

remedied, and falls within the language of the enactment. They find it impossible to say that this is not the case in the present instance.

They have already intimated their opinion that the general scope and object of the statute was to remove all the disabilities arising out of the *status* of slavery. The rule of *Willa*, whereby the natural heirs of the emancipated were excluded by the heirs of the emancipator, was not less such a disability than the rule of law whereby the natural heirs of an unemancipated slave were excluded by his master or his heirs. As to the language of the Act, the question which arises upon the first words of the section has been already dealt with; but a further argument has been founded upon the words "that the person from whom the property may be derived *was a slave*." The words are not "was a slave at the time of his or her death," and the terms may well be taken to apply to any person who had at any time been a slave. Putting this interpretation upon the statute, their Lordships think that it is sufficient to dispose of this appeal without going into any of the other questions raised either of law or of fact, and they will therefore humbly advise Her Majesty to affirm the decision under appeal, and to dismiss this appeal with costs.

Appellant's agent.—Messrs. *West, King, Adams & Co.*

Respondents' agent.—Messrs. *Gregory, Rowcliffes and Rawle.*

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### APPELLATE CIVIL.

( 80 )

*Before Mr. Justice M. Melvil and Mr. Justice Kemball.*

GURACHARYA (OPPENENT), APPELLANT, *v.* SVAMIRAYACHARYA  
(APPLICANT), RESPONDANT,\*

*Administration—Guardianship—Undivided Hindu family—Minors Act XX of 1864.*

Where a member of a Hindu family dies, leaving to his children only his undivided share in the joint family property, administration cannot be granted under Act XX of 1864, nor, under such circumstances, can a guardian of the persons of the minor children be appointed; but if the deceased has left any separate property, administration of such property may be granted, and a guardian may be properly appointed at the same time.

\* Appeal No. I of 1879 under the Minors Act.

1879

SAYAD MIR  
UJMUDDIN  
KHAN  
*v.*  
ZIA-UL-NISSA  
BEGAM AND  
ANOTHER.

*July 9.*

1879  
 GURACHA-  
 RYA  
 v.  
 SVAMIRAYA-  
 CHARYA.

THIS was an appeal against the order of W. Sandwith, Judge of Dharwar.

Svamirayacharya applied to the Judge of Dharwar to be appointed the guardian of the persons and administrator of the estate of the minor children of his deceased son-in-law. The application was opposed by Guracharya, the father of the deceased, with whom he had lived in union. On the matter being referred by the District Judge to the Subordinate Judge for inquiry the latter reported that the applicant was a pauper and the opponent a man of weak intellect, quite unfitted to manage the affairs of his family, and recommended that the opponent and the Nazar of the District Court or some other competent person be appointed joint guardians and administrators. The District Judge, however, appointed the Nazar alone as the sole guardian and administrator.

The original opponent appealed to the High Court.

*V. R. Inamdar* for the appellant.—The appellant, being the paternal grandfather of the minor, is their natural guardian, and should have been granted a certificate of guardianship. He is jointly interested with the minors in the property which belonged jointly to himself and his deceased son. He is consequently entitled also to the certificate of administration. The applicant is a pauper and, therefore, unfit to take charge of valuable property. The minors being of tender age it is impossible for the Nazar to take care of them.

The applicant did not appear.

The judgment of the Court was as follows:—

MELVILL, J.—This case must be remanded for reconsideration by the District Court.

If, as there appears reason to believe to be the case, the whole of the property, of which administration is sought, was the undivided property of Guracharya and his deceased son, Anacharya an administrator cannot legally be appointed to have charge of the undivided shares of Anacharya's sons in the family property: *Govind Ramchandra v. Moro Ragunath* (1) and *Shivji Hasun v. Dattu Marji*. (2) Nor, under the same circumstances, can a

(1) Appeal No. 1 of 1875 under Act XX of 1864, decided 4th July 1876.

(2) S. A. 316 of 1872 (Printed Judgments for 1874, page 299).

guardian be appointed under Act XX of 1864. The administration and the guardianship will, under such circumstances, remain with Guracharya, as the undivided paternal grandfather of the minors, but no certificate can be granted in respect thereof.

But it may be that there is some separate property acquired by Anacharya. Guracharya in his deposition says: "I also hear that the late Anacharya had acquired some land at Kelgheri. I do not hold possession of the said land." If this be the case, it would both legal and desirable to appoint an administrator of this separate property, and the appointment of a guardian might properly be made at the same time.

The District Judge should inquire whether there is any separate property of the deceased Anacharya. If there is not, he should refused to make any order in the case. If there is such property, he should grant a certificate of administration and guardianship but should limit the certificate of administration to the separate property acquired by the deceased Anacharya. This Court would recommend that the certificate, if granted, be granted jointly to the Nazar and Guracharya, as recommended by the Subordinate Judge. It would be difficult for the Nazar to perform by himself the duties of guardian to the children, two of whom are living with Guracharya, and the eldest of whom appears content to remain under his charge.

1879  
GURACHA-  
RYA  
v.  
SVAMIRAYA-  
CHARYA.

*Case remanded.*

### APPELLATE CIVIL.

( 81 )

*Before Sir M. R. Westropp, Kt., Chief Justice, Mr. Justice Kemball, and  
Mr. Justice F. D. Melvill.*

July 14

**BASAPA APPLICANT v. MARYA OPPONENT.\***

*Decree—Execution—Sale—Confirmation of sale—Certificate of sale—Application for possession—Limitation—Act XV of 1877, Sch. 11, Art. 178—Civil Procedure Code (VIII of 1859), Secs. 263, 264.*

A obtained a money decree against B on the 25th January 1872, in execution of which, property belonging to B was sold on the 9th of September 1874, A himself becoming the purchaser. The sale was confirmed on the 9th of October 1874, but the certificate of sale was not issued till the 23rd of January 1878. A, applied for possession on the 2nd of April 1879.

\*Civil Reference No. 8 of 1879.