

imam Buksh Vs. Thacko Bibee

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Court : Kolkata

Decided On : Jan-04-1883

Reported in : (1883)ILR9Cal599

Judge : Maclean and ;O'Kinealy, JJ.

Appellant : imam Buksh

Respondent : Thacko Bibee

Judgement :

Maclean, J.

1. The appellant before us applied to the District Court of the 24-Pergunnahs for a certificate of administration, under Act XL of 1858, to the property of an infant, Chota Bari Bibee, granddaughter of one Nizamudin, The petitioner's position is that of a brother of the infant's deceased mother.

2. There appears to be some opposition on the part of one Thacko Bibee, widow of Nizamudin; but her case does not affect the question before us. She disputes the title of the infant to the property of Nizamudin. That question, of course, has to be decided elsewhere.

3. The Collector, we are informed, was the first who moved the Civil Court to appoint a guardian for the minor, and he also appears to have suggested to the

Judge the appointment of a lady called Kulsoom Bibee, who is in no way connected with the minor by any relationship. The District Judge, adopting certain objections made by the Collector to the appointment of the appellant, has refused him a certificate, and granted one to the Collector's nominee, Kulsoom Bibee. Hence this appeal.

4. The law in this matter is perfectly clear, that is, if any person establishes a right by virtue of a will or deed to take charge of the property of a minor, that person shall have a certificate of administration. There being no person so entitled, or any person so entitled being unwilling to undertake the trust, it is in the discretion of the Court to entrust any near relative of the minor, who is willing to take up the trust, with the charge of the property. Failing the person who is entitled to a certificate, and failing any near relative who is willing and fit to undertake the trust, the Court may make other provisions. Therefore, the only question we have to consider is, has it been shown that Imam Buksh, who is undoubtedly a near relative, is unfit to take charge of the property of the minor. The only ground of unfitness suggested is that he is in the direct succession to the minor. That is an objection which, of course, might apply in other cases, such as to a father who claims the custody or charge of the property of a son or daughter. That is not, in our opinion, a sufficient ground for refusing a certificate to the charge of the property. In fact, there may be cases in which some one interested in the succession is the very best person to defend the minor's interests. However, in the present case, we think that the alleged disqualification imputed to Imam Buksh is not sufficient to deprive him of the certificate he asks for. We have no doubt that the lady named by the Collector is in every way suitable, but we do not think that her claim should have precedence over that of the minor's mother's brother. We, therefore, direct that the certificates issued to Kulsoom Bibee be re-called, and a fresh certificate of administration issued to Imam Buksh.

5. With reference to the guardianship of the minor's person and maintenance, it is not necessary for us to make any order here as we are not in a position to state who should be the proper guardian of her person. We direct the District Judge to make the necessary orders.

6. The appellant is entitled to his costs, which he will recover from the Collector and Kulsoom Bibee.

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