

In Re: Srish Chunder Singh and ors.

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Court : Kolkata

Decided On : Sep-11-1893

Reported in : (1894)ILR21Cal206

Judge : Sale, J.

Appellant : In Re: Srish Chunder Singh and ors.

Judgement :

Sale, J.

1. This is an application for the appointment of the adoptive mother of the infant Srish Chunder Singh as guardian of his person and property made under Clause 17 of the Charter, and also under Section 7 of the Guardians and Wards Act. The circumstances under which it is made may be shortly stated as follows : Srish Chunder Singh was taken in adoption by the widow of Grish Chunder Singh, as a son to Grish Chunder Singh. Grish Chunder Singh, who was entitled to a share of very large properties, called the Paikpara Raj Estate, which originally belonged to two brothers, Issur Chunder Singh and Pertap Chunder Singh, died in 1877, leaving a will by which he appointed his uterine brothers Poorno Chunder Singh, Kanti Cunder Singh, and Sarut Cunder Singh, and his paternal uncle's son Indra Chunder Singh, his executors. The terms of the appointment will be more particularly referred to presently.

2. At that time the family was joint, and the joint Paikpara estate was in charge of the Court of Wards and remained in charge of the Court of Wards till 1879. It was then, including the share of Grish Chunder Singh, made over to Poorno Chunder Singh, Indra Chunder Singh, and Sarut Chunder Singh, the share of Grish Chunder Singh being managed by them as his executors.

3. In 1889 a suit (No. 41 of 1889) was brought by Sarut Chunder Singh, one of the sons of Pertab Chunder Singh, for partition of the joint estate. In the same year, a suit No. 235 of 1889 was brought by Srish Chunder Singh, the adopted son of the petitioner, through the petitioner as his next friend, against the other members of the joint family, for the removal of Sarut Chunder Singh from acting further as executor to the estate of Grish Chunder Singh, and for an injunction and other relief. The case alleged against Sarut Chunder Singh was that he had improperly dealt with large sums of money belonging to the estate. In 1891 a decree was made in the last mentioned suit, directing an account as against Sarut Chunder Singh and Indra Chunder Singh, as the surviving executors to the estate of Grish Chunder Singh.

4. On the 2nd February 1892 Sarut Chunder Singh filed his account. In the objections taken to this account it is alleged that the account is to a great extent unintelligible; that it is incomplete and insufficient; that it does not give credit for the whole income derived from Grish Chunder Singh's share in the joint estate, and that the disbursements charged in the account are not all properly chargeable against the share of Grish Chunder Singh. Indra Chunder Singh, though directed to file his account, has not done so.

5. It is an important fact that in the partition suit a Receiver was appointed of the whole Paikpara Raj estate. Thereupon the Receiver took charge and has ever since remained in charge of the estate.

6. The statements upon which the petitioner relies are, that by an award made by the arbitrator appointed in the partition suit to decide all matters in dispute between the parties, and to carry out the partition of the joint estate, the zemindaries belonging to the estate have been partitioned; that on the award being confirmed the Receiver will be discharged as to such zemindaries; that the share allotted to

Srish Chunder will then pass into the hands of the executors, who are unfit to take charge of it; that this should be prevented by the appointment of the petitioner as guardian.

7. It should, however, be stated that pending this application the award was remitted to the arbitrator for amendment and for reconsideration as to certain properties left unpartitioned. The result apprehended by the petitioner has thus been postponed.

8. The petitioner claims to be entitled to the order sought in the present application, both under the power which this Court has under its Charter, and also under the terms of the Guardians and Wards Act. The infant, it is admitted, resides outside the Original Civil jurisdiction of this Court, and the difficulty I have in proceeding under the jurisdiction given by the Charter is this : In the first place I am not aware of any instance in which this Court has exercised that jurisdiction in the case of an infant residing outside the ordinary Original Civil jurisdiction of this Court, who is other than a European British subject. And, further, it does not appear to be the practice of this Court, or of the English Courts, to act in a summary way without suit in the appointment of a guardian, except where no difficulty arises in the administration of an estate. Here there is an important question arising as to whether there are not now in existence persons in the position of testamentary guardians of the infant; at all events a claim is made on behalf of Sarut Chunder and Indra Chunder that they are in that position, and I do not think I should be justified in a summary proceeding, under the jurisdiction conferred by the Charter, to appoint a guardian as against those persons. I may also say, having regard to the terms of the 'Guardians and Wards Act,' that even if the Court were now to act under the powers conferred by the Charter, still, in exercising those powers, it would not disregard, but as far as possible follow, the principles and procedure laid down in the Guardians and Wards Act. Coming to the terms of the Act, we find the definition of the word Guardian' in the 4th section of the Act as follows: 'Guardian means a person having the care of the person of a minor, or of his property, or of both his person and property.'

9. Now the question is whether, under the terms of the will appointing the executors and defining their powers, guardians of property within the meaning of the Act have in fact been appointed. By the second clause of the will the testator appoints his uterine brothers, Poorna Chunder Singh and Kanti Chunder Singh, executors, and directs that his youngest brother Sarut Chunder Singh, and his paternal uncle's son Indra Chunder Singh, who were then under age, should on attaining their majority also become executors.

10. Their powers in connection with the estate of the testator are thus defined in the 10th clause of the will: 'If the party who is entitled to the property be under age, then the whole of my property will pass into the hands of my executors, and until the person so entitled as aforesaid shall attain the full age of 21 years, they shall manage all the property and the duties of the management and education of the said son shall be conducted under the supervision of my wife.'

11. Now that, I take it, gives to the persons who are appointed executors the care and management of the property until the infant attains the full age of 21 years, and I therefore think this appointment did constitute the executors guardians within the meaning of the Guardians and Wards Act.

12. The 7th section of the Act provides that 'where the Court is satisfied that it is for the welfare of a minor that an order should be made appointing a guardian of his person or property, or both, or declaring a person to be such a guardian, the Court may make an order accordingly;' and the second clause of the section says that 'an order under this section shall imply the removal of any guardian who has not been appointed by will or other instrument, or appointed or declared by the Court.' This is controlled by Sub-section 3. 'Where a guardian has been appointed by will or other instrument, or appointed or declared by the Court, an order under this section, appointing or declaring another person to be guardian in his stead, shall not be made until the powers of the guardian appointed or declared as aforesaid have ceased under the provisions of this Act.'

13. The present application is not one for the removal of Sarut Chunder Singh and Indra Chunder Singh : indeed, what has been contended is that these persons are not testamentary guardians of the infant, It may be that it is undesirable that the

infant's estate should, under present circumstances, and until the charges made against Sarut Chunder Singh have been determined, revert to the care of Sarut Chunder Singh or Indra Chunder Singh, but that is a matter not before me at the present time, and the arguments addressed to me, though they might perhaps be of considerable weight in opposition to an application for the discharge of the Receiver, or in support of an application to continue the Receiver, so far as the estate of the infant is concerned, and so to prevent the property coming into the charge of either of the executors, do not assist the petitioner on the present application. I therefore think, having regard to Section 7, that I am at present precluded from making any appointment of guardians of the property of the infant. As regards the application for the appointment of a guardian of the person of the minor, the Act provides that the application should be made to the Court in whose jurisdiction the minor resides.

14. Therefore, I think I have no power to make the order asked for. The application must be dismissed and the costs of Sarut Chunder Singh must be paid by the applicant. The Receiver, being in possession of the property, was right in appearing, and he will be at liberty to pay his own costs out of the estate, which will be debited to the share of the infant in the general estate. The Receiver will also be at liberty to pay the costs of Sarut Chunder Singh out of the infant's share in the general estate.