
(1890) 05 CAL CK 0007
In the Calcutta High Court

Satis Chunder Mukhopadhyaya through his guardian, Patu Mondul

APPELLANT

Vs

Mohendro Lal Pathuk

RESPONDENT

Date of Decision : 28-05-1890

Acts Referred:

Evidence Act, 1872 — Section 32(6), 35

Citation : (1890) ILR (Cal) 849

Hon'ble Judges : W. Comer Petheram, C.J.; Rampini, J

Bench : Division Bench

Judgement

W. Comer Petheram, C.J.—It is contended before us that neither the certificate of guardianship nor the horoscope upon which the District Judge relies, and upon which alone he relies, is evidence in this case for the plaintiff at all.

2. We think that this contention is well founded, and that neither of those documents is evidence. And first as to the certificate of guardianship. A certificate of guardianship is a document which is issued to a person appointing him the guardian of a certain person on the ground that that person is a minor, and it is said that the document is evidence of the age of that person u/s 35 of the Evidence Act. It is only necessary to read Section 35 to see that it is nothing of the kind. That section relates to entries made in public or official books, registers, or records, which are kept in the performance of a duty specially enjoined by the law of the country. This certificate is neither a book nor a register, nor a record kept by any officer in accordance with any law, but is a certificate, as it professes to be, of which there is only this one, and which is not a public record or register of any kind, but is a document issued to a particular person giving to that particular person, and only to him, a particular kind of authority.

3. Then the next question is with reference to the horoscope. That horoscope has been admitted as coming within Section 32 of the Evidence Act and within Clause 6 of that section. That clause makes entries made by deceased persons evidence

on questions of relationship, blood, marriage, or adoption, where the deceased person had some special means of knowledge. As to that it is enough to say that it is not shown that the person who made this horoscope had any special means of knowledge, and that the question which we have to decide is not one either of relationship, blood, marriage, or adoption. That shows that neither of these documents is any evidence at all.

4. In holding this we are acting in accordance with the view taken by Mr. Justice NORRIS in the case of *Ram Narain Kallia v. Monee Bibee* ILR Cal 413 and also with our own view of the law. Therefore, we come to the conclusion that the finding of fact, that this person, the plaintiff, was a minor-the Judge having rejected the oral evidence-is supported by no evidence at all, and as his judgment rests upon that finding, the judgment must be set aside.

5. In doing so we do not wish to be understood as expressing any opinion or as agreeing in the opinion expressed by the learned Judge that the decree obtained against the minor who has been sued without a guardian is a nullity, or that the suit will lie to set that decree aside, supposing all the plaintiff's allegations have been proved.

6. In the result, this appeal will be decreed and the plaintiff's suit dismissed with costs.