

(1919) 12 CAL CK 0003

Calcutta High Court

Case No: None

Sunder Khan

APPELLANT

Vs

Meajan Chaprashai

RESPONDENT

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**Date of Decision:** Dec. 3, 1919**Citation:** 55 Ind. Cas. 234**Hon'ble Judges:** Panton, J; Chatterjea, J**Bench:** Division Bench

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### Judgement

1. This appeal arises out of a suit for possession of the land in dispute on declaration of the plaintiff's mirash karsha rights to the same by purchase from the heirs of one Madan Gazi.

2. Various defences were raised by the defendant, one of them being that the plaintiff's purchase in respect of the shares of the minor daughters of Madan Gazi from their mother was void as she was not properly appointed guardian of the minors. That question was decided against the defendant in the Court below, and the plaintiff was given a decree in respect of the shares of the widow and the three daughters of Madan including the two minor daughters.

3. Several contentions have been raised in this second appeal on behalf of the defendant-appellant. We do not think that there is anything in those contentions except that relating to the question of the validity of the sale of the minors' shares by their mother.

4. Madan Gazi left a widow, one son and three daughters, two of whom were minors. The plaintiff purchased from the widow of Madan her share, the shares of the two minor daughters and also the share of the other daughter who was of age.

5. The question whether the sale of the minors' shares by their mother is void appears to be settled by the decision of the Judicial Committee in the ease of Imambandi v. Haji Mutsaddi 47 Ind. Cas. 513 : 28 C.L.J. 409 : 35 M.L.J. 422 : 16 A.L.J.

800 : 24 M.L.T. 330 : 23 C.W.N. 50 5 P.L.W. 276 : 20 Bom. L.R. 1022 : 45 C. 878 : (1919) M.W.N. 91 : 9 L.W. 518 : 45 I.A. 73 (P.C.) and we need only refer to a passage at. page 427 Page of 28 C.L.J.-Ed. where their Lordships observed as follows: For the foregoing considerations their Lordships are of opinion that under the Muhammadan Law a person who has charge of the person or property of a minor without being his legal guardian, and who may, therefore, be conveniently called a "de facto guardian" has no power to convey to another any right or interest in Immovable property which the transferee can enforce against the infant, nor can such transferee, let into possession of the property under such unauthorised transfer, resist an action in ejectment on behalf of the infant as a trespasser It follows that, being himself without title, he cannot seek to recover property in the possession of another equally without title".

6. That disposes of the question, and the appeal will be allowed to the extent of the shares of the minor daughters of Madan Gazi, the result being that the plaintiff's suit in respect of the said shares of the minors amounting to 5 annas 12 gandas will be dismissed.

7. Each party will bear his own costs in all Courts.