

(1907) 03 CAL CK 0023
In the Calcutta High Court
In Re: Nirojini Debi

Date of Decision : 22-03-1907

Acts Referred:

Probate and Administration Act, 1881 — Section 33

Citation : (1907) ILR (Cal) 706

Hon'ble Judges : Woodroffe, J

Bench : Single Bench

Judgement

Woodroffe, J.—This is an application u/s 33 of the Probate and Administration Act. The applicant applies that letters of administration may be granted to him for the use and benefit of his wife who is a minor, and a preliminary objection has been taken to the hearing of this application.

2. I deferred judgment in order to make enquiries whether or not there has been any practice on the point taken.

3. The objection, which is raised, is that the applicant should in the first place have applied to the Court to be assigned the guardian of his wife in order to enable him to apply for letters of administration, and that until this is done the matter cannot further proceed. It is submitted that it is only after such application has been made and granted that the applicant is in a position to ask, as such assigned guardian, for letters of administration for the use and benefit of the minor. Upon that application being made, citations should issue.

4. From enquiries I have made, it does not appear that the matter was considered until the case *In the goods of Dakhina Mohun Boy* (1904) Unreported. came on for hearing before Mr. Justice Stephen, some time in 1904. From the records in that matter it appears that my brother Stephen directed that in a matter of this kind two applications should be made. He directed that an order should be drawn up appointing a guardian for the purpose of applying for letters of administration for the use and benefit of the minor, and that upon this being completed, the guardian should put in an application in his own name as guardian praying for grant to him of administration for the use and benefit of the minor. He stated that on this being put in, an order would be made directing the

issue of citations. I agree that the procedure should be in future that which my learned brother has stated. I have looked into the English practice. In Coote's Probate Practice, 13th Edition, pp. 124, 125, 127, 128, 676, 834, 835, it appears that in matters of this kind where there has been no election, a separate Registrar's order is drawn up assigning a guardian for the purpose of taking out letters of administration.

5. I must hold that the present application is not maintainable until the applicant has been appointed guardian of his wife for the purpose of enabling him to obtain letters of administration for her use and benefit. When he has been appointed such guardian he may then apply for the grant to him for her use and benefit.

6. I express no opinion as to the merits of the application which will have to be dealt with when it is in form.

7. The application is, as I have said, not now in form, and therefore I will adjourn it to enable the applicant to apply to be assigned guardian. The application will be made in these proceedings.

8. As regards costs, the applicant must pay the opposite party's costs of appearance on the last motion day.