

## ORIGINAL CIVIL.

*Before Mr. Justice Kemp.*NARSI TOKERSEY AND COMPANY v. SACHINDRANATH GAJANAN\*  
GIDH.\*1929  
March 5.*Guardianship—Minor—Minor's property consisting only of an undivided share in joint Hindu family—High Court—Inherent jurisdiction to appoint guardian of property—Extension of period of minority.*

The High Court of Bombay has inherent jurisdiction to appoint a guardian of the undivided share of a minor Hindu coparcener of a joint Hindu family.

Where a guardian is so appointed the period of minority is extended to the completion of the minor's twenty-first year.

## PRELIMINARY ISSUE.

Defendant No. 1's father and his two brothers were members of a joint Hindu family owning two immovable properties at Girgaum Road and Picket Road, Bombay. On July 25, 1921, the father, who had agreed to sell the Girgaum Road property, presented a petition to the Chamber Judge for his appointment as guardian of the undivided coparcenary interest of his minor sons to enable him to furnish a clear title to the purchaser. On this petition, the Chamber Judge passed an order on the same day appointing the father, guardian of the property of the minors.

The present suit was filed on January 31, 1929. Defendant No. 1 was sued as a major. It was contended on his behalf that at the date of the suit he was a minor.

The suit was thereupon put down for trial of two issues :

" (1) Whether by reason of the appointment of a guardian to the property of the 1st defendant under the inherent jurisdiction of this Honourable Court, the 1st defendant is a minor; and

(2) What is the date of the 1st defendant's birth."

The finding on issue No. 2 was that, Sachindranath (defendant No. 1), was born on February 8, 1909.

*M. J. Mehta*, with *Mulla*, for the plaintiff.

*Kania*, with *Bhagvati*, for defendant No. 1.

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KEMP, J.—[His Lordship, after setting out the facts and issues, proceeded.] The date of birth of defendant No. 1 shows that at the date of the institution of this suit defendant No. 1 was over the age of eighteen years and under the age of twenty-one years and the position is the same to-day. The plaintiffs contend that the appointment of the father as guardian of the property of these minor sons under the inherent jurisdiction of this Court is not the appointment of a guardian of the property of the minor under section 3 of the Majority Act (IX of 1875) because no appointment of the guardian of the property of a minor coparcener can be made, where there are adult coparceners, as the minor has only an undivided interest in the joint family property. In other words, they say that section 3 of Act IX of 1875 contemplates the existence of separate property of the minor to which the guardian must be appointed.

I will first deal with the case law on the point. There can be no doubt that under the Guardians and Wards Act VIII of 1890 no guardian can be appointed of a minor coparcener's interest in the joint family property where there is any adult coparcener alive. This has been laid down in the cases of *Kajikar Lakshmi v. Maru Devi*,<sup>(1)</sup> *Bindaji v. Mathurabai*,<sup>(2)</sup> and the Privy Council case of *Gharib-ul-lah v. Khalak Singh*.<sup>(3)</sup> In the Privy Council case a certificate of guardianship which was throughout the case assumed to be of the property was granted under section 8, Act XL of 1858, to the mother as guardian of a minor coparcener and the judgment of their Lordships which was delivered by Sir Arthur Wilson states as follows (p. 170) :—

"It has been well settled by a long series of decisions in India that a guardian of the property of an infant cannot properly be appointed in respect of the

<sup>(1)</sup> (1908) 32 Mad. 139.

<sup>(2)</sup> (1905) 30 Bom. 152.

<sup>(3)</sup> (1903) L. R. 30 I. A. 165.

infant's interest in the property of an undivided Mitakshara family. And in their Lordships' opinion those decisions are clearly right, on the plain ground that the interest of a member of such a family is not individual property at all, and that therefore a guardian, if appointed, would have nothing to do with the family property."

Now the certificate in that case was granted under Act XL of 1858, which was succeeded by the Guardians and Wards Act VIII of 1890. But it is to be noted that later on in their judgment at the same page of the report their Lordships, in dealing with the question of the certificate granted to another of the respondents who was also a coparcener but concerning whose age there was some doubt, state (p. 170) :—

"If it be true that the respondents' mother was appointed guardian of the second respondent as well as of the third (as seems to have been assumed in India), that appointment might under Act XI of 1875, section 3, have the effect of prolonging the minority of that respondent until he attained twenty-one."

Therefore their Lordships expressed the opinion that although the certificate of guardianship was granted under the Act XL of 1858 the construction of section 3 of the Majority Act IX of 1875 might have the effect of prolonging the period of minority notwithstanding that in fact a guardian could not properly be appointed under Act XL of 1858 of a minor coparcener's interest in the joint family property.

Further, the cases show that where the guardian is appointed under the inherent jurisdiction of the High Court such an appointment is valid. In *Re Jagannath Ramji*<sup>(1)</sup> Mr. Justice Starling held that the High Court had power to appoint guardian of the person and property of minor coparceners whether such minors possessed property or not. He states (p. 98) :—

"There is no doubt that the Court of Chancery has always had the power of appointing guardians to infants on a proper case being made out, whether such infants have property or not—see *In re Spence*,<sup>(2)</sup> *In re Fynn*<sup>(3)</sup>—though it is ordinarily not necessary for a Court to interfere in cases where there is no property—*Wellesley v. The Duke of Beaufort*<sup>(4)</sup>. This power was possessed

<sup>(1)</sup> (1893) 19 Bom. 96.

<sup>(2)</sup> (1847) 2 Phil. 247 at p. 252.

<sup>(3)</sup> (1848) 2 De. G. & Sm. 457 at p. 481.

<sup>(4)</sup> (1827) 2 Russ. 1, at pp. 20, 21.

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by the Supreme Court of Bombay under its charter, and was, amongst other powers, preserved to the High Court by the 24 and 25 Vict., c. 134, s. 9; and the Guardians and Wards Act VIII of 1890 also reserves the same power to the High Court."

Indeed section 3 of the Guardians and Wards Act provides that nothing in that Act shall derogate in any way from the jurisdiction of the High Court. The High Court, therefore, has in a proper case the jurisdiction which the Court of Chancery possessed to appoint guardians of the person or property of minors. Then, in the case of *In re Manilal Hurgovan*<sup>(1)</sup> our own appeal Court held that under its general jurisdiction the High Court had power to appoint a guardian of the property of a minor who is a member of a joint Hindu family and where the minor's property is an undivided share in the family property. In that case the inherent jurisdiction was exercised in order to effect a sale of the family property and the Court considered it a proper case for the appointment for the reasons given by Sir Lawrence Jenkins, C. J., at page 357 of the report. I, therefore, hold that the High Court has jurisdiction to appoint a guardian of the undivided share of a minor coparcener where there are no adult coparceners in a joint Hindu family.

Turning to section 3 of the Majority Act the words of the section merely exclude from the definition of a guardian one who is appointed as guardian for a suit within the meaning of Chapter XXXI of the Code of Civil Procedure. There is nothing in the section which states that the minor must have separate property before a guardian of it can be appointed. It is my duty to construe the section as it stands and it clearly states that the minority is extended to the completion of the twenty-first year when a guardian of the property of the minor has been appointed. Nor would it be expedient for the Court to hold an inquiry in every case where

<sup>(1)</sup> (1900) 25 Bom. 353.

a guardian of the property of a minor was appointed whether in fact the minor had separate property. I, therefore, hold that the period of minority, so far as defendant No. 1 in this suit is concerned, was extended to the completion of his twenty-first year.

Finally, it has been pointed out now that in Suit No. 2773 of 1926 which was a partition suit filed on November 29, 1926, by the present defendant No. 1's brother against his father and the present defendant No. 1 the plaintiff in that suit was under the ruling which I have now given also a minor at the date of the institution of that suit. But the answer to that appears to me to be that the plaintiff in that suit, who is now defendant No. 2 in this suit, completed his twenty-first year in January 1927 and adopted the proceedings in that suit and continued them. And here I may refer to the Privy Council case of *Gharib-ul-lah v. Khalak Singh*,<sup>(1)</sup> which I have already referred to, where the point in the passage that I last cited from the judgment of their Lordships is met by them in the following terms (p. 171):—

"As to this it seems sufficient to say that the second respondent is now of full age and able to bring his case before the Court; that at the time of the mortgages in question he was of full age according to the general Hindu law; that he executed the mortgages himself as a person of full age; and that if there were any grounds for exempting him from liability, it was for him to shew them, which he has failed to do."

This is a very similar position to the position of the plaintiff in suit No. 2773 of 1926. Nor would the plaintiff's position in that case have been different if a next friend had been appointed for him in his place because the questions in that suit were questions of law and were fully argued for him. I may state that in his reasons for his order dated March 19, 1928, the learned Chief Justice also adopted the view that the plaintiff

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in suit No. 2773 of 1926 had adopted and continued the proceedings in that suit after completing his twenty-first year. I, therefore, answer issue No. 1 in the affirmative.

I appoint Mr. Fahey guardian of defendant No. 1 for the suit. Liberty to the plaintiffs to amend the plaint by describing defendant No. 1 as a minor and bringing on record Mr. Fahey as his guardian *ad litem*. Mr. Fahey appointed guardian *ad litem* for defendants Nos. 3 and 4. The defendants waive service of the summons. Written statement to be filed by March 26, 1929, affidavit of documents by the 2nd proximo, inspection forthwith thereafter and hearing on April 11, 1929, subject to part heard.

The plaintiffs to pay the costs of the trial of these two issues.

Attorneys for plaintiffs : Messrs. *Mohile & Parekh*.

Attorneys for defendants : Messrs. *Madharji & Co.* ;  
*Purnanand & Clubwala*.

B. K. D.

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## APPELLATE CIVIL.

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*Before Mr. Justice Mulgavkar.*

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 July 5.

THE RAIPUR MANUFACTURING CO., LTD., OF AHMEDABAD (ORIGINAL PLAINTIFF), APPELLANT v. THE AHMEDABAD MUNICIPALITY (ORIGINAL DEFENDANT), RESPONDENT.\*

*Bombay District Municipal Act (Bom. Act III of 1901), section 82, clause (2), sub-clause (b), paragraph (i)—Ahmedabad Municipality—Water-tax—Notice of demand—Liability—Immediate liability—Imposition of tax in the middle of the official year—Mill buildings—If appreciable portion of mill building*

\*Second Appeal No. 196 of 1927.