

## TESTAMENTARY JURISDICTION.

*Before Mr. Justice Woodroffe.*

IN THE GOODS OF NIROJINI DEBI.\*

1907

March 13, 22.

*Letters of Administration—Grant for the use and benefit of Minor—Minor wife—Husband, grant to—Guardian—Probate and Administration Act (V of 1881) s. 33—Practice.*

Where a husband applied under s. 33 of the Probate and Administration Act for letters of administration for the use and benefit of his minor wife :—

*Held*, that such application was not maintainable until the applicant had been appointed guardian of his minor wife.

THIS was an application by one B. P. Gangooly, the husband of Sreemati Hiranmoyi Debi, a minor daughter of one Nirojini Debi, deceased, for letters of administration of the deceased's *stridhan* property for the use and benefit of his minor wife as preferential heiress to her deceased mother.

Nirojini Debi, who was a Hindu widow governed by the Bengal School of Hindu Law, died intestate in Calcutta on the 28th July 1900, leaving three adult and three infant daughters her surviving, and her own separate property. Of the six daughters, all except one were married at the time of her death. Hiranmoyi Debi was married on the 21st February 1901. At the time of Nirojini's death, her father took charge of her property and held it until about July 1905, when the petitioner, B. P. Gangooly, returned from England, and then he made over the property to him.

B. P. Gangooly on behalf of his wife, Hiranmoyi, alleged that at the time of her mother's death when the succession opened to the daughters of the deceased, Hiranmoyi was the only maiden daughter of Nirojini Debi and, as such, was entitled to her estate in preference to the other daughters. A caveat was entered by Sushovini, Suhasini and Saratibala, three of the daughters of Nirojini.

\* Testamentary and Intestate Jurisdiction.

*Mr. Hill* (*Mr. B. C. Mitter* with him), for the caveatrices, raised a preliminary objection that the application was not in form. The applicant had not been duly assigned guardian to his wife by a competent Court, and the matter could not therefore proceed any further until that was done: see the decision of Stephen J., on this point, in *In the goods of Dakhina Mohun Roy* (1).

*Mr. Chakravarti* (*Mr. S. R. Dass* with him), for the applicant. The objection cannot stand; because, in that case the latter part of s. 33 of the Probate and Administration Act would be meaningless. The words "thinks fit to appoint" in the section mean "thinks fit to appoint *administrator*" for the use and benefit of the minor until he attains majority, and not "thinks fit to appoint *guardian*." Such administration has always been granted by this Court without having in the first instance a guardian assigned to the infant where there had been none appointed previously. Letters of administration may be issued to any person whom the Court thinks fit.

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*Cur. adv. vult.*

WOODROFFE J. This is an application under section 33 of the Probate and Administration Act. The applicant applies that letters of administration may be granted to him for the use and benefit of his wife who is a minor, and a preliminary objection has been taken to the hearing of this application.

I deferred judgment in order to make enquiries whether or not there has been any practice on the point taken.

The objection, which is raised, is that the applicant should in the first place have applied to the Court to be assigned the guardian of his wife in order to enable him to apply for letters of administration, and that until this is done the matter cannot further proceed. It is submitted that it is only after such application has been made and granted that the applicant is in a position to ask, as such assigned guardian, for letters of administration for the use and benefit of the minor. Upon that application being made, citations should issue.

(1) (1904) Unreported.

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From enquiries I have made, it does not appear that the matter was considered until the case *In the goods of Dakhina Mohun Roy*(1) came on for hearing before Mr. Justice Stephen, some time in 1904. From the records in that matter it appears that my brother Stephen directed that in a matter of this kind two applications should be made. He directed that an order should be drawn up appointing a guardian for the purpose of applying for letters of administration for the use and benefit of the minor, and that upon this being completed, the guardian should put in an application in his own name as guardian praying for grant to him of administration for the use and benefit of the minor. He stated that on this being put in, an order would be made directing the issue of citations. I agree that the procedure should be in future that which my learned brother has stated. I have looked into the English practice. In Coote's Probate Practice, 13th Edition, pp. 124, 125, 127, 128, 676, 834, 835, it appears that in matters of this kind where there has been no election, a separate Registrar's order is drawn up assigning a guardian for the purpose of taking out letters of administration.

I must hold that the present application is not maintainable until the applicant has been appointed guardian of his wife for the purpose of enabling him to obtain letters of administration for her use and benefit. When he has been appointed such guardian he may then apply for the grant to him for her use and benefit.

I express no opinion as to the merits of the application which will have to be dealt with when it is in form.

The application is, as I have said, not now in form, and therefore I will adjourn it to enable the applicant to apply to be assigned guardian. The application will be made in these proceedings.

As regards costs, the applicant must pay the opposite party's costs of appearance on the last motion day.

Attorneys for the applicant: *G. C. Chunder & Co.*

Attorney for the caveatrices: *H. N. Dutt.*

R. G. M.

(1) (1904) Unreported,