

APPELLATE CIVIL.

Before Mr. Justice Batchelor and Mr. Justice Shah.

1916.

March 6.

GURAPPA SHIVGENAPPA PUTTI (ORIGINAL PETITIONER), APPELLANT v.
TAYAWA SHIDDAPPA KALASANNAVAR AND OTHERS (ORIGINAL
OPONENTS), RESPONDENTS.*

Guardians and Wards Act (VIII of 1890), section 7—Application for guardianship of property—Resistance to the guardianship order on the ground that the property was joint family property—Elaborate inquiries into the character of the property not competent—Summary nature of the inquiry.

In an application for guardianship of a minor's property under section 7 of the Guardians and Wards Act (VIII of 1890) the applicant alleged that the property was the separate property of the minor's husband. The opponents resisted the application contending that the property was joint family property which had survived to them. The Court conducted a lengthy inquiry into the character of the property, and having come to the conclusion that it was joint, rejected the application. The applicant having appealed,

Held, reversing the order, inasmuch as the application was made on the footing and with the claim that the minor was separately entitled to separate property, the Court ought to appoint a guardian of the property of the minor, and leave it to him to institute suits for the recovery of the property.

Section 7 of the Guardians and Wards Act (VIII of 1890) contemplates only a summary enquiry followed by an order made for the welfare of the minor.

APPEAL from the decision of N. J. Wadia, Assistant Judge of Belgaum.

This was an application under section 7 of the Guardians and Wards Act (VIII of 1890).

The applicant applied for an order appointing him guardian of the person of his minor daughter Savitribai, and the Collector or the Nazir of the Court as guardian of her property.

The property in dispute belonged originally to one Shidappa, on whose death, it passed to his son, Baswanta

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(husband of Savitribai). Baswanta having died, the present proceedings came up. The applicant alleged that the property being the separate property of Shidappa and Baswanta, the minor Savitribai was entitled to it. The opponents, who were the two widows of Shidappa and the two brothers of Shidappa, opposed the application contending that the property in dispute was held by Shidappa jointly with his two brothers, and that on his death, it passed to them by survivorship.

The Assistant Judge went into the question whether the property was joint ancestral or separate, and having come to the conclusion that it was joint-ancestral, rejected the application for appointment of guardian to the property.

The applicant appealed to the High Court.

Jayakar, with *Nilkanth Atmaram*, for the appellant, referred to *Virupakshappa v. Nilgangava*.⁽¹⁾

Coyaji with *A. G. Desai* for the respondents Nos. 1, 3 and 5.

BACHELOR, J. :—This is an appeal from a judgment of the learned Assistant Judge of Belgaum pronounced in an application made under section 7 of the Guardians and Wards Act. The application was by the present appellant, who is the father of the minor concerned, a young widow named Savitribai, aged about 16 or 17. The application was that the appellant should be appointed guardian of her person and property.

The petition was made on the footing that certain property left on the death of the widow's husband's father, named Shidappa, was Shidappa's separate property. The opponents contended, on the other hand, that this property was joint property between Shidappa

⁽¹⁾ (1894) 19 Bom. 309.

and his brother. The question, therefore, was raised in the lower Court whether the property was in fact the separate property of Shidappa or was joint family property, and the learned Judge below embarked upon a long and laborious enquiry upon this question. In the end he came to the conclusion adverse to the petitioner, holding that the property was joint. Consequently he refused to appoint petitioner guardian of the property.

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In appealing against this decision, counsel for the petitioner seeks to show that on the evidence the true conclusion should be that the property was separately owned by Shidappa. It appears to me, however, that there is an initial difficulty in the appellant's way, and that is that in my opinion elaborate enquiries of this nature are not contemplated to be made under section 7 of the Guardians and Wards Act. That section, in my judgment, contemplates only a summary enquiry followed by an order made for the welfare of the minor. Another reason for holding that such an enquiry as this is outside the scope of the Guardians and Wards Act is that, despite the elaborateness of the enquiry made, it is admitted that the Court's decision, whatever it might be, would not operate as *res judicata*, so that the difficult questions agitated in such an enquiry as this would still have to be agitated again in a civil suit in order that finality of decision could be attained.

Mr. Jayakar for the appellant has called our attention to the Full Bench decision in *Virupakshappa v. Nilgangawa*.⁽¹⁾ But that case is not, I apprehend, of authority upon our present facts. For the facts upon which that case was decided were that the minor in question was admittedly a member of a joint Hindu family governed by the Mitakshara law, and, therefore,

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admittedly possessed of no separate property. Here it is otherwise. For the petitioner claims that the minor is not a member of a joint Hindu family and is entitled in her own right to the separate property owned exclusively by Shidappa. It is true that this position is contested on behalf of the opponents. But the question between them must, I think, be decided by a civil suit and ought not to be determined in summary proceedings under the Guardians and Wards Act. For the purposes of that Act it is, I think, enough that the petition is made on the footing and with the claim that the minor is separately entitled to separate property. Upon that footing, I think, we ought to appoint the petitioner the guardian of the property of the minor. It will then be for him on behalf of the infant to institute suits for the recovery of the property which he claims.

I would, therefore, reverse the finding and the order of the learned Assistant Judge and appoint the petitioner guardian of the minor's property without expressing any opinion as to whether the petitioner is right in claiming that the property belonged to Shidappa separately, or the opponents are right in maintaining the contrary.

We have not overlooked that passage in the petition where the petitioner expresses his willingness that the Nazir may be appointed guardian of the property. But on the whole it appears to us more satisfactory that the petitioner himself should be appointed in that capacity.

No costs here or in the Court below.

SHAH, J. :—I am of the same opinion.

Order reversed.

R. R.