

ORIGINAL CIVIL.

*Before Mr. Justice Scott.**In re CASSUMALI JAVERBHAI PIRBHAI.*

1906.

June 23.

Guardians and Wards Act (VIII of 1890)—Investment by guardians of minor's property—Principles governing investment by guardians—Indian Trusts Act (II of 1882), section 20.

Guardians are in a fiduciary position and the Court should be guided by the rules embodied in the Trusts Act in sanctioning changes in the investment of a minor's property. The duty of guardians is primarily to preserve and not to add to the property of the minor.

Where it was sought to invest monies belonging to a minor in the purchase of lands deriving their income from buildings erected thereon,

Held, that the proposed investment not being one which trustees would be authorised to make, the Court must withhold its sanction.

Lcaroyd v. Whiteley⁽¹⁾ followed and applied.

PETITION in Chambers.

The material facts upon which the present application was made appear in the judgment.

Inverarity appeared for the petitioners the guardians of the minor Cassumali and applied for Court's sanction to the investment of monies belonging to the minor in lands deriving income from buildings erected thereon.

SCOTT, J. :—In this case the property of the minor is estimated to be of the value of upwards of 14 lacs of rupees, more than 4 lacs of which is invested in Bombay in immoveable property, 2½ lacs on mortgage of immoveable property and the balance for the most part in authorized trustee securities.

The sanction of the Court is now asked for the investment by the guardians of Rs. 6,65,000 by sale of that amount of the trustee securities and re-investment in the purchase of certain house property situate at the junction of Church Gate Street and Esplanade Road.

In the case of trustees in whom property is vested the Court could not, apart from any special investment clause in the instrument of trust, sanction a change of investment into any

(1) (1887) 12 App. Cas. 427 at p. 733.

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securities other than those mentioned or referred to in section 20 of the Indian Trusts Act : see section 40.

Guardians are in a fiduciary position and I think the Court should ordinarily be guided by the rules embodied in the Trusts Act in sanctioning changes in the investment of the minor's property.

The question here is whether there is anything in the circumstances of this case which should induce the Court to favour a further investment in house property which is not a trustee security.

The minor has a large income from his money, most of which is well invested already, but his guardians and their valuer say that a higher rate of interest can be obtained from the desired purchase and that the property proposed for acquisition could be still further developed. Both these results may be reasonably expected, although as pointed out by Lord Romilly in *Ingle v. Partridge*,⁽¹⁾ nothing is more uncertain than a valuation.

The property which it is desired to purchase is land deriving its value from buildings erected on it which at present are in a favourite locality for trade purposes. House property is of a wasting character and trade is not always constant in particular localities.

The following observations of Lord Watson in *Leary v. Whiteley*⁽²⁾ are in point :—

“ [A trustee] is not allowed the same discretion in investing the moneys of the trust as if he were a person *sui juris* dealing with his own estate. Business men of ordinary prudence may, and frequently do, select investments which are more or less of a speculative character ; but it is the duty of a trustee to confine himself to the class of investments which are permitted by the trust, and likewise to avoid all investments of that class which are attended with hazard In cases where the subject of the security derives its value from buildings erected on the land, or its use for trade purposes, the margin [demanded of a trustee advancing money on mortgage] ought not to be less than one half. I do not think these have been laid down as hard and fast limits up to which trustees will be invariably safe In cases where the subject of the security are exclusively or mainly used for the purposes of trade, no prudent investor can be in a position to judge of the amount of margin

(1) (1865) 34 Beav. p. 412.

(2) (1887) 12 App. Cas. 727 at p. 733.

necessary to make a loan for a term of years reasonably secure, until he has ascertained not only their present market price, but their intrinsic value, apart from those trading considerations which give them a speculative and it may be a temporary value."

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If the proposed change of investment were sanctioned upwards of 12 out of the minor's 14 lacs would be invested directly or indirectly in house property, the greater part of it without any margin for contingencies. I do not think there is any necessity for this. The duty of guardians is primarily to preserve, not to add to the property of the minor.

The application is therefore rejected.

Application rejected.

Attorneys for the applicant :—*Messrs. Payne & Co.*

W. J. W.

APPELLATE CIVIL.

*Before Sir Lawrence Jenkins, K.C.I.E., Chief Justice, and Mr.
Justice Beaman.*

KRISHNABAI KUM JANARDAN SUNDUR THAKUR (ORIGINAL PLAINTIFF),
 APPELLANT, v. MANOHAR SUNDURRAO (ORIGINAL DEFENDANT,
 RESPONDENT.*

1906.

 July 17.

Civil Procedure Code (Act XIV of 1882), section 401—Application to file a suit in formâ pauperis—"Other than his necessary wearing apparel and the subject-matter of the suit"—Construction.

The applicant applied for leave to file a suit *in formâ pauperis* alleging that after her husband's death, her husband's brother possessed himself of her property including the ornaments that she ordinarily was accustomed to wear. She sued to recover these ornaments. The Subordinate Judge rejected her application on the ground that she must have had these ornaments which she had been accustomed to wear.

Held, that the Subordinate Judge had failed to perceive that the point he had to consider was whether the applicant at the time at which the application was made, was possessed of sufficient means to enable her to pay the fees prescribed by law for the plaint.

* Civil Application No. 36 of 1906.