(1910) 03 CAL CK 0043

Calcutta High Court

Case No: None

Dipa Koer and Another		APPELLANT
	Vs	
Lakshmi Narain Singh and Another		RESPONDENT

Date of Decision: March 16, 1910

Acts Referred:

- Guardians and Wards Act, 1890 - Section 52
- Hindu Wills Act, 1870 - Section 2
- Majority Act, 1875 - Section 3
- Succession Act, 1865 - Section 46

Citation: 6 Ind. Cas. 6

Hon'ble Judges: Holmwood, J; Chitty, J

Bench: Division Bench

Judgement

1. This is a petition for probate of the Will of one Lala Kondhey Lal, who died on the 8th April 1907. The petitioners are the maternal aunts of the deceased. The application has been rejected by the learned District Judge of Saran, on the ground that at the date of the alleged Will, that is the 5th April 1907, Lala Kondhey Lal had not attained majority and was, therefore, u/s 46 of the Succession Act, as extended by Section 2 of the Hindu Wills Act to Hindus, incapable of making'' a Will.

2. The learned Vakil for the petitioner, appellant, has placed before us some cases. Most of them are of dates antecedent to the amendment; of the Indian Majority Act, 1875, by Section 52 of the Guardians and Wards Act of 1890. Section 3 of the Indian Majority Act, as it now stands, says that "every minor of whose person or property or both a guardian other than a guardian for a suit has been or shall be appointed or declared by any Court of Justice, before the minor has attained the age of eighteen years shall, notwithstanding anything contained in the Indian Succession Act (X of 1865) or in any other enactment, be deemed to have attained bis majority

when he shall have completed his age of twenty-one years and not before."

3. The alleged testator at the date of his death was between the age of 18 and 19 years. It is argued that the provision of the Indian Majority Act has never yet been applied by the Court to the case of a person making a Will, and it is said that the matter is, therefore, res integra and that it is open to us to decide that it does not apply to the case of a person over the age of eighteen whose guardian has died, and for whom no fresh guardian has been appointed, so far as his testamentary capacity is concerned. If that were so open, the words of the section of the Indian Majority Act, to which we have referred, appear so plain that it would be impossible to put two interpretations upon them. There is no reason, so far as we can see, for confining the operation of that section to any particular case or class of cases. The Act is general in its terms and explicit in its directions. The section has been considered by this Court in the case of Joyram Marwari v. Mahadeb Sahoy, (under name Jaraomull v. Mahadeb) 13 C.W.N. 643 : 36 C. 768 : 1 Ind. Cas. 724. In that case a Bench of this Court held that where a guardian had been validly appointed or declared under the Guardians and Wards Act, the minority of the ward does not cease till he attains the age of 21 years and it is immaterial whether the guardian dies, or is removed, or otherwise ceases to act. The ruling, of course, applied to the particular state of facts before the Court at that time, but the expression of the opinion is general and was not in any way limited to that particular case. In the present case there is no doubt (indeed, it is not disputed) that guardian of the person and property of this youth, Lala Kondhey Lal was appointed by the District Judge of Saran on the 10th April 1900, the certificate being granted on the 19th April 1900. From that certificate it appears that the then minor would not attain his majority until the 28th August 1909.

4. In these circumstances we think that the decision of the learned District Judge is correct and we, therefore, dismiss the appeal.

5. We make no order as to costs as the opposite party does not appear.