainment of the adult status by one of the minors for whom a guardian had been appointed *ipso facto* the guardianship terminates. This view can be supported by the authority of their Lordships of the Judicial Committee in *Gharib-ul-lah* v. *Khalak Singh* (2). At page 170 their Lordships observe:

"It has been well settled by a long series of decisions in India that a guardian of the property of an infant

(1) (1933) A.I.R., All., 180 (183). (2) (1903) L.R., 30 I.A., 165.

cannot properly be appointed in respect of the infant's interest in the property of an undivided Mitakshara family."

A similar view was taken by the Patna High Court in *Mahanand* v. *Dasrath Misra* (1), and by the Judicial Commissioner of Oudh in *Balbir* v. *Chedi Lal* (2). The learned Subordinate Judge has himself relied upon a ruling of the Bombay High Court in *Ram Chandra Vasdeo* v. *Krishna Rao Vasdeorao Deshpande* (3). This ruling however is clearly against the view taken by the learned Subordinate Judge. It was held that where a joint Hindu family consists of coparceners who are all minors, the coparceners forming one group, the Court has jurisdiction to appoint a guardian of the property of that group as a whole. But when, subsequently, one of that group arrives at the age of majority, the guardianship of the person appointed by the Court ceases and the Court is bound to hand over the joint family property to the adult coparcener, notwithstanding the fact that other coparceners are minors.

This ruling is directly in point. It shows that Musammat Ram Dei must be removed from guardianship on account of Chandrapal Singh having attained majority but the ruling is opposed to the view that Chandrapal Singh himself can be appointed guardian of the property of his minor brothers. On the contrary the ruling is an authority for the proposition that the Court is bound to hand over joint family property to Chandrapal Singh himself as *karta* of the joint family.

No one appears for the respondent but the case for the appellant seems to have been clearly established on the authorities mentioned.

I therefore allow the appeal and set aside the order of the Court below so far as it relates to the appointment of Chandrapal Singh as guardian of the person

(1) (1918) 46 I.C., 815. (2) (1925) A.I.R., Oudh, 642.
(3) (1908) I.L.R., 32 Bom., 259.

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and property of his two minor brothers and to the furnishing of accounts and the drawing of an allowance from the Court. The property should be made over to Chandrapal Singh as *karta* of the joint Hindu family.

Appeal allowed.

APPELLATE CRIMINAL

Before Mr. Justice E. M. Nanavutty

1935
February, 15

BHAGGAN (APPELLANT) *v.* KING-EMPEROR (COMPLAINANT-RESPONDENT)*

Criminal Procedure Code (Act V of 1898), section 239—Indian Penal Code (Act XLV of 1860), sections 411 and 414—Stolen property—Possession obtained by several thefts—Joint trial of persons in possession or assisting in disposing of the property, if justified—Joint trial in violation of section 239, Cr. P. C.—No failure of justice or prejudice to accused—Trial, whether illegal or void—Dishonestly receiving or retaining stolen property—Accused having no knowledge or reason to believe the property to be stolen—Conviction on suspicion, if justified.

If more than one offence of theft has been committed in respect of certain property which could be designated as stolen property, within the meaning of section 410 of the Indian Penal Code, then the persons in possession of such stolen property which has been secured by means of the commission of several offences of theft or robbery, etc., cannot be tried jointly according to the provisions of clause (*f*) of section 239 of the Code of Criminal Procedure. Separate trial is the rule and joint trial is the exception and a joint trial can only be justified if the provisions of section 239 of the Code can be applied.

A joint trial in violation of the express provisions of section 239 of the Code of Criminal Procedure is not illegal or void *ab initio*, if it has not occasioned a failure of justice and has not prejudiced the accused in his defence on the merits. *King-Emperor* v. *Subramanya Iyer* (1), referred to.

*Criminal Appeal No. 252 of 1934, against the order of Pandit Bishu Nath Hukku, Assistant Sessions Judge of Bahraich, dated the 13th of August, 1934.

(1) (1901) I.L.R., 25 Mad., 61.