

B. L. R. Vol. V, p. 80.

(Original Civil.)

The 10th March 1870.

Before Mr. Justice Norman, Officiating Chief Justice, and Mr. Justice Markby.

In the Goods of GANGA PRASAD
GOSAIN.

Majority, Age of, of Hindus—Act XL of 1858.

A Hindu, domiciled with his family at Serampore, in the Zilla of Hooghly, died, leaving a will, in which was the following direction:—

"In order to look after the affairs, to conduct suit and manage the debts and dues relative to my real and personal estates, my eldest son, H. C. G., who has attained the age of majority, remains executor, for my younger son, G. C. G., is an infant; but as my eldest sister, S. H. D., is prudent and sensible, all the affairs of the estates shall be under her superintendence; and my eldest son shall do all the acts according to her advice and direction. But when my younger son, G. C. G., will then come of age, both the brothers shall be competent personally to manage the affairs; at that time the advice and superintendence of my said sister shall not remain."

G. C. after attaining the age of 16, but before he had reached the age of 18, applied for grant of probate of his father's will to himself, jointly with his brother H. C., in respect of property in Calcutta. *Held*, that he had not attained the age contemplated in his father's will at which he was to be joined in the executorship with his brother.

This was an appeal from an order of Mr. Justice Macpherson rejecting an application for probate on behalf of the testator's younger son, Srimau Gopal Chandra Gosain.

The facts of the case, and the judgment of Macpherson, J., will be found in 4 B. L. R., App., 43.

Mr. Woodroffe and *Mr. Marindin* for Appellant.—Where a testator talks of majority, he means majority according to the law in force among the persons of whom he is one. In this case he was a Hindu, and "majority" would mean majority according to Hindu law. By that law the age of majority is the end of the 15th year—1 Macnaghten's H. L., 103. In the case of *Mangala Devi v. Dinanath Bose* (1), it was contended that a son was a minor, he being between 16 and 18; but the Court did not call upon the opposite counsel to argue that point, seeming to allow that he was not a minor. Act XL of 1858 does not apply to this Court. It is an Act relating to the

Court of Wards, and would not be applicable to Calcutta. Section 29 of the Act implies it is not in force in the local limits of the jurisdiction of this Court. Regulation XXVI of 1793, Section 2, the other provision on the subject, does not apply, it not having been registered under 13 George III, c. 63, s. 36. See the case of *Jogendronarain Deb Roykut v. Temple* (1). The age of majority may be different to be different in different jurisdictions; for instance, by English law all persons under the age of 21 are considered minors, without reference to the period of majority in their native countries—Macpherson on Infants, 576. It by no means follows that, if Act XL of 1858 applies to a person at Serampore, he may not, in another place, where that law does not prevail, be able to get probate. Again, a minor left without property would come of age at 16, while one to whom property had been left would do so at 18. [NORMAN, J.—Would not the Full Bench decision on Act XL of 1858 prevent that?] That Act only affects minors with property. [NORMAN, J.—I remember a case in which I was of opinion that, by Section 56, Act XL of 1858, a minor for the purposes of the Act might make a will.] If he can make a will, he is entitled to probate.

Mr. Marindin on the same side. The son being a Hindu, came of age at 16, except for some special purposes, for which he is disqualified by Act XL of 1858. It was the intention of the testator that he should come of age at the period when Hindus by their law are considered of age; if the intention had been that his son should come of age, with reference to some special Act, he would have so expressed it. It has no doubt been decided that the full age, according to Act XL of 1858, in the case of a person to whom that Act applies, is 18 years for other purposes than those contemplated by the act: *Madhusudan Manji v. Debighobindo Newgi* (2); but that Act does not apply in this Court; the son therefore is entitled to probate in respect of the assets in the jurisdiction of this Court.

Norman, J.—Gopal Chandra Gosain prayed for an order that probate of the will of his father, Gangaprashad Gosain, should be granted to him under a power reserved to him for that purpose upon a

(1) 2 Ind. Jur., N. S., 234.

(2) 1 B. L. R., F. B., 49.

(1) 4 B. L. R., O. C., 72.

grant of probate to his elder brother, Hem Chandra Gosain, Gangaprasad Gosain, the deceased, was in his life-time, and at the time of his death, a Hindu, living at Serampore, in the Zillah of Hooghly. He died in December 1864, leaving a will, which contained the following paragraph:—

“In order to look after the affairs, to conduct suits and manage the debts and dues relative to my real and personal estates, my eldest son, Sriman Hem Chandra Gosain, who has attained the age of majority, remains executor, for my younger son, Sriman Gopal Chandra Gosain, is an infant; but as my eldest sister, Srimati Harumani Dabi, is prudent and sensible, all the affairs of the estates shall be under her superintendence; and my eldest son shall do all the acts according to her advice and direction. But when my younger son, Sriman Gopal Chandra Gosain, will then come of age, both the brothers shall be competent personally to manage the affairs; at that time the advice and superintendence of my said sister shall not remain.”

Gopal Chandra Gosain, having now attained the age of 16 years, applied for probate to Mr. Justice Macpherson, and that application was rejected.

The question is whether, under the terms of the will of Gangaprasad Gosain, Gopal Chandra Gosain is entitled to probate as executor, jointly with his brother, at the age of 16 years, or whether he will not be so entitled until he attains the age of 18 years. Now the first thing which it is necessary to observe is that the parties were all domiciled at Serampore, and therefore Gopal Chandra Gosain is clearly a person, whose minority and the right to appoint a person to take charge of whose property as a minor, is regulated by the provisions of Act XL of 1858. It is clear that, until Gopal Chandra Gosain attains his full age of 18 years, he would be liable either to have his property taken charge of by the Court of Wards, or by a relative or friend, or other person appointed by the Court on a petition under Act XL of 1858.

The will of Gangaprasad Gosain provides for the time at which Gopal Chandra Gosain is to be associated as executor with Hem Chandra Gosain. It says that, when he comes of age, both the brothers shall be competent personally to manage their affairs. Now it is clear that it cannot be said that Gopal Chandra Gosain will be

personally competent to manage his affairs, as long as he is liable as a minor to have his person and property put under the charge of a guardian. The coming of age to which the father alluded in his will means, in my opinion, coming to an age when Gopal Chandra Gosain will be no longer under any such disability.

The decision in the case of *Madhusudan Manji v. Debigobindo Newgi* (1) goes very much further than it is necessary for us to go for the purposes of this decision. For the purposes of Act XL of 1858, in ascertaining whether Gopal Chandra Gosain is a minor, for the custody of whose person and property orders may be made under that Act, it is clear that Gopal Chandra Gosain must be held to be a minor, until he has attained the age of 18 years.

I am therefore of opinion that Gopal Chandra Gosain has not attained the age at which by his father's will it is provided that he shall be joined in the executorship with his brother; and I am confirmed in that opinion, by the consideration, that his father must have contemplated his coming of age at one single certain time. There is nothing in the will to shew that the father meant that, as to property in Calcutta, Gopal Chandra Gosain should come of age, and obtain probate at the age of 16 years, but that he should not come of age, and not be entitled to a certificate, with respect to property at Serampore, until he attains the age of 18 years.

For these reasons I am of opinion that the decision of Mr. Justice Macpherson is correct, and must be affirmed.

Markby, J.—I am of the same opinion.

Proctors: *Messrs. Swinhoe, Law & Co.*

(1) 1 B. L. R., F. B., 49.