1894.

IN RE JEHÁNGIR B. KARÁNI & Co.

Judge in chambers after the filing of the affidavits. The petitioners must pay the costs of this rule.

Attorneys for the petitioners:—Messrs. *Pestanji, Rustim, and Kola.*

Attorneys for the liquidators:—Messrs. *Craigie, Lynch, and Owen.*

Attorneys for the English creditors:—Messrs. *Turner and Hemming.*

ORIGINAL CIVIL.

Before Mr. Justice Starling.

1893. *September* 23.

JAGANNA'TH RA'MJI, PETITIONER.*

Guardian and ward—Minor—Power of Court to appoint guardian of person and estate of a minor—Power of guardian to sell minor's property.

The power of the Court of Chancery to appoint guardians to infants, whether such infants have property or not, is possessed by the High Court.

Quœre whether a guardian appointed by the Court (except under some special Act) has any authority to sell the property of his ward unless the express sanction of the Court is given.

IN chambers.

The petitioner presented his petition praying that he might be appointed guardian of the person and property of his two minor sons Dámodar Jagannáth and Bháskar Jagaṇnáth, and that he might be empowered to mortgage certain family property.

The petition stated that he and his two minor sons were joint in food, worship and estate, and resided together in Bombay; that they were possessed of certain ancestral immoveable property described in the schedule to the petition; that the petitioner had incurred costs, amounting to about Rs. 800, in a suit which was still pending; that he was indebted to various persons and had no moveable property wherewith to pay the said debt; that the creditors were pressing for payment, and that unless paid they would file suits to the detriment of the family. He further stated that subject to the sanction of the Court he had con-

*Miscellaneous No. 770.

tracted for a loan of Rs. 1,500 on the mortgage of the said immoveable property, and he, therefore, prayed, as above stated, for the sanction of the Court.

Lang (Acting Advocate General) presented the petition and cited *Re Jairám Luxmon* (1).

STARLING, J.:—The petitioner in this case, Jagganáth Rámji, has two minor sons Dámodar and Bháskár, and the three together constitute a joint and undivided Hindu family possessed of ancestral immoveable property and also of some moveable property, but none which apparently is available to pay off certain debts which the petitioner has incurred. These seem to me *primâ facie* to be debts properly incurred for the benefit of the family, and such as would justify the petitioner in selling or mortgaging the family property in order to pay them. The petitioner has arranged to raise a mortgage on the family property for the purpose of paying them, and now petitions the Court to appoint him guardian of the persons and estate of his minor children and to sanction the mortgage in order that he may be able to raise the money at a lower rate of interest than he would otherwise be able to do.

When the petition was presented to me in chambers I refused to accept it, or make any order on it, as I considered that under the circumstances the petitioner had full power to mortgage the property himself, and that, as I did not feel I ought formally to sanction the mortgage without a much fuller enquiry which would cause additional expense to be incurred, the appointing him as guardian would certainly give him no further power than he originally possessed as the father of an undivided Hindu family, but might possibly lead the mortgagee to think that he had fuller powers. The petition was, however, presented to me again by the Acting Advocate General, who called my attention to the case of *Jáiram Luxmon*(1), in which a similar order,—with some doubts, however, as to its propriety—was made by Farran, J. After hearing his argument, I reserved judgment, and consulted the Chief Justice on the matter, as I felt it was desirable that some definite rule should be laid down on which to act in these cases which are becoming somewhat numerous.

(1) I. L. R., 16 Bom., 634.

1893.

RE JAGANNÁTH RÁMJI.

There is no doubt that the Court of Chancery has always had the power of appointing guardians to infants on a proper case being made out, whether such infants have property or not—see *Re Spence*,[1] *Re Fynn*[2]—though it is ordinarily not necessary for a Court to interfere in cases where there is no property—*Wellesley* v. *Duke of Beaufort*[3]. This power was possessed by the Supreme Court of Bombay under its charter, and was, amongst other powers, preserved to the High Court by the 24 and 25 Vict., c. 134, s. 9; and the Guardians and Wards Act VIII of 1890 also reserves the same power to the High Court. Consequently, I consider I have the power of appointing the petitioner guardian of the persons and estate of his two minor children, and I do so.

As to sanctioning the proposed mortgage, I understood the Acting Advocate General to say that he did not now ask for that; but under any circumstances I do not consider I could grant that sanction without fuller information as to the means of the petitioner and the nature and amount of the moveable property of the family than is afforded to me in the petition, for it may be (I do not say it is) the case that the petitioner is in receipt of a comparatively large income by way of salary, in addition to the income of the immoveable property, which he has been squandering, and thus the necessity of borrowing money for proper purposes has arisen. The Court of Chancery has always exercised a very rigid scrutiny over the dealings of a guardian with the property of his ward. In Daniell's Chancery Practice, chap. XXIX, sec. 5, part 3, it is said: "There is some difficulty in determining with precision the extent of the authority which is possessed by a guardian of the estate of an infant, who has been appointed by the Court of Chancery," and that doubt, except so far as it has been removed by English statutes, still seems to be in existence. The whole of part 3 is devoted to discussion of the powers of guardians in the management of the property of their wards, and from a perusal of it, it seems to me very doubtful whether a guardian appointed by the Court (except under some particular Act) has any authority to sell the property of his ward, unless of course the express sanction of the Court is given. The result of my granting this application, so far as I have granted it, will

(1) 2 Phil., 247 at p. 252. (2) 2 DeG. and Sm., 457 at p. 481.
(3) 2 Russ., 1 at pp. 20, 21.

be, as Farran, J., says in the above case, to leave the guardian to do on his own responsibility what he thinks right and proper under the circumstances of the case.

Attorneys for petitioner:—Messrs. *Mulji and Raghowji.*

APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice M. G. Ránade.

MAHA'DEV BALVANT AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS, *v.* LAKSHMAN BALVANT (ORIGINAL DEFENDANT), RESPONDENT.*

1894. *February* 1.

Hindu law—Partition—Suit by minors for partition—In what cases such a suit can lie—Malversation.

Under the Hindu law a minor co-parcener cannot sue for partition unless his interests are likely either (1) to be advanced thereby, or (2) protected from danger.

Where an adult co-parcener has taken up a hostile position to the interests of minor co-parceners and denied their rights, or sets up his own independent title, or where the minors live separately and the adult co-parcener does not support them, in all these cases it is in the interest of the minors that their share shall be partitioned and set apart.

The plaintiffs, who were minors, sued by their next friend for a partition of their ancestral property in the possession of their step-brother, the defendant. It appeared that soon after their father's death disputes and differences arose between plaintiffs' mother and their step-brother, which led to their separation in food and residence. The defendant managed the family property, but did not support the minors out of the rents and profits thereof. Hence the suit.

Held, that though no malversation was alleged or proved, the allegation, in the plaint, of disputes and separate residence and defendant's failure to support the plaintiffs were sufficient to justify the Court in permitting the plaintiffs to maintain the suit.

APPEAL from the decision of Ráo Bahádur Chunilál Máneklál, First Class Subordinate Judge of Poona, in Suit No. 382 of 1889.

Suit for a partition of joint family property.

One Balvant Karandikar died on 23rd April, 1886, possessed of considerable moveable as well as immoveable property. He left behind him a widow by name Jánkibái, two minor sons (the plaintiffs) by Jánkibái, and an adult son (the defendant) by his first wife.

Within a few months after Balvant's death, disputes arose in his family, in consequence of which Jánkibái and her two minor

*Appeal, No. 145 of 1892.