

(1878) 05 CAL CK 0006

Calcutta High Court

Case No: None

Soonder Narain

APPELLANT

Vs

Bennud Ram and
Others

RESPONDENT

Date of Decision: May 10, 1878

Citation: (1879) ILR (Cal) 76

Hon'ble Judges: Tottenham, J; Jackson, J

Bench: Division Bench

Judgement

Jackson, J.

The specific ground on which the special appellant impugns the conveyance which has been upheld by the lower Appellate Court is that the guardian who conveyed the property on behalf of his minor son was not a guardian appointed under Act XL of 1858; and it is contended that no guardian acting as what is called in this judgment a natural guardian can exercise higher powers than a guardian appointed under the law; that is to say, the power of a natural guardian is limited to granting leases for a period not exceeding five years, and such guardian must apply to the Court for sanction even in cases of legal necessity. I am not aware of any sanction of the law for that contention (see, however, *Abhassi Begum v. Maharanee Rajroop Koonwar ante* (p. 33). There is no doubt a decision by one of the learned Judges of this Court, sitting alone in the trial of a special appeal below Rs. 50, in which that opinion has been expressed; but with every respect for the opinion of the learned Judge, it appears to me that no such position is warranted by the law. The case in which Mr. Justice Phear held that the guardian of a lunatic could not exercise powers without the authority of the Court higher than he would have exercised if he had been clothed with the authority of the Court, stands on different grounds. I have had some difficulty in perceiving how any person could, as guardian of a lunatic, exercise any power otherwise than by the authority of the Court. But it seems clear to me that, not to speak of other considerations, Act XL of 1858 made clear provisions for cases of estates of small value, and distinctly provided that, in regard

to such estates, or even in other circumstances where it might appear advisable, the Court might dispense with the production of certificates even in regard to the maintenance of suits. It is only in regard to the commencement or the defence of suits that the production of certificates is required by the law, and inasmuch as this property was admittedly of small extent and value, it seems very probable that [79] even if the guardian had to institute a suit, the Court would have dispensed with the production of a certificate, because the expenses necessary to be incurred in obtaining a certificate and the permission of the Court, might have exhausted a quite undue proportion of the minor's property. It seems to me, therefore, that there is no ground for saying that this act of the natural guardian done for a legal necessity was done without authority. The special appeal must be dismissed with costs.