
(1936) 07 CAL CK 0020
In the Calcutta High Court

Jagat Kishore Acharya Choudhury

APPELLANT

Vs

Badan Mandal and Others

RESPONDENT

Date of Decision : 28-07-1936

Acts Referred:

Bengal Tenancy Act, 1885 — Section 148(h)

Citation : AIR 1936 Cal 702 : 166 Ind. Cas. 82

Hon'ble Judges : Nasim Ali, J

Bench : Division Bench

Judgement

Nasim Ali, J.—This rule is directed against an order of the Second Sadar Munsif, Mymensingh, dated 6th May 1936, in rent Suit No. 34 of 1936 now pending before him. The petitioner is the plaintiff in that suit. He applied to the learned Munsif u/s 148 (h), Ben. Ten. Act, to serve on defendant 1 the elder brother of minor defendant 6, a notice informing him that he will be treated as the guardian of the minor defendant in respect of the suit. That prayer was allowed and the notice was served. He, however, did not appear and object to his being treated as guardian for the suit within the time prescribed by that section. On 21st April 1936, the learned Munsif directed the petitioner to deposit requisite fees for the appointment of a Court guardian. The petitioner thereafter prayed for reconsideration of that order on the ground that defendant 1 who was the natural guardian of defendant 6 did not object to his being appointed guardian and consequently must be deemed to be the duly appointed guardian of the minor defendant under the provisions of Section 148 (h), Ben. Ten. Act. The learned Munsif however rejected his prayer on 6th May 1936, on the ground that defendant 1 was not the "natural guardian of the minor" within the meaning of Section 148 (h) of the Act. The petitioner thereupon obtained this rule.

2. The expression "natural guardian" has not been defined in the Bengal Tenancy Act or in the Civil Procedure Code. The word "guardian" standing alone generally means guardian of the person. "Guardian of an infant means guardian of the person" per Jessel M.R. in *Remington v. Holby* (1880) 14 Ch D 630 A "natural

guardian" therefore is a natural guardian of the person of the infant. A person is a natural guardian when he is neither the testamentary guardian nor a guardian appointed. The mere fact that an infant is in the care of a person does not make that person the natural guardian of the person of the infant. The section contemplates guardians who are entitled to the custody of the infant under the personal law by which the infant is governed, in the absence of a testamentary guardian or a guardian appointed. It is not disputed that defendant 1 is now entitled to the custody of defendant 6 under the Muslim law. He did not appear and object to be appointed guardian of defendant 6 for the suit. He must therefore be deemed to be the duly appointed guardian of defendant 6 for the purposes of the rent suit. The learned Munsif was therefore wrong in directing the petitioner to deposit fees for the appointment of a Court guardian.

3. The result therefore is that this rule is made absolute. The orders of the Munsif directing the petitioner to deposit fees for the appointment of a Court guardian are set aside. Defendant 1 must be deemed to be the duly appointed guardian of defendant 6 for the purposes of the suit. There will be no order for costs in the rule.