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In the Bombay High Court

Laxminarayan Sheshgiri Haldipur — APPELLANT

Vs

Parvatibai Parmeshwar Mudbiri and Another — RESPONDENT

Date of Decision : 08-12-1919

Acts Referred:
Guardians and Wards Act, 1890 — Section 12, 43

Citation : (1920) ILR (Bom) 690

Hon'ble Judges : Shah, J;Crump, J

Bench : Division Bench

Judgement

Shah, J.—In this, case an application was made by Parvatibai to be appointed a guardian of the person of the minor Sagimabai on the 14th of December 1918. We are not concerned with the previous appointment of the guardian of the person of this minor. At this time there was a guardian of the property of the minor, out there was no guardian of the person of the minor. On that very day the District Judge made an order snider Section 12 of the Guardians and Wards Act with the consent of both the parties that "the grandmother, in whose custody the girl must for the time being remain, do give security in Rs. 1,000 that the girl will not be married without the permission, of the Court first had." Subsequently an application was made by Laxminarayan to be appointed a guardian of the person of this minor, and we are informed by the pleaders appearing In this case that both these applications are pending, and no order has still been made appointment any person as guardian of the person of the minor. On the 22nd of February last a proposal was placed before the Court as to the bridegroom intended for this girl. The District Judge sanctioned the marriage of the girl with the proposed bridegroom on the same day. Then on the 14th of March last pertain facts having been brought to the notice of the District Judge, he suspended that sanction and warned all persons concerned not to proceed farther upon the authority of that sanction. Subsequently, on the 2nd of April last, another proposal for the marriage of the minor with one Naimpully Jayaram was sanctioned.

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2. Laxminarayan has preferred an appeal to this Court objecting to the last order made on the 2nd of April. On behalf of the respondents it is objected that no appeal lies as the order appealed from does not fall u/s 43 of the, Guardians and Wards Act, and it is urged that all the orders made relating to the marriage of the minor are made u/s 12 of the Act.

3. In order to appreciate the merits of the preliminary objection as also of this appeal it is necessary to consider the question as to whether these orders relating, to the marriage of the minor could be made tinder Section 12 of the Guardians and Wards Act. Section 12 -of the Act relates to the temporary custody and protection of the person and property of the minor. It enables the Court to direct, that the person having the custody of the minor shall produce her or cause her to toe produced at such place and time and before such person as it appoints and may make such order for the temporary custody and protection of the person or property of the minor as it thinks proper. The first order which was made oh the 14th of December 1918 was a proper order u/s 12 and it purported to be made under that section. But the order made on the 22nd of February sanctioning the marriage of the girl as also the last order made on the 2nd of April, sanctioning another proposal as to the marriage of the girl cannot properly be treated as orders falling within, the scope of Section 12, because they cannot be said to relate to the temporary custody and protection of the person of the minor. The only other provision under which the District Court could give directions as to the marriage of the minor would be Section 43 of the Act. We have not been referred to any other section of the Act under which these orders could be made. u/s 43 the District Court can make an order, regulating the conduct or proceedings of any guardian appointed or declared by the Court. It is only with reference to such a guardian that the Court could make an order regulating his conduct or proceedings. In the present-case no appointment of a guardian of the person of the minor has been made; and the grandmother who was allowed to retain the temporary custody of the minor u/s 12 cannot be treated as a person appointed or declared by the. Court to be the guardian of the person of the minor. Under the circumstances it seems, to us that all these orders as to the marriage of the minor made on the 22nd of February, the 14th of March and the 2nd of'' April are made without, jurisdiction.

4. In this view of the matter it is clear that no appeal lies to this Court u/s 47 of the Act. But as the question is whether the orders complained of were made with or without jurisdiction, we can entertain the appeal as an application under our Extraordinary Jurisdiction and make an appropriate order with reference to the orders complained of. The proper procedure in our opinion for the District Court to follow would be to deal with the two applications which are pending in that Court for the appointment of a guardian of the person of the minor; and when a guardian of the person is appointed, to give such directions to that guardian as it may think proper under the circumstances for the welfare of the minor.

5. It is unfortunate, that this matter concerning the person of a female minor has

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been unavoidably delayed on account of the procedure followed in the lower Court and the subsequent proceedings taken in this Court by way of appeal. But it will be possible-for the District Judge now to treat this as an urgent matter and to proceed with the applications pending before him without any avoidable delay.

6. We express no opinion whatever as to the merits of these orders, which we hold to have been made without jurisdiction.

7. We discharge all the orders'' made by the District Court relating to the marriage of the minor on the 22nd of February, 14th of March and the 2nd of April.

8. Each party will bear his or her own costs in the appeal here, which mast be treated as an application under Extraordinary Jurisdiction, and in the lower Court as to the said orders.

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