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Court : Allahabad

Decided On : Dec-11-1929

Reported in : 131Ind.Cas.673

Judge : Mukerji and ;Bennet, JJ.

Appellant : Munawar Khan

Respondent : Tasalli Khan

Judgement :

1. This is an appeal by a gentleman who was appointed guardian to two minors, Jhabbu Khan and Zaibunissa and who has been now dismissed from his office of guardianship, except in so far as the guardianship of the person of Zaibun-nissa is concerned.

2. It appears, by an order passed sometime in 1923, Munawar Khan was appointed the guardian of the person and property of Jhabbu Khan and Ziibunnissa, who are brother and sister, Zaibunnissa, although then a child of 6 had already been married to Munawar Khan's son. In 1918 one Tasalli Khan, the respondent to this appeal, put in an application before the learned District Judge of Basti for the removal of Munawar Khan from the guardianship of the minors. The charge that he brought against Munawar Khan was mainly that he mismanaged the minors' property. The learned District Judge called for an account and had the same checked by a Commissioner it was found that a sum of Rs. 83 13-0 was

payable by Munawar Khan. Munawar Khan had paid himself a sum of Rs. 280 on account of the maintenance charges of Zaibunnissa. This amount he took for the period of four years. The learned District Judge was of opinion that, as the father-in-law of Musammatt Zaibunnissa, Munawar Khan was responsible for her maintenance, and, therefore, he was not entitled to pay himself the sum of Rs. 280. The learned Judge removed Munawar Khan, from the guardianship of the person and property of Jhabbu Khan and from the guardianship of the property of Zaibunnissa. He ordered Munawar Khan to pay back a sum of Rs. 320-14-6 to Tassali Khan who was appointed guardian of the property in place of Munawar Khan.

3. Munawar Khan's contention in appeal is that he should not have been called upon to refund the sum of Rs, 280 that he was entitled a proper amount of monay for the support of Zaibunnissa whose guardian he still was, and that the share of the property of Ziibunnissa should have been handed over to him for management.

4. Taking the last point first, it is abundantly clear from the judgment of the learned District Judge that the property should be left in the hands of Tasalli Khan. The property is not large, and the appointment of two guardians for the management of a small property would only lead to waste. This part of the appeal, therefore, must fail.

5. Coming to the question of maintenance, past and future, it appears that the guardian appointed by the Court should be put in a position to maintain the minor. We do not propose to decide whether a Muham-madan father-in-law is bound to maintain, out of his own property, his daughter-in-law. We think it to be sufficiently clear that the Court, when it appoints a person as the guardian of a minor, should put the person appointed guardian in a position to support the minor. On this broad principle, the order of the learned District Judge is not capable of being maintained.

6. Jn the result, we modify the order of the Court below by directing that, the sum of Ra. 280 taken by Munawar Khan for the maintenance of the minor need not be refunded to him. We also direct Tasalli Khan, the respondent, to pay Munawar

Khan, in two instalments Rs. 70 per annum for the maintenance of the minor Zaibunnissa Rs. 35 to be paid on 1st November and Rs. 35 on 15th April of each year. We may point out that Rs. 70 per annum is less than, the income of Zaibunnissa from her property and that after payment of this sum a small amount will be left in the hand of Tasalli Khan to meet the expenses of collection and other necessary expenses. Having regard to the circumstances of the case we direct that the parties shall pay their own costs in this appeal. We leave the order as to costs passed by the Court below undisturbed.

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