

Bindeshri Prasad Vs. Mahadeo Prasad

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Court : Allahabad

Decided On : Jan-28-1908

Reported in : (1908)ILR30All137

Judge : Aikman and ;Karamat Husein, JJ.

Appellant : Bindeshri Prasad

Respondent : Mahadeo Prasad

Judgement :

Aikman, J.

1. This is an appeal from an order of the learned District Judge of Allahabad appointing a guardian of the person and property of a minor named Kedar Nath under the provisions of the Guardians and Wards Act, 1890. The appellant is the father-in-law of the minor. The respondent, who was appointed guardian by the learned Judge, is the minor's elder brother. Each of the parties to this appeal claimed to be appointed guardian. It appears that on the joint application of the parties the question as to who should be appointed guardian was referred to the arbitration of Kunwar Bharat Singh, a gentleman against whom no imputation whatever is made. It appears from the order of the learned Judge that he decided the question as to who should be the guardian solely on the award of the arbitrator. In appeal here it is contended that under Act No. VIII of 1890 the District Judge was not competent to refer to an arbitrator the question as to who should be

appointed guardian. In my opinion this contention must prevail. Some special Acts, for instance, the Act dealing with religious endowments, No. XX of 1863, empower a Court to refer matters in difference to arbitration. No such power is given in the Guardians and Wards Act, and it is easy to understand why this should be so. When there are rival claimants to be appointed as guardian these claimants are not in the position of ordinary litigants who can refer any matter in dispute between them to a tribunal selected by themselves. The guiding principle in appointing a guardian is the consideration of what is best for the welfare of the minor. In my opinion the intention of the law is that the question as to who is the best guardian of the minor's interests is one to be decided by the Court, and that a Court cannot delegate its functions to any arbitrator, however competent and above suspicion that arbitrator may be. If rival claimants to a certificate of guardianship are allowed to refer the dispute between them to an arbitrator, a door would be open to collusion and the interests of minors might suffer. For these reasons I am of opinion that this appeal must be sustained.

Karamat Husein, J.

2. This is an appeal from an order passed by the learned District Judge of Allahabad under the Guardians and Wards Act (No. VIII of 1890). The facts are these: One Bindeshri Prasad, the managing member of a joint Hindu family governed by the Mitakshara, applied to the District Judge of Allahabad under Section 10 of the Guardians and Wards Act (No. VIII of 1890) to be appointed guardian of the person and property of his minor brother Kedar Nath. The application was opposed by Sukhdeo Ram and Mahadeo Prasad, grandfather and father of Kedar Nath's wife, Musammat Janki.

3. The learned District Judge with the consent of the parties referred the matter to arbitration, and the arbitrator by his award, dated the 4th March 1907 recommended that Bindeshri Prasad be appointed guardian of the person and property of Kedar Nath. In accordance with this award the learned District Judge on the 30th of April 1907 appointed Bindeshri to be the guardian of the person and property of the minor. Mahadeo Prasad appeals to this Court against this order. One of the grounds of appeal is that the learned District Judge had no power to

refer the matter to arbitration and to accept the award.

4. This objection is in my opinion sound. The State is theoretically the guardian of all its minor subjects. As an old writer observes, 'the law protects their persons, their rights and estates, excuseth their laches and assists them in their pleadings; the judges are their counsellors, the jury are their servants and the law is their guardian'--(Trevelyan on the law relating to minors, page 15). The State being the guardian of all minor subjects delegates by legislation its guardianship to such of its tribunals as it deems fit. In British India the guardianship of the person and property of minors has been given to District Courts, and they have been authorized to appoint guardians in certain specific ways. The law on the subject is now contained in the Guardians and Wards Act (No. VIII of 1890.) The course to be followed by the District Court in appointing or declaring a guardian is prescribed in Sections 11 (1), 13, 17 and 46. Under Section 13 it shall hear such evidence as may be adduced in support of or in opposition to the application. Under Section 17 it shall be guided by whatappears....to be for the welfare of the minor. Section 46 allows the District Court to call upon the Collector or upon any Court subordinate to it for a report on any matter arising in any proceeding under the Act and treat the report as evidence.

5. Such are the powers given by the Act to a District Court for the purpose of appointing or declaring a guardian of the person or the property of a minor. There is nothing in the Act to authorize a District Court to refer the question of the appointment or declaration of a guardian to arbitration. The 'learned District Judge had, therefore, no power to refer that matter to arbitration.

6. It might be contended that Section 647 of the Code of Civil Procedure empowered the learned District Judge to make such reference, but there is no force in this contention. The section in my opinion deals with procedure, and procedure alone, and does not touch the substantive law of arbitration. The reference by the learned District Judge in the case before me was no doubt made with the consent of the parties, but that would give him no power. Besides, a party is allowed by law to submit any dispute regarding any right of his own to arbitration, but the question of guardianship stands upon a different footing and is

not one of the private civil rights of any private person.

7. For the above reasons I hold that the course adopted by the learned District Judge was contrary to law and I therefore set aside his order and remand the case under Section 562 of the Code of Civil Procedure with directions to readmit the application under its original number in the register and proceed to determine it in accordance with law.

8. The appeal is allowed, the order of the learned District Judge is set aside, and the case is remanded to his Court with directions to readmit the application under its original number in the register and proceed to determine it according to law. Costs here and hitherto will abide the event.

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