

1921
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Mst. JIWANI
 v.
MULA RAM.

The Lower Appellate Court's decision cannot be sustained. Under the Hindu Law the mother is, after the father, the guardian of her minor daughter, and her right to select a bridegroom for the girl is prior to that of the paternal kindred—see Rama Krishna's Hindu Law, Volume II, page 406, and *Ranganaiki v. Ramannuja* (1). She is not required to consult or obtain the consent of the girl's uncles in this matter.

We accept the appeal, reverse the decree of the Lower Appellate Court, and restore the decree of the trial Court dismissing the suit. The plaintiffs will pay the appellants' costs throughout.

Appeal accepted.

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APPELLATE CIVIL.

Before Mr. Justice Chevis and Mr. Justice Campbell.

NAZIM AND OTHERS (DEFENDANTS)—*Appellants,*

versus

ABDUL HAMID AND OTHERS (PLAINTIFFS)—*Respondents.*

Civil Appeal No. 2447 of 1917

Civil Procedure Code, Act V of 1908, order XLI, rule 10—Pauper Appeal—rejected on account of failure to give security for costs—whether the order is open to appeal—and whether it is a legal order—Revision.

The defendants, judgment-debtors, were permitted by the District Judge to appeal against the decree of the subordinate Judge *in forma pauperis*. Subsequently the successor of the District Judge who gave this permission ordered the appellants to give security for costs and on their failure to do so rejected the appeal under order XLI, rule 10 (2) of the Code of Civil Procedure.

Held, that no appeal was competent from the order rejecting the appeal for failure to furnish security for costs.

Lekha v. Bhauna (2), and *Firozi Begam v. Abdul Latif Khan* (3), followed.

(1) (1911) I.L.R. 35 Mad. 728. (2) (1895) I. L. R. 18 All. 101 (F. B.)
 (3) (1908) I. L. R. 30 All. 143.

But *held* on the revision side that in making the order for the pauper appellants to furnish security for costs the District Judge had acted in the exercise of his jurisdiction illegally and with material irregularity, as order XLI, rule 10 of the Code of Civil Procedure does not apply to pauper appeals.

Nusseerooddeen Biswas v. Ujju Biswas (1), *Mussamat Hafizan v. Abdul Karim* (2), and *Khemraj v. Kisantala Surajmal* (3), followed.

Seshayyengar v. Jainulavadin (4), and *Srinivasa Sastrial v. Subramania Aiyar* (5), not followed.

Second appeal from the decree of Major R. W. E. Knollys, District Judge, Delhi, dated the 31st January 1917, affirming that of Lala Chuni Lal, Subordinate Judge, 2nd Class, Delhi, dated the 22nd July 1916, decreeing the claim.

RUP RAM, for Appellants.

LOTI SAGAR, for Respondents.

The judgment of the Court was delivered by—

CAMPBELL J.—Three minors, children of Muhammad Umar, were permitted by the District Judge of Delhi to appeal against a decree of the Subordinate Judge *in forma pauperis*. Subsequently the successor of the Judge who gave this permission ordered the appellants to give security for costs and on their failure to do so dismissed the appeal (he should have said *rejected*) under order XLI, rule 10 (2). The appellants filed a petition for revision in this Court on 30th April 1917, within thirty days of the District Judge's order, and were granted time for putting in an appeal, which is now before us together with the revision petition.

Counsel on both sides are agreed that no appeal lies from an order rejecting an appeal for failure to furnish security for costs and *Lekha v. Bhauna* (6) and *Ferozi Begam v. Abdul Latif Khan* (7) are clear authorities to this effect. We accordingly dismiss the

(1) (1871) 17 W. R. 68

(2) (1907) 12 Cal. W. N. 168.

(3) (1917) I. L. R. 42 Bom. 5.

(4) (1880) I. L. R. 3 Mad. 66.

(5) (1907) 17 Mad. L. J. 588.

(6) (1895) I.L.R. 18 All. 101 (F. B.).

(7) (1908) I.L.R. 80 All. 148.

1921

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NAZIM

c.

ABDUL HAMID.

appeal and proceed to take up on revision the question whether order XLI, rule 10 is applicable to pauper appeals. *Prima facie* it is anomalous for a Court, having held that an appellant is too poor to afford the court-fee payable on his appeal, to expect him to be able to find security for the costs of the suit.

The earliest authority is a case of 1871 reported as *Nusseerooddeen Biswas v. Ujjul Biswas* (1). It was laid down that the provisions of the Code then in force relating to the power of an Appellate Court to demand security for costs were inconsistent with and therefore did not apply to those relating to appeals *in forma pauperis*.

This judgment was dissented from in *Seshayyengar v. Jainulavadin* (2) (afterwards followed in *Srinivasa Sastrial v. Subramania Aiyar* (3), where it was held that Appellate Courts have power to require security for costs from pauper appellants but should use it only on very special grounds.

To the contrary was a decision by the Calcutta High Court in a case very similar to the one before us, *Mussammat Hafizan v. Abdul Karim* (4), that in making an order under section 380 of the old Code for a pauper appellant to furnish security for costs the Court below had acted in the exercise of its jurisdiction illegally and with material irregularity. Finally the Bombay High Court has held that order XLI, rule 10, does not apply to pauper appeals in *Khemraj v. Kisanlala Surajmal* (5), citing in support of that view an English case *Wille v. St. John* in which the Master of the Rolls had ruled that the grant of permission to appeal *in forma pauperis* rendered a previous order to give security for costs no longer operative.

We have no hesitation in following the two authorities last quoted and hold that the order under consideration was illegal. It is accordingly set aside. We make no order as to costs of either the appeal or the revision.

Appeal dismissed.

Revision accepted.

(1) (1871) 17 W. R. 68.

(2) (1880) I.L.R. 8 Mad. 86.

(3) (1907) 17 Mad. L. J. 588.

(4) (1907) Col. 12 W. N. 163;

(5) (1917) I.L.R. 42 Bom. 5.