

APPELLATE CIVIL.

Before Sir L. H. Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Batty.
Ex parte MAHADEV GANGADHAR DESHPANDE (ORIGINAL APPLICANT),
 APPELLANT.*

1904.
 January 21.

Succession Certificate Act (VII of 1889), section 6, clause (d)—Guardian and Wards' Act (VIII of 1890), section 27—Minor—Guardian—Succession Certificate.

A certificate under the Succession Certificate Act (VII of 1889) can be granted to the guardian of a minor.

Gulabchand Gannaji v. Moti Chatraji⁽¹⁾, distinguished.

APPEAL against the decision of L. Crump, District Judge of Sâtára, in the matter of an application under the Succession Certificate Act (VII of 1889).

One Mahadev Gangadhar Deshpande having been appointed guardian, under the Guardian and Wards' Act (VIII of 1890), of the person and property of his minor daughter Yamunabai, widow of Narhar Anant Renavikar, applied for a certificate under the Succession Certificate Act (VII of 1889) to collect the debts due to the minor on her behalf. The Judge dismissed the application holding that it was not maintainable under the ruling in *Gulabchand Gannaji v. Moti Chatraji*.⁽¹⁾

The applicant having appealed,

K. H. Kelkar appeared for the appellant (applicant); he relied on *Ram Kuar v. Sardar Singh*.⁽²⁾

JENKINS, C. J.:—This is an application for the grant of a succession certificate under Act VII of 1889 and the petitioner purports to be a minor widow acting through her father and guardian, Mahadev Gangadhar Deshpande.

An order has been made purporting to appoint the father a guardian of the person and property of his minor daughter under Act VIII of 1890 (Guardian and Wards' Act). The present application should, we think, be amended so as to make the guardian the petitioner, because it is at least open to doubt

*Appeal No. 154 of 1903.

(1) (1900) 25 Bom. 523.

(2) (1898) 20 All. 352.

reading the Succession Certificate Act as a whole whether a grant should be made to a minor.

Treating the amendment then as made, and the petition as one presented by a legal guardian of the minor, can we grant a certificate under the Succession Certificate Act?

The District Judge has decided this in the negative, relying on *Gulabchand Gannaji v. Moti Chatraji*.⁽¹⁾

The head-note in that case goes beyond the actual decision, for the Court was not in the circumstances called on to determine, nor did it in fact determine, that a legal guardian is not entitled to a succession certificate under the Succession Certificate Act.

No doubt clause (d) of section 6 requires that the application should set forth the right under which the petitioner claims, and on that the comment was made in Gulabchand's case that it only permits the petitioner who claims the right for himself, to apply. But a legal guardian has, under section 27 of the Guardian and Wards' Act, the obligation cast upon him of dealing with the property of a ward as carefully as a man of ordinary prudence would deal with his own, and subject to the provisions mentioned in chapter 3 of the Act, he may do all acts which are reasonable and proper for the realization, protection or benefit of the property. That appears to us to vest in the guardian power to receive from any debtor the sum due by him to his ward and to give a receipt for the same. This constitutes the right under which he claims within the meaning of clause (d) of section 6 of the Act.

Therefore on the completion of the amendment we have directed, an order will be drawn up for a grant to the guardian of a succession certificate on proper security being furnished to the satisfaction of the District Court. For the reasons we have given we must reverse the decree of the District Judge who only came to the conclusion he did, because he reasonably treated himself as bound by authority.

Decree reversed.

(1) (1900) 25 Bom. 523.

1904.

(EX PARTE)
MAHADEV
GANGADHAR.