In Re: Nikhrannessa Bibi

Court: Calcutta High Court

Date of Decision: March 30, 1915

Acts Referred: Guardians and Wards Act, 1890 â€" Section 45

Citation: 33 Ind. Cas. 918

Hon'ble Judges: D. Chatterjee, J; Chapman, J

Bench: Division Bench

Judgement

1. This appeal arises out of a suit under the Guardians and Wards Act. The appellant who is the mother of two minor sons was appointed a

guardian under this Act. When the eldest son became 16 years of age, she made an application to the District Judge at Alipore that she was going

to get her two sons married at an expense of Rs. 4,000 and she wanted her application to be filed as of record, and this was done. She did not in

this application say that Rs. 4 000 would be spent out of the minors'' estate and that being so, it is not open to her now to say that she spent Rs.

4,000 out of the minors'' estate. Thereafter she made an application to the learned Judge that a sum of about Rs. 3,000 was required for the

repairs of the minors'' house and something for paying their debts. She then applied for permission to sell certain property of the minors in the

District of Patna yielding an annual income of Rs. 15 at a price of Rs. 4.000. Sanction was riven and then she sold the shares of the minors as well

as her own 1/8th share in the property to one Musammat Idun for a consideration of Rs. 5,000. Out of this consideration money, however,

Musammat Idum, from whom she had borrowed Rs. 4,000 for the purpose of marrying her sons under a hand-note, deducted the amount due to

her for principal and interest thereon and paid only the balance. She then drew up and filed an account with regard to the purchase-money showing

how the share of the minors in this Rs. 5,000 was disposed of. Upon this the learned Judge after examining the accounts suspected that there was

foul play on the part of the guardian, the Court having been deceived into granting the permission to sell op the representation that the money

would be spent for the repairs of the minors'' house. She was called upon to explain her conduct and she explained by saying that at first it had

been arranged with the purchaser that the money would be paid, but that the purchaser ultimately refused to pay the full amount and deducted the

amount due to her out of the purchase-money. She did not conceal this fact to the Court because she filed a kobala which mentioned the way in

which the consideration was paid. The learned Judge, however, directed her to pay the balance of the money into Court within a certain time and

upon her failing to pay the amount within the specified time he passed an order that until she did pay that amount she was to pay a fine of Rs. 5 per

diem. Now this order could have been passed only u/s 45 of the Guardians and Wards Act and the only clause of that section which might

authorise an action of this kind would be Clause (b). This clause, however, does not seem to have, any application to the facts that have transpired

in this case. Clause (ft) says: ""If a guardian appointed or declared by the Court fails to deliver to the Court, within the time allowed by or under

Clause (b) of Section 34, a statement required under that clause, or to exhibit accounts in compliance with a requisition under Clause (c) of that

section or to pay into the Court the balance due from him on those accounts in compliance with a requisition under Clause (d) of that section,"" then

only the Court can impose a fine upon the guardian. Now the amount of the consideration money was not paid to her and, therefore, she could not

be called upon to pay any amount of balance due from her, nor could this balance be said to be a balance due on accounts filed in compliance with

a requisition under Clause (d) of Section 34. The order for fine, therefore, was clearly ultra vires and should be set aside.

2. There is then an order dismissing her from the guardianship of her minor sons. We must consider on the whole facts whether such an order is for

the benefit of the minors. Simple illiteracy is no ground for disqualification for the appointment of a mother as a guardian of her sons. The estate in

this case is not a very large one and if a stranger be appointed a guardian of the estate, he would have to be paid a certain amount which would be

an incumbrance on the estate of the minors. There is no charge of any other mismanagement than this, that the consideration money which should

have been paid in cash was deducted by the purchaser in payment of debts due to her from the guardian. We do not think that this conduct of the

guardian, so far as it is disclosed in the record in this case, shows such a disqualification for her being a guardian of the property of her minor sons

as to disentitle her to remain their guardian any longer. In this view of the case we think that the order dismissing her from the guardianship of her

minor sons should also be set aside.

3. There is, however, this to be said in favour of the order of the District Judge that the permission to make the sale in this case was obtained on

the allegation that the amount of the purchase money would be received in cash and utilised in the repair of the minors'' house and that the conduct

of the purchaser in refusing to pay in cash was not in accordance with what had been represented by the guardian to the Judge.

4. Under these circumstances the best order to pass is to order that the sale of the minors'' property will not be confirmed unless the balance of the

purchase money is put in into Court within two months from this date. The fine, if paid, will be refunded.

5. The Rule will stand discharged without costs.