

think that there is no force in this last argument of the learned counsel

We may observe that the very fact that the share in question was dealt with in her will by Askari Khanam separately from the shares given not only to her sons but also to Fatima Begum, clearly shows that she never meant it to be Fatima Begum's property but that it was meant by her to be made waqf.

The learned lower court was in our opinion perfectly right in holding the property in suit to be waqf and we dismiss this appeal with costs.

*Appeal dismissed.*

### MISCELLANEOUS CIVIL

*Before Mr. Justice Bisheshwar Nath Srivastava, Chief Judge  
and Mr. Justice H. G. Smith*

ABDUL RAHMAN (APPELLANT) *v.* PROPERTY OF  
MUSAMMAT HUSN JAHAN, *minor* (RESPONDENT)\*

*Guardian and Wards Act (VIII of 1890), section 45(1)—Order directing former guardian to pay amount found due from him by court to minor—Disciplinary action under section 45(1) for non-compliance with court's order, if can be taken.*

It is not open to the court to take disciplinary action under section 45(1) of the Guardian and Wards Act against a late guardian for non-compliance with an order issued to him to pay into court an amount which is not admittedly due from him but which is arrived at by the court itself on the basis of a report made by the present guardian, together with the court's own inquiry into the correctness of that report. *Muhammad Farid-uddin Ahmad v. Ahmad Abdul Wahab* (1), and *Sita Ram v. Govindi* (2), dissented from. *Hoondomal Chhabaldas Chugh v. Nazir, J. C.'s Court, Sind* (3), *Sadhu Singh v. Mehar Singh* (4), *Fakir Muhammad v. Bhari* (5), *Fakir Muhammad v. Brij Narain Mehrotra* (6), and *Rangnath v. Murari Lal* (7), relied on.

\*Miscellaneous Appeal no. 7 of 1936, against the order of Syed Shaukat Husain, Civil Judge of Mohanlalganj at Lucknow, dated the 7th of November, 1935

(1) (1927) I.L.R., 7 Pat., 144.

(2) (1924) I.L.R., 46 All., 458.

(3) (1930) A.I.R., Sind., 43.

(4) (1931) A.I.R., Lah., 68.

(5) (1932) A.I.R., Lah., 306.

(6) (1935) A.I.R., All., 785.

(7) (1936) A.I.R., All., 179.

1937

SYED  
MOHAMMAD  
QASIM  
*vs.*  
SYED  
MOHAMMAD  
MERDI

Ziaul Hasan  
*and*  
Madeley, J.J.

1937  
July, 23,

1937

ABDUL  
RAHMAN  
VS.  
PROPERTY  
OF  
MUSAMMAT  
HUSN  
JAHAN

Mr. *Ajodhya Prasad Singh*, for the appellant.

Mr. *Mohammad Wasi*, guardian (in person) of the respondent.

SRIVASTAVA, C.J., and SMITH, J.:—These appeals are connected, and can be disposed of by one judgment.

The facts are that one Abdul Rahman was formerly the certificated guardian of his grand-daughter, (daughter's daughter), Musammat Husn Jahan. He has since been removed, and the minor is now under the guardianship of Mr. Mirza Mohammad Wasi, an advocate of this Court. On the 19th of August, 1935, after a report by Mr. Mohammad Wasi, the learned Subordinate Judge of Mohanlalganj wrote an elaborate order as the result of which he concluded that the report of the present guardian was correct, and that a sum of Rs.5,605-9 was due from the former guardian, Abdul Rahman, to the minor, and he ordered Abdul Rahman to pay that sum into court within fifteen days. That order was not complied with, and on the 7th of November, 1935, the learned Subordinate Judge passed an order fining Abdul Rahman Rs.200. That order was presumably intended to be passed under the provisions of section 45(1) of the Guardians and Wards Act, though that section is not expressly referred to in the order. Afterwards, on the 26th of November, 1935, the learned Subordinate Judge directed that Abdul Rahman should be detained in the civil jail until he paid the balance that had been found due from him to the minor. Against both the above orders Abdul Rahman has appealed, Miscellaneous Appeal No. 7 of 1936 being against the order of the 7th of November, 1935, and Miscellaneous Appeal No. 17 of 1936 being against the order of the 26th of November, 1935.

The learned counsel for the appellant contends that it was not open to the learned Subordinate Judge to take action against the late guardian under section 45 of the Guardians and Wards Act on the basis of a computation arrived at by the court as to the amount due from him, as distinguished from an amount admittedly due from him. In support of this contention the

learned counsel has made reference to the following cases:

*Hoondomal Chhabaldas Chugh v. Nazir, J. C.'s Court, Sind and another* (1); *Sadhu Singh v. Mehar Singh* (2); *Fakir Muhammad v. Musammat Bhari and another* (3); *Fakir Muhammad v. Brij Narain Mehrotra* (4) and *Misra Rangnath v. Misra Murari* (5).

1937

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OF  
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HUSN  
JAHAN

*Srivastava,  
C.J. and  
Smith, J.*

On the other side the present guardian, who himself argued the case before us, referred us to a decision reported in *Sita Ram v. Musammat Govindi* (6), which was followed by the Patna High Court in a case reported in *Saiyid Muhammad Fariduddin Ahmad v. Saiyid Ahmad Abdul Wahab* (7).

In the decision reported in *Rangnath v. Murari* (5) there is an elaborate discussion by BAJPAI, J. of the whole question. He shows (*vide* page 183 of the report), that the balance of authority is in favour of the contention raised before us in the present matters by the learned counsel for the appellant, and that was the view adopted by the Bench of the Allahabad High Court that decided this latest case. The view taken in *Sita Ram v. Govindi* (6) and *Saiyid Muhammad Fariduddin Ahmad v. Saiyid Ahmad Abdul Wahab* (7) was dissented from.

In our opinion we ought to follow the preponderating authority, and to hold that it was not open to the learned Subordinate Judge to take the disciplinary action he did against the late guardian Abdul Rahman for non-compliance with an order issued to him to pay into Court an amount which was not admittedly due from him, but was arrived at by the court itself on the basis of a report made by the present guardian, together with the court's own inquiry into the correctness of that report.

(1) (1930) A.I.R., Sind, 43.

(2) (1931) A.I.R., Lah., 68.

(3) (1932) A.I.R., Lah., 306.

(4) (1925) A.I.R., All., 785.

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(7) (1927) I.L.R., 7 Pat., 144.

1937

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*Srivastava,  
C.J., and  
Smith, J.*

The learned advocate who is the present guardian of the minor has conceded before us that if we follow, as we do follow, the authorities cited before us by the learned counsel for the appellant, these appeals must be allowed. He further concedes that, as pointed out by the learned counsel for the appellant, in any case the imposition of a fine of Rs.200 was not warranted by the provisions of section 45(1) of the Guardians and Wards Act.

The result is that we allow both these appeals, but in all the circumstances we do not think that it would be equitable to saddle the minor's estate with the appellant's costs in respect of them. We therefore make no order as to costs.

*Appeal allowed*

### MISCELLANEOUS CIVIL

*Before Mr. Justice Ziaul Hasan and Mr. Justice  
W. Y. Madeley*

1937  
*July, 26,*

NORAH ALEXANDRINA MARGARET MOORE (APPELLANT) *v.* ARTHUR REGINALD MOORE.

(RESPONDENT)\*

*Civil Procedure Code (Act V of 1908), order XXI, rule 34—Provident Funds Act (XIX of 1925), section 3(1)—Decree absolute for divorce directing husband to secure to his wife a specific sum and execute a proper instrument securing payment—Failure of husband to comply with decree—Wife's application under order XXI, rule 34, Civil Procedure Code, for execution of special power of attorney in her favour authorizing her to withdraw on behalf of judgment-debtor the sum decreed out of the Provident fund of judgment-debtor in Railway Company—Execution of special power of attorney in favour of wife, whether contravenes section 3(1) of Provident Funds Act.*

Where a decree absolute for divorce directs the judgment-debtor to secure to his wife a gross sum of money and to execute a proper instrument securing that payment, then, on the judgment-debtor's failure to comply with the order in the decree absolute, the court can, on an application by the wife under

\*Miscellaneous Appeal no. 42 of 1936, against the order of the Hon'ble Mr. Justice E. M. Nanavutty, Judge of the Chief Court of Oudh, sitting on the original side, dated the 11th of January, 1935.