

Utma Kuar Vs. Bhagwanta Kuar

Utma Kuar Vs. Bhagwanta Kuar

SooperKanoon Citation : sooperkanoon.com/478522

Court : Allahabad

Decided On : May-10-1915

Reported in : 29Ind.Cas.416

Judge : Chamier and ;Piggott, JJ.

Appellant : Utma Kuar

Respondent : Bhagwanta Kuar

Judgement :

1. This is an appeal by a guardian lawfully appointed under the Guardians and Wards Act, VIII of 1890. The facts are peculiar. Musammat Utma Kuar applied to the District Judge of Azanigarh to be appointed guardian of the person and property of her minor daughter, Chandra Kuar. She stated in her application that the minor had been removed from her care and custody by her married daughter, Musammat Bhagwanta Kuar, sister of the said minor; but she did not ask the Court to take action under Section 12 of Act VII of 1890. Notice was issued to Musammat Bhagwanta Kuar, and certain matters having been inquired into by the Court, an order was passed on the 26th of August 1914 appointing Musammat Utma Kuar guardian of the person of her minor daughter, and a formal certificate of guardianship was issued to her dated 31st August 1914. On 15th September 1914 Musazmmat Utma Kuar presented an application to the Court, alleging that she was still unable to obtain possession of the person of the minor and asking the Court to take steps to cause the minor to be placed in her charge. This application

was rejected by the learned District Judge, on the ground that he had no jurisdiction to take any action in the matter under the provisions of Act VIII of 1890 and that Musammat Utma Kuar's only remedy was by way of a regular suit. According to the principles laid down by this Court in *Sham Lal v. Bindo* 26 A. 594; A.W.N. (1904) 135 : 1 A.L.J. 266 with which we entirely concur, no regular suit for the purpose suggested could have been brought. We are satisfied that the minor Chandra Kuar became a ward of the Court from the date of the order appointing Musamat Utma Kuar to be her guardian and on general principles the District Judge became thereby empowered to enforce, for the benefit of the minor, all the provisions contained in the Guardians and Wards Act, IVIII of 1890. One of these provisions is to be found in Section 21, which lays down that a guardian of the person of a ward is charged with the custody of the ward and must look to his (or her) support, health and education. Musammat Utma Kuar was asking the Court to assist her to perform the duties imposed upon her by the section above quoted, and we are quite satisfied, on general principles alone, that she was entitled to the assistance of the Court. The matter has been argued before us on various technical grounds. An objection has been taken on behalf of the respondent that the order of the District Judge, whether right or wrong, is one against which no appeal lies under the provisions of Section 47 of Act VIII of 1890. It has also been argued that whatever powers the Court possesses by way of controlling the possession of the person of a minor ward, its jurisdiction is limited by Sections 12 and 26 of the Act itself. Neither of these sections, it has been contended, applies to the present case. Over the question whether an appeal lies or not we are disposed to pass lightly. If we are satisfied that the learned District Judge has in fact rejected the application of Musammat Utma Kuar upon wrong grounds, then he has refused to exercise jurisdiction in a matter in which it was incumbent upon him to exercise such jurisdiction. If we cannot interfere by way of appeal, we can interfere by way of revision, as laid down by Section 48 of Act VIII of 1890. With regard to Sections 12 and 25 of the said Act we think it possible that either or both of these sections might be applied. On the whole, if the matter is to be dealt with as a technical question with reference strictly to the wording of Act VIII of 1890, the preferable view seems to us to be that the Court below could have taken action, and was bound to take action, under Section 12 of the Act. In view of the

provisions of Section 24 of the Act to which we have already referred, the appointment of Musammat Utma Kuar to the guardianship of the person of this minor ward could not be regarded as complete until she had obtained effective possession of the person of the ward, so as to enable her to discharge the duties laid upon her by that section. It is quite true that Section 12 of the Act provides for the temporary custody of a minor in the interim between application being made to the Court and the final conclusion of the necessary proceedings for the appointment of a guardian of the person of the minor, but as we have already pointed out those proceedings are really not complete until the guardian of the ward has obtained the custody of the minor. We think, therefore, that it was still open to the Court below to take action under Section 12 of the Act. An alternative view would be for the Court to proceed on the assumption that what ought to have been done had been done, and that the custody of the minor had technically been made over to the lawfully appointed guardian from the date of such appointment, in this view the provisions of Section 25 would apply. From any point of view we are satisfied that the Court below was wrong and its order cannot be sustained. We set it aside and remand the case to the Court below with directions to readmit the same to the file of pending applications and dispose of it according to law. Costs of this appeal will be costs in the cause and can be dealt with by the Court below when finally disposing of the matter.