

(1867) 05 CAL CK 0006

In the Calcutta High Court

Case No : Miscellaneous Regular Appeal No. 710 of 1866

In Re: Khaja Shurwar Hossein Khan and Others

Date of Decision : 31-05-1867

Acts Referred:

Citation : (1867) 05 CAL CK 0006

Judgement

Sir Barnes Peacock, Kt., C.J.—The two questions which have been propounded for the decision of the Full Bench are:--(reads). We are of opinion that both these questions must be answered in the affirmative. By the grant of a certificate under Act XL of 1858, the person to whom it is granted acquires powers which he could not exercise without it. For instance, by s. 3, although he may have been appointed by a will to manage the estate, he is not entitled to institute or defend any suit connected with the estate of which he claims the charge, until he shall have obtained a certificate. So by s. 18, every person to whom a certificate is granted has the same powers in the management of the estate as the proprietor might have had, if he were not a minor, except that he cannot sell or mortgage any immoveable property, or grant a lease thereof for any period exceeding five years, without an order of the Civil Court previously obtained. By s. 7, it is compulsory upon the Court to grant a certificate to any person who shall have been appointed to the charge of a minor's estate by will or deed, and who is willing to undertake the trust.

2. Prima facie, a person who has been appointed the manager of a minor's estate, either by will or deed, is a proper person to be the manager, and, prima facie, there is no sufficient cause why he should not be the person to whom the certificate is to be granted. The law has therefore made it compulsory on the Court to grant him the certificate; but it by no means follows that when a certificate has been granted to him, and he has acquired the management, it may not be discovered that he is not a proper person to have the management. It is true, no doubt, that a person to whom a certificate is granted under s. 7 is not bound to render periodical accounts in the same manner as a public officer to whom such a certificate is granted, and that he can be compelled to do so only by suit. It was so held in the case of *Mussamut Soukolly Koonwar* 6 W.R., Mis.,

53. The Court in that case said:-- "After carefully examining the Act, we come to the conclusion that the law does not require a party holding a certificate under s. 7 to produce accounts, unless sued for such under s. 19 of the Act by any relative or friend of the minor. Public curators or administrators appointed under s. 10 are required by the provisions of s. 16 to put in annual accounts, to the accuracy of which any relative or friend of the minor may take objections. But where a party is appointed under s. 7 to administer to the estate, it appears to us that he is bound, as was the practice before the passing of the Act, to account only to the minor, on his attaining majority, and to no one else, though of course, he is liable to have the certificate withdrawn under s. 21, should any sufficient cause for its withdrawal be proved to the satisfaction of the Court." That case is an authority to show that, although a manager, appointed by a will or deed, to whom a certificate is granted, is not bound to render periodical accounts under s. 16, still, if there be any mismanagement or improper conduct on his part, he is liable to be removed under the provisions of s. 21.

3. S. 21 enacts that "the Civil Court, for any sufficient cause, may recall any certificate granted under this Act, and may direct the Collector to take charge of the estate, or may grant a certificate to the Public Curator, or any other person, as the case may be." It is only for sufficient cause that a certificate can be recalled, but the words of the section are general, "that for sufficient cause any certificate granted may be recalled," and there seems to be no good reason for holding that a certificate granted under s. 7 of the Act, either to a manager appointed by will, or by a near relative, cannot be recalled for sufficient cause in the same manner as any other certificate, merely because such manager is not bound to render periodical accounts. By s. 28, all orders of the Civil Court are subject to appeal, subject to the rules in force in miscellaneous cases, so that if a manager be dismissed summarily for insufficient cause, he has a remedy by appeal.

4. The authorities upon the subject have all been very clearly set out in the statement by which the points were submitted or the opinion of the Full Bench, and the only case which appears to throw any doubt upon the right of the Judge to recall a certificate by a summary proceeding in the case of a manager appointed under s. 7 is that of *Mudhoosoodun Singh v. The Collector of Midnapore* Marsh. Rep., 244 which was decided by Steer and Campbell, JJ. In that case the Judges observed: "It is clear that a regular suit for an account can be brought against such manager under s. 19 of the Act. As regards his removal, we would not, after the precedent quoted, now object to these proceedings under s. 21; but we think that in whatever form a suit instituted to cancel the certificate under that section may be instituted, it must be supported by such proof of malversation and misconduct as will afford sufficient ground for removal." To that extent we entirely concur. The Judges proceed:-- "Looking to the nature of the title on which the certificate is held, there is a wide difference between a manager appointed by will or a near relative appointed in right of natural propinquity, and a mere officer of the Court appointed manager subject

to the supervision of the Court. The two former managers hold under s. 7, and render no accounts till their management is impugned under the provision of s. 19. The latter, appointed under ss. 10 and 12, is subject to a variety of special provisions, and is bound to render periodical accounts. As regards the grant of a certificate to a person claiming under a will, it is clear that, in the terms of s. 7, the Court has no option whatever. Hence we think that in such a case the Court cannot exercise any mere discretionary power under s. 21, the candidate not being absolutely and palpably incompetent." In this we also concur. There can be no doubt that it is obligatory on the Court to grant a certificate to a manager appointed by will, and the Court has no power to recall it, unless a sufficient cause is made out. But the Judges go on to observe: "There will be sufficient cause for removing a manager appointed as of right, only when there is such entire incompetency, or actual breach of trust, as would justify a Court of equity in depriving a man of the management of his own property, or a trustee of the management of a trust." There appears to be some inaccuracy in this statement, because we are not aware of any incompetency which would justify a Court of equity in removing a man from the management of his own property. A man may manage his own property as he thinks fit, and unless declared to be a lunatic, he has a right to manage his property as he pleases. So far as the Court speaks of the removal of a trustee, we think that they may be correct; but it does not follow that, if a manager to whom a certificate has been granted under s. 7 should be compelled to render his accounts by a regular suit, and it should appear from those accounts that there has been embezzlement, or waste, or mismanagement, such as would justify the removal of a trustee, the certificate cannot be withdrawn without a regular suit. There may be many cases in which, if a manager so appointed could not be removed summarily, the estate might be wholly lost. Suppose, if it were made out upon a summary application to the Civil Court that an estate under a manager had realized more than sufficient to pay the expenses of management, and the public revenue, and the allowance to the minor, and that the Government revenue was not paid, and the estate about to be sold, that the manager refused to render his accounts, and referred the friend to a regular suit, and would give no reason for his not paying the Government revenue; if the Court could not remove him summarily without a regular suit, the estate might be sold for arrears of the public revenue, and before a decree for his removal could be obtained the estate would be lost. We think it clear that in such a case the Courts ought to have, and would have, power to remove the manager by a summary proceeding under s. 21, and put the management of the estate into the hands of the Collector or of the Public Curator, notwithstanding the manager could not be compelled to render his accounts without a regular suit. So, if the accounts rendered by such a manager, whether voluntarily or under a decree for an account in a regular suit, should be incorrect, and the manager should fraudulently omit to give credit for moneys received, it appears to us that the manager might be removed upon proof of the facts on a summary proceeding, and it would not be necessary to falsify the accounts in a regular suit. We make this remark because the Judges, in the case to which we have

already referred, think that merely because the accounts were impugned, the Court could not remove the manager until those accounts had been impugned by regular suit.

5. We think that, without compelling the minor or his friends to resort to a regular suit, the Civil Court has power, if a sufficient case is made by summary proceeding, to recall a certificate granted under s. 7 to a manager appointed by will or deed or a near relative, and to put the estate into the hands of the Collector, and to exercise the other powers conferred upon the Court by s. 21.

6. For these reasons it appears to us that both the questions ought to be answered in the affirmative. The case will be referred back to a Division Bench with this expression of our opinion, in order that the Division Bench may determine the appeal.