(1914) 03 CAL CK 0020

Calcutta High Court

Case No: Appeal From Order No. 49 of 1914 and Rule No. 122 of 1914

Rashmoni Dassi		APPELLANT
	Vs	
Ganoda Sundari Dassi		RESPONDENT

Date of Decision: March 13, 1914

Judgement

Mookerjee, J.

We are invited to consider the propriety of an order by which the Court below has recalled an order previously made for the appointment of the Appellant as guardian of the person and property of her daughter-in-law, the Respondent. On the 20th January 1912 the Appellant made an application under the provisions of the Guardians and Wards Act. The application was not opposed, and on the 15th May a conditional order was made as a matter of course in her favour. She was called upon to furnish security, and as soon as the order of the Court had been carried out in this respect, a formal order of appointment was drawn up on the 26th November 1912. On the 21st July 1913, (he daughter-in-law applied to the District Judge for revocation of the previous order on the ground that she had attained majority before her mother-in-law was appointed guardian of her person and property. The District Judge thereupon took evidence, and ultimately came to the conclusion that the daughter-in-law had been born on the 23rd January 1893, and had consequently attained majority on the 23rd January 1911, long before the order for the appointment of her mother-in-law as guardian of her person and property had been made. In this view, the District Judge has recalled the orders of the 15th May and the 26th November 1912. The order of revocation has been assailed in this Court on behalf of the mother-in-law, and we have been invited to examine its propriety in the exercise either of our appellate or of our revisional jurisdiction.

2. A preliminary objection has been taken to the competency of the appeal, and it has been argued that as the order was not made under any of the clauses of section 39 of the Guardians and Wards Act, it cannot be questioned by way of appeal under any of the clauses of sec. 47. This preliminary objection raises a question of considerable importance as to the true nature of the jurisdiction which has been

exercised by the District Judge in this matter. On behalf of the Appellant it has been broadly contended that the District Judge had either jurisdiction to take action under sec. 39, or had no jurisdiction at all to deal with the matter in controversy before him. In support of the former view, it has been argued that sec. 39 is not exhaustive and that the circumstances specified therein, under which the Court is competent to remove a guardian, are merely illustrative. We have in substance been invited to read sec. 39 as if the legislature had provided that "the Court may remove a guardian appointed by the Court, for the following amongst other reasons." We are not prepared to accept this view as well-founded. If the legislature had intended to give illustrations merely of the contingencies in which the Court may remove a guardian in the exercise of the power conferred upon it by sec. 39, the section might have been differently framed. In our opinion, sec. 39 specifies the circumstances under which the Court may remove a guardian appointed under the statute. It is worthy of note that each of the circumstances specified in the section is of such a character, that if its existence is established, the Court would have no option but to remove the guardian in the interests of the minor. Consequently we must hold that the order in this case was not made under sec. 39. We may add that the only clause of sec. 39, which, it was suggested, might possibly cover the case, if reliance had to be placed upon a special clause, was clause (j) which provides that the Court may remove a guardian by reason of the guardianship of the guardian ceasing or being liable to cease under the law to which the minor is subject. But if it be a fact that when the order for appointment of the guardian was made in the present case, there was no infant in respect of whom the Court could exercise jurisdiction, no question clearly arises about the cessation of guardianship. There is no escape, consequently, from the position that sec. 39 does not apply; and this necessarily leads to the inference that the order is not appealable under clause (9) of sec. 47 which provides for an appeal to this Court from an order, made by a subordinate Court under sec. 39, for removal of a guardian. The first branch of the contention of the Appellant must consequently fail.

3. As regards the second branch of the contention of the Appellant, it has been broadly argued that if the District Judge had no jurisdiction to entertain an application under sec. 39, he had no jurisdiction to deal with the matter at all. The contention in substance is that the Judge, invested with authority to deal with matters under the Guardians and Wards Act, constitutes a special Court created by the Legislature for specified purposes and that the limits of his jurisdiction must be sought for within the four corners of the Statute. The position taken up by the Appellant is that as there is no section of the Guardians and Wards Act applicable in terms to the present matter, the Judge was incompetent to inquire into the allegations of the Respondent. In our opinion, this contention is entirely baseless. A Court which exercises powers under the Guardians and Wards Act has ample inherent jurisdiction to deal with matters brought before it, of which cognizance may be required in the interests of justice. Sec. 151 of the CPC of 1908 which

provides that nothing in the Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice, or to prevent abuse of the process of the Court, does not formulate a new doctrine. It merely furnishes legislative recognition of a well-established principle, which is applicable quite as much to Courts called upon to deal with matters under the Guardians and Wards Act as to ordinary Civil Courts. The futility of the contention of the Appellant may be illustrated by an obvious example. Sec. 10 of the Guardians and Wards Act specifies the contents of the application to the Court : the Appellant is required, amongst other matters, to state, so far as can be ascertained by him, the date of birth of the minor. Suppose after the application has been made and before the order of the Court, has been passed therein, it is brought to the notice of the Court by the person in respect of whom a guardian is proposed to be appointed or by some person on his behalf, that he is not an infant, that he has as a matter of fact attained majority and that consequently the provisions of the Guardians and Wards Act cannot be applied to his case. In such an event, it would plainly be competent to the Court to determine whether the alleged infant was in reality an infant. The Court has jurisdiction to determine the question, indeed, it is incumbent upon the Court to investigate the matter, on the fundamental principle that when the jurisdiction of a Court is invoked in respect of a particular matter and such jurisdiction is challenged, it is the duty of the Court to determine the essential facts on the actual existence of which alone the Court is competent to assume jurisdiction. It is indisputable that the Court is competent to make an enquiry of this description, even though it may ultimately transpire that the Court has no jurisdiction over the matter in controversy; in other words, the Court has jurisdiction to determine that it has no jurisdiction to deal with the matter brought before it [Hurree Prasad v. Koonjo Behary Marshall 99.; 1 Hay 238; W. R. Spl. 29; Ind. Jur. O.S. 20 (1862), Hukum Chand v. Kamalanand ILR 88.Cal, 927 (941) : S.C. 3 C. L. J. 67 (1905), Budh Singh v. Nirad Baran 2 C L. J. 431 (437) (1905), Hudson v. Morgan ILR 36 Cal. 713 (721) : S.C. 9 C. L. J. 563 : 13 C.W.N. 651 (1909)]. This view cannot be seriously challenged; and once it is accepted, as it must be, it follows inevitably that, if even after the order has been made on the application, the Court is apprised that it has been made to assume jurisdiction in a matter over which it has in reality no jurisdiction; the Court has inherent power to investigate the matter and to recall the previous order, if it transpire that it has been made without jurisdiction. It is needless to refer to authorities in support of this proposition; but if authority is required, reference may be made to the classical work on Chancery Practice by Daniell, Vol. II, page 1303, where the following statement will be found: "If an order has been made as a matter of course and if there is any irregularity in the order or if it has been obtained upon any false suggestion or by the suppression of any material fact, it will be discharged on special application by motion, although on the merits it would have been proper to make the order." There are numerous cases to be found in the reports where this doctrine has been applied in England, and amongst those, reference may be made to the cases of Brookes v. Purton 4 Bev. 494

(1841), St. Victor v. Oevcreux 6 Bev. 584 (1843), Marquis of Hertford v. Suisee 7 Bev. 160 (1844), Holcombe v. Antrobus, 8 Bev. 405 (1845).Wilkin v. Nainby 8 Rev. 465 1845), DeFeucheres v. Dawes 11 Bev. 46 (1848), Wyllie v. Ellice 11 Bev. 99 (1848), Brignell v. Whitehead 30 Bev. 229 (1861), Harris v. Start 4 My. & Cr. 261 (1838), Cooper v. Lewis 2 Phil. 178 (1847), Bidder v. Bridges 26 Ch D 1 (3) (1884). But the principle is essentially of much wider scope than is indicated by the passage to which we have just referred. It is not confined in its application to ex-parte orders or to orders made as a matter of course. If an order has been obtained from the Court by a suppression of facts, if the Court has been over-reached and has been induced to assume jurisdiction over a matter in which, upon a true state of facts, it does not possess jurisdiction, the Court is competent to recall the order obtained from it by suppression or mis-representation of facts. This view is supported by a long series of decisions amongst which may be mentioned Hiralal v. Premmoyee 2 C. L. J. 306 (1965), Gurdeo v. Chandrika 5 C. L. J. 611 (620) : s. c. I. L. R 36 Cal. 193 (1907), Udit v. Radhika 6 C. L. J 662 (1907), Nagardas Vacharaj v. Anandarao I. L.R. 31 Bom. 590 (1907). Much stress however was laid upon the provisions of sec. 48 of the Guardians and Wards Act where it is stated that save as provided by sec. 47 (which specifies appealable orders) and by sec. 622 of the Code of 1882 (which defines the grounds for revision), an order made under the Act shall be final and shall not be liable to be contested by suit or otherwise. The reference to sec. 47 of the Guardians and Wards Act and to sec. 622 of the Code of 1882 indicates that the Legislature had in view the question of the liability of an order to be challenged by way of appeal or revision before a superior tribunal; the Legislature did not contemplate, it is said, a reconsideration of the order by the Court itself on the ground that the Court had been induced to assume jurisdiction in a matter in which it had no jurisdiction. But we are clearly of opinion that section 48 is not a bar to the present proceedings and that the District Judge had jurisdiction to entertain the application in the exercise of his inherent powers. Consequently his order is not appealable. The preliminary objection must accordingly be allowed and the appeal dismissed with costs. We assess the hearing fee at three gold mohurs.

4. Rule No.122 of 1914.

5. As regards the application for revision, it is plain that it can be sustained on the ground either that the Court had no jurisdiction to deal with the application or that the Court in the exercise of its jurisdiction has acted illegally or with material irregularity. We have already held that the District Judge had jurisdiction to deal with the matter; and therefore the only point for consideration is, whether he acted illegally or with material irregularity. It has been suggested in support of the application that important evidence was improperly excluded and that if such evidence had been admitted, it could have been shown that the application for revocation of guardianship was not bond fide. Reference has also been made in the course of argument to portions of the evidence. We may, in this connection, observe that it is competent to the Court to investigate the facts in revision, if the Court is

satisfied that such a step is needed in the ends of justice, as was done in the case of Kailash Chandra Haldar v. Bisswanath Pramanick 1 C.W N. 67 (1896). But we must guard against the possible assumption that the Court may, in a matter like this, in the exercise of its revisional jurisdiction, assume appellate powers. One aspect of the fundamental distinction between the exercise of appellate and revisional powers was explained in the case of Shivanath v. Joomakashinath I. L. R. 7 Bom 341 (1883). A Court in the exercise of its appellate jurisdiction investigates the facts, and, if necessary, substitutes its own appreciation of the evidence for that of the primary Court. But when the Court as a Court of revision looks into the evidence, it does so with a view to determine whether the subordinate Court has assumed a jurisdiction which it did not possess, or declined a jurisdiction which it did possess or has in the exercise of its jurisdiction acted illegally or with material irregularity. If this distinction were overlooked, the superior Court might, in the name of revisional jurisdiction, exercise appellate powers. Consequently, in the case before us, we cannot be rightly invited by the Petitioner to examine the evidence with a view to determine whether the District Judge has correctly appreciated its effect. But we may look at the evidence to determine whether he has acted illegally or irregularly in the exercise of his jurisdiction. Upon that point we are satisfied that the ground taken by the Petitioner has not been established. There is no indication whatever from the proceedings in the Court below that the District Judge excluded any evidence the true bearing of which was explained to him. The only ground on which the Petitioner invites the Court to interfere in the exercise of revisional jurisdiction thus completely fails. The result is that this Rule is discharged; we make no separate order as to costs.

Beachcroft, J.

I agree.