

(1933) 04 BOM CK 0006

In the Bombay High Court

Case No : O.C.J. Appeal No. 65 of 1932 and Petition No. 315 of 1932

In Re: Narayan Khanderao

Date of Decision : 21-04-1933

Acts Referred:

Succession Act, 1925 — Section 372

Citation : AIR 1933 Bom 436 : (1933) 35 BOMLR 950 : 145 Ind. Cas. 588

Hon'ble Judges : Rangnekar, J; John Beaumont, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

John Beaumont, Kt., C.J.—This is an appeal from an order of Mr. Justice Wadia. The applicant as the mother and natural guardian of the minor sons applied for the grant of a succession certificate u/s 372 of the Indian Succession Act, 1925. Mr. Justice Wadia declined to grant the certificate unless the guardian got herself appointed guardian under the Guardians and Wards Act. We were referred to various authorities. There is a case of this Court, *Gulabchand v. Moti* ILR (1900) 25 Bom. 523 3 B om. L.R. 795 which the learned Judge followed. In that case the Court held that a succession certificate can be granted to the guardian of a minor who had been appointed as such under the Guardians and Wards Act; but the case did not decide that a certificate could not be granted in the absence of such an appointment. We were also referred to cases of other High Courts in which certificates have been granted where no appointment of the guardian has been made under the Guardians and Wards Act. But apparently in those cases the certificate was granted to the minor. We reserved judgment in order that we might ascertain what the practice has been in the office in this Court, and we find that the practice has been to grant a certificate only where the guardian has been appointed under the Guardians and Wards Act, and the form of the certificate has been in favour of the minor. We think that that is the wrong form. It is impossible for the minor actually to give receipts for money which may be collected under the certificate, and we think that the proper form is for the certificate to be granted to the guardian who should be empowered to recover, transfer or negotiate or otherwise deal with the securities in question for the use

and benefit of the minor and to pass valid receipts on his behalf. The question then remains whether a certificate in that form should be granted to a guardian who has not been appointed under the Act. In our view such a certificate should only be granted where the guardian has been appointed guardian of the property under the Act. We have the direct authority of this Court in *Gulabchand v. Moti* that a certificate can be granted in such a case, and we think that the correct course is to follow the decision in that case and require the guardian to be appointed under the Guardians and Wards Act before a certificate is granted to her.

2. The appeal, therefore, must be dismissed. Costs will be costs in the petition.