

**(1930) 01 CAL CK 0003**

**Calcutta High Court**

**Case No:** None

Mt. Kiransasi Ghose

APPELLANT

Vs

Panchanan Ghose

RESPONDENT

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**Date of Decision:** Jan. 17, 1930

**Citation:** AIR 1931 Cal 102

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### **Judgement**

1. This appeal has arisen out of an order passed by the District Judge of 24 Parganas removing the appellant from her position of guardianship of her minor son Dhirender Krishna Ghose. It appears that the appellant was appointed guardian on an application made by her some time in the year 1926. Thereafter certain proceedings were taken against her upon the ground that she was not properly managing the property of the minor and was not submitting accounts of her management in respect thereof. From time to time she made applications before the Court which clearly made out that she personally knew nothing about the management and was completely in the hands of certain other persons whom she charged with having mismanaged the minor's estate. Ultimately proceedings were taken against her under the Guardian and Wards Act and on her showing cause an order was passed by the District Judge on 27th July 1928 which runs in these words: Cause shown. The guardian admits that she been doing nothing towards the management of the minor's estate and that she knows nothing about the accounts. She admits that she has been signing blank papers and making them over to the minor to be filed in Court by a person whom she now accuses of defrauding the minor. The accounts filed remain unintelligible and have not been explained. On two occasions warrant for realization of the fine imposed on the guardian remained unexecuted. Obviously she is not fit to be guardian of the property. She now says that she proposes to file an application for the appointment of a common manager u/s 93, Tenancy Act. I am unaware whether the facts would justify such an appointment but if they do, this might possibly be the best course to pursue. I give one month's time for the purpose. If nothing is done by 27th August 1928 the

guardian will be removed.

2. Thereafter on 27th August 1928 the appellant filed a petition for the appointment of a common manager but this application appears to have been resisted on behalf of the respondent with the result that the attempt to set a common manager appointed proved abortive. Ultimately on 17th January 1929 the learned District Judge made an order removing the appellant from guardianship and that is the order from which the present appeal has been taken.

3. Upon the facts which have been recited above it is abundantly clear that whatever other steps may be taken for the appointment of a guardian in respect of the minor's property the appellant certainly is not a proper person to be appointed as such. On her own showing she appears to have been completely ignorant of the affairs of the estate and unable to protect the minor's property from being misappropriated by others and is dependant entirely upon others for the management of the minor's estate. In such circumstances it is difficult to see how the present appeal on her behalf in so far as it seeks to set aside the order of her removal from guardianship and to have herself reinstated as guardian can possibly succeed. The appeal must necessarily be dismissed. At the same time in view of the allegation she has made as against the respondent in this appeal and the hopeless state in which the minor's property is at the present moment it is exceedingly desirable that somebody should be appointed guardian in respect of that property without any further delay. The learned District Judge in our opinion was not right in leaving the matter simply by removing the appellant from guardianship but ought to have directed his attention towards the minor's estate and to have made some provision for its adequate protection.

4. We have enquired of the parties before us as to what should be the proper mode to proceed in order to safeguard the minor's interests seeing that the application that had been made for the appointment of a common manager had failed. We are informed that Babu Mani Lal Kar, the maternal grandfather of the minor, against whom none of the parties before us has got anything whatsoever to say is willing to be appointed as guardian of the minor's property and further that he is in a position to furnish security to the extent of Rs. 1,000 which would be the amount of the income of the property for the period of one year. In those circumstances we would direct the learned District Judge to receive from the said maternal grandfather of the minor application which he proposes to file for being appointed guardian of the minor's property and on receipt of that application he will proceed forthwith to deal with the matter and will appoint him such guardian provided in his opinion the security he is prepared to furnish is sufficient. In considering whether the security should be considered sufficient or not the opinion of the respondent in this appeal in our judgment would not be of much weight, in view of the allegation which has been made as against him. There will be no order as to costs.

5. We wish to make it clear that this order of ours will not in any way affect the position of the appellant in so far as she is the guardian of the person of the minor.

6. The rule is discharged.