

(1917) 01 CAL CK 0038

Calcutta High Court

Case No: None

Hadish Bapari

APPELLANT

Vs

Bogamulla Sheik

RESPONDENT

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**Date of Decision:** Jan. 31, 1917**Citation:** 38 Ind. Cas. 787**Hon'ble Judges:** Newbould, J; N.R. Chatterjea, J**Bench:** Division Bench

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### Judgement

1. This is an appeal against an order refusing the application of the appellant to be appointed and declared guardian of the person and property of his minor daughter under the Guardians and Wards Act, 1890. The learned District Judge has refused the application, on the ground that according to the Sunni school of Muhammadans, which prevails in this case, the mother's mother has a preferential claim over the father to the custody of an infant on the death of the mother and also on the ground that it will be in the best interests of the minor that she should remain for the present with her mother's relations. These are good grounds for refusing the appellant's application to be appointed guardian of the person of the minor but no sufficient reason has been given why he should not be declared guardian of her property. According to Muhammadan Law he has a preferential claim to be the minor's guardian for this purpose. Though the Guardians and Wards Act gives to the Judge power of appointing anybody, Section 17(2) lays down rules which bring the provisions of the Act into line with those of the Muhammadan Law. We are told that the real dispute between the parties is about the right to give the girl in marriage. It is sufficient to remark that the refusal to appoint the appellant guardian of his daughter's person in no way diminishes his rights as a father under the Muhammadan Law in this respect. The rules as to guardianship for contracting marriage on behalf of a minor depend exclusively upon Muhammadan Law and, therefore, are not affected by any order made under the Guardians and Wards Act.

2. We accordingly allow this appeal in part and declare the appellant Hadish Bepari to be the guardian of the property of his minor daughter Gul Banu who was born in Sraban 1320 B.S. The respondent did not appear and we make no order as to costs.