

(1917) 03 CAL CK 0030

Calcutta High Court

Case No: None

Dhanon Joy Bhuiya

APPELLANT

Vs

Nimai Chand Das

RESPONDENT

---

**Date of Decision:** March 1, 1917**Acts Referred:**

- Guardians and Wards Act, 1890 - Section 7(3)

**Citation:** 42 Ind. Cas. 574**Hon'ble Judges:** Newbould, J; Fletcher, J**Bench:** Division Bench

---

### Judgement

Fletcher, J.

This is an appeal by the opposite party as he is called, against, an order of the learned District Judge of the 24-Pergannahs, dated the 10th June 1915. The appeal arises out of an application that was made to the learned District Judge under the provisions of the Guardians and Wards Act. The application was made by their respondent to the present appeal Nimai Chand, Das, asking that he should be appointed the guardian both of the persons and the. pro-parties of the infant children of a deceased Hindu named Dina Nath Das. The application was. opposed by the appellant before us, on the ground that he was the executor under the terms of the Will of Dina Nath Das and that he was also, in accordance with the terms of that Will, the guardian of both the persons and the properties of the minors. The learned Judge came to the conclusion that the appellant before us was not the guardian and appointed the respondent to this appeal guardian, both of the persons and the properties of the minors. The sole question in this appeal is whether Dina Nath Das appointed the appellant before us as the guardian of his minor children, because it is quite clear that having regard to the terms of Sub-section (3) of Section 7 of the Guardians and Wards Act, the Court could not appoint the present respondent as such guardian unless the appellant before us had not been appointed guardian by the terms of the Will. The question, therefore,

turns solely on whether the testator Dina Nath Das appointed the appellant as guardian of the persons and the properties of his minor, children. The appointment clearly is not in express words and, therefore, it is necessary to consider the terms of the Will. After the usual introductory statements that generally appear in the Will of a Hindu and a statement of his family, the testator appointed the appellant who was stated to be his trusted friend the executor, of his Will. The Will then proceeds as follows: "On my death, he will take care of and supervise all my properties and manage my family and will educate and maintain my sons Surendra Nath Das and Nagendra Nath Das." Those are the words which, if any, must be taken as an appointment of the appellant as the guardian of the persons and the properties of the minors. The learned Judge came to the conclusion that these words did not constitute the appellant the guardian of the persons and the properties of the minors. In that view, I am unable to agree. It was held by Vice-Chancellor Shadwell in the case of *Miller v. Harris* (1845) 14 S. 540: 9 Jur. 388; 60 E. R. 487 "that a request to a person to take upon himself the management and the care of the house and of his children is sufficient to constitute the person so requested to be the testamentary guardian of the infants; and Lord Hardwicke in the case of *Mendes v. Mendes* (1747) 1 Ves. Sen. 89: 27 E. R. 1910 expresses the opinion that a direction that the wife should have the education and, the maintenance of the children might amount to the appointment of the wife as the guardian of the minors. In this case, the words seem to me clearly to appoint the appellant before us as the guardian both of the persons and the properties of the minors. The direction to educate and maintain", in accordance with the opinion of Lord Hardwicke in *Mendes v. Mendes* (1747) 1 Ves. Sen. 89: 27 E. R. 1910 above referred to, certainly seems sufficient to constitute the appellant the guardian of the persons, and the direction "to take care of and supervise all my properties and manage my family" seems to constitute the appellant the guardian not only of the persons, but also of the properties of the minors. I am unable to agree with the view of the learned Judge of the Court below that, under this Will, the appellant is not the guardian of the persons and the properties of the minors. I think. We ought to set aside the order passed by the learned District Judge and allow the present appeal. The respondent to this appeal must pay to the appellant his costs both in this Court and in the lower Court. We assess the hearing fee in this Court at two gold mohurs.

Newbould, J.

2. I agree.