

In Re: Nazirun

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SooperKanoon Citation : sooperkanoon.com/859806

Court : Kolkata

Decided On : Mar-17-1880

Reported in : (1881)ILR6Cal19

Judge : Pontifex and ;McDonell, JJ.

Appellant : In Re: Nazirun;muhamdee

Respondent : ;nazirun

Judgement :

Pontifex, J.

1. We think that this is not a case in which a certificate ought to have been granted under Act XL of 1858. The applicant in the Court below is Mussamut Nazirun, and according to her own statement, at the time she made her application, her son, Tabaruck Hossein, was within a very few months of attaining majority; and at the time when the learned Judge's order was made in August 1879, he must have been within a few days of attaining his eighteenth year.

2. In the Court below, Mussamut Muhamdee Begum was, either at her own instance, or by the action of the opposite party, made a party to the proceedings, and' Tabaruck Hossein himself also took objection to the certificate being granted. The objector, Muhamdee Begum, claimed to hold a mukurari from the alleged infant made in the preceding March, and she would certainly be prejudiced if the

certificate is allowed to stand.

3. We think that applications for certificates under Act XL of [21] 1858, the result of which would be to prolong minority from eighteen to twenty-one, ought not to be granted when the alleged minor is admittedly so near his majority of eighteen as in this case, unless under particular circumstances, as where very great weakness of mind is proved, or where it is shown that there is some absolute necessity for it. We have had the evidence read to us, and we do not think that any sufficient reason appears for the grant of certificate. We are not satisfied even that the evidence shows that the alleged infant was at the date of the judgment a minor. The Judge, it appears, was satisfied with the evidence, because the witnesses stated that Tabaruck was born some twenty-five days before his father's death. But the evidence as to the date of the father's death does not appear to be at all satisfactory. However, we do not intend to prejudge that question. If Tabaruck was an infant at the time that he executed this mukurari lease, he will not be bound thereby. The case must be determined upon its merits. We think the lower Court ought not to have granted a certificate in this case, the result of which would be to prolong the tutelage of Tabaruck for three years.

4. A question has been raised whether the appellant here has any locus standi in appealing to the Court. We think that, under Section 28 of Act XL of 1858, an appeal is clearly given to any person injured by such an order of Court. The appellant here would certainly be injured by that order, and we think that, as she was a party to the proceedings below, she is entitled to appeal. Upon her appeal we overrule the order of the Court below, and decree that the petitioner, Mussamut Nazirun, was not entitled to a certificate, which we direct must be cancelled. Under the circumstances each party will bear her own costs in this Court.