

(1880) 08 CAL CK 0001

Calcutta High Court

Case No: None

In Re: Shrish Chunder
Mookhopadhy and
Another

APPELLANT

Vs

RESPONDENT

Date of Decision: Aug. 25, 1880

Citation: (1881) ILR (Cal) 161

Hon'ble Judges: White, J; Field, J

Bench: Division Bench

Judgement

White, J.

This is an appeal against the order of the Judge of the 24-Pargannas, declining to sanction a lease, which sanction was applied for by Nitumbini Debi, as guardian of her two infant sons, u/s 18 of Act XL of 1858.

2. The case was opened to us as one in which the Court had refused to go into the question of whether the proposed lease was for the advantage of the infants or not; but the order, when read, shows that the Judge merely declined to sanction the lease, and having regard to the materials that were put before him in the petition, we cannot say that he was wrong.

3. In applications u/s 18 the Court is bound to go into the question, whether or not the proposed sale is one which it is for the benefit of the infant that the guardian should be empowered to execute. On this point we may adopt the language used by the present Chief Justice in Sikher Chund v. Dulputty Singh (I. L. R., 5 Cal. 363) where he says:---"The Civil Court has now not only the power, but it is bound, as I consider, under that section to enquire into the circumstances of each case and to determine whether, as a matter of law and precedence, it is right that any proposed sale or mortgage of the minor"s property should take place."

4. The petition in the present case contains a statement of the proposed lease on behalf of the, infants, and that its execution is necessary in order to avert the disposal of the property by the creditors of the infants" father; but it is defective in not stating the amount of premium that is to be taken from the intended lessee, the amount of rent that is reserved by the patni lease, and the annual rent of profits which are at present derived from the property proposed to be leased.

5. The petitioner, therefore, did not furnish the District Judge with all the materials which he reasonably required in order to enable him to form a correct opinion as to whether the lease was for the benefit of the infants or not.

6. We must dismiss the appeal, but at the same time we think it right to intimate that this dismissal will not prevent a second application from being made to the District Judge u/s 18, based upon further and better materials; and that if these materials show that the granting of the proposed patni lease is for the benefit of the infants, the Court should give the necessary power to the guardian to make or join in the grant. In dealing with these materials, the Court will consider the allegation of the guardian that the granting of the patni lease is necessary to avert the disposal of the property by the creditors of the infants" father.