In Re: Govind Prasad

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SooperKanoon Citation : sooperkanoon.com/464322

Court : Allahabad

Decided On : Feb-23-1928

Reported in : AIR1928All709

Appellant : In Re: Govind Prasad

Judgement :

Boys, J.

1. This application is not in form and does not comply with the rules of the Court in that it does not in the heading quote the law giving the right to apply and should have been returned to the applicant on that ground alone, Counsel for the applicant stated that he made the application on the authority of certain decisions of the Bombay High Court and eventually relied upon Clause 12, Letters Patent of this Court read with Section 3, Guardians and Wards Act 8 of 1890 and it is with reference to these that we deal with the application. We may note at once that it is not contested that in view of the rulings of this Court,-of. Jhhabbu Singh v. Ganga Bishan [1895] 17 All. 529 neither this Court nor the District Court will contemplate the appointment of a guardian of property, whether that guardian be the manager or no, in the case of a joint Hindu family by virtue of any powers suggested to be conferred under the Guardians and Wards Act, (Act 8 of 1890).

2. It is unnecessary for us to trace back the authority of this Court in reference to the persons and estates of infants conferred by Clause 12, Letters Patent. It is

sufficient to say that we are satisfied that the jurisdiction of the Court of Chancery which descended to the Supreme Court of Calcutta and so to the High Court at Calcutta and so to this Court by virtue of C1.12, exists. The question whether we ought to exercise that jurisdiction or not in the case of a joint Hindu family is quite another matter. We have been referred to several cases of the High Court at Bombay, to one decision of this Court and to one decision of the Calcutta High Court. To consider first the authority in this Court-Ellen Ramm v. Charles Spencer [1903] 2 A.L.J. 81. In that case the only point relevant to the present is that the learned Chief Justice and Burkitt, J. referred to the powers of this Court conferred by the Letters Patent and apparently accepted that such power exists. That is the view which we have already ourselves accepted.

3. In Bombay there was a series of decisions, e.g., Jai Ram, In re [1892] 16 Bom. 634; Jagannath Ramji In re [1893] 19 Bom. 96 and Mani Lal Hurgovan, In re [1900] 25 Bom. 353. In the latter case the learned Judges were obviously unwilling to hold that they had jurisdiction or that, if they had jurisdiction, it was a case in which they should act. But it was pointed out that there was a series of cases in which the Court had acted and their Lordships obviously consented to interfere in the particular case because they were desirous of not running counter to the practice. It was obviously only a case of stare decisis. They eventually appointed a guardian and gave a sanction to the sale of the property on certain conditions which, it was considered, would ensure for the minor a moiety in the proceeds. No question appears to have been raised as to what was to be the effect of this transaction on the joint or separate nature of the family in the future. That is a matter in which it is not difficult to see that trouble might arise, and is one further reason for refusing to countenance the practice in the exercise of the jurisdiction of this Court of which, so far as we are aware, there is no instance in this Court. It would seem that if an application like the present was proper to be granted it would equally be proper for us to consider applications which might be made in every single case in which a manager of a joint Hindu family might come to this Court and say

either the sole or one of many members of the family is a minor and I want the Court to appoint me his guardian and sanction a particular transaction because I

shall thereby be able to get a better price.

4. It is admitted that it will not help the applicant in any way to get himself appointed a guardian unless he can also in duce the Court to enter into the merits of the proposed transaction and give it the Court's sanction. Another difficulty that must arise is in the proposed securing of the minors' interest in half the proceeds. Where is the money to be deposited, who is to be responsible for it, what rate of interest is to be paid on it, when is it to become available to the minors and a number of other similar questions must follow where it is suggested that a wholly new practice is to be sanctioned.

5. We have hitherto referred only to the difficulties that must necessarily arise; on the other hand, to refuse such applications as these does not in our view put the manager of the joint Hindu family in a difficult position. In the present case, at any rate, the applicant can proceed to effect a separation from his sons and that can be done very speedily. He can then apply in the ordinary way to be appointed guardian of his sons and his sons' estate and proceed to deal with the property both on behalf of himself and his sons, applying if necessary under Section 29, Guardians and Wards Act. His purpose will thereby be served with facility without this Court embarking on a wholly new practice. We dismiss the application.