1902

RAM SARUP LAL v. SHAM LATAFAT HOSSEIN.

estate or person of an infant and for his benefit has the effect of making him a ward of Court." In the result we direct that the Rule be made absolute, and that the case of the minor plaintiff be restored to the file and be tried on the merits, the mother of the minor being substituted as his next friend.

We do not interfere with the order discharging the Court of Wards from the case with costs.

M. N. R.

Rule made absolute.

APPELLATE CIVIL.

Before Mr. Justice Hill and Mr. Justice Brett.

1902
July 15

ABDUL SERANG
v.
PUTEE BIBI.*

Mahomedan Law—Distant kindred—Relation, who is neither a sharer nor a residuary—Great-grandson of the brother of the grandfather of the deceased—Probate and Administration Act (V of 1881)—Letters of Administration.

According to Mahomedan law, the term 'distant kindred' includes all relations, who are neither sharers nor residuaries; therefore a great-grandson of the brother of the grandfather of the deceased comes within the term "distant kindred."

ABDUL SERANG, petitioner, appealed to the High Court.

This appeal arose out of an application for Letters of Administration of the property of one Mussamat Khur Banu Bibi, deceased. The petitioner alleged that the said Khur Banu Bibi died on the 15th October 1900, leaving certain moveable properties; that his mother was the granddaughter of the brother of the grandfather of the deceased, who had no other relation besides the petitioner. The petition was opposed by Mussamats Wahedunnissa Bibi and Putee Bibi, who did not admit that Abdul Serang was a relation of the

* Appeal from Original Decree No. 46 of 1902, against the decree of F. E. Pargiter, Esq., District Judge of 24-Parganas, dated the 21st December 1901.

deceased, and also contended that, granting that relationship to be true, he was not an heir according to Mahomedan law. The District Judge of the 24-Parganas, Mr. F. E. Pargiter, having held that the petitioner was not one of the distant kindred, rejected his application.

Moulvi Shamsul Huda for the appellant.

Moulvi Mahomed Tahir for the respondent.

HILL AND BEETT JJ. We think the learned District Judge has fallen into the error, which more than one writer on Mahomedan law have referred to in their works, of supposing that the "distant kindred" are restricted to the four classes, who are usually enumerated as primarily standing in that relation to the deceased. We find, however, in Mr. Rumsey's work on the Mahomedan law of Inheritance, which is a work of some authority, as well as in Baillie, which is also authoritative, that the right of inheriting extends to the whole kindred of the deceased, and that it is an error to suppose that the right is limited to certain degrees or classes of relations. This observation Mr. Rumsey makes in a note to a passage on page 12 of his work, where he defines the "distant kindred" as including all relations, who are neither sharers nor residuaries. The appellant is not only a relation, but is a near relation of the deceased; and, in our opinion, he comes within the definition which we have just referred to and which Mr. Rumsey derives from an authoritative Mahomedan source.

That being so, the order appealed against must be set aside and the case remanded to the Court below for trial on its merits.

Costs will abide the result.

Appeal allowed. Case remanded.

S. C. G.