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SADASHIV
BAB
HABBU.

The petitioners before us are accused Nos. 3, 5, 6, 7, 8 and 15. But as the case is brought to our notice on this petition we make the order which would apply to all the accused; on whose persons cash, currency notes and ornaments were found, even though some of them may not have applied to this Court.

The order of forfeiture made by the Magistrate is set aside and the cash, currency notes and ornaments found on the persons of the accused as noted in the Panchnama to which the order of forfeiture relates are ordered to be returned to the respective persons from whom they were taken.

Order set aside.

R. R.

APPELLATE CIVIL.

Before Mr. Justice Shah, and Mr. Justice Crump.

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December 8.

LAXMINARAYAN SHESHGIRI HALDIPUR (ORIGINAL APPLICANT),
APPLICANT v. PARVATIBAI PARMESHWAR MUDBIRI AND ANOTHER
(ORIGINAL OPPONENTS), OPPONENTS.*

Guardians and Wards Act (VIII of 1890), sections 12, 43 and 47—Appointment of guardian of the person of a minor—Custody of minor with a relative pending appointment—Order passed by the Court regarding marriage of minor—Jurisdiction of the Court to pass the order.

A minor girl was left in the custody of her grandmother pending the appointment by the Court of a guardian of her person. In the meanwhile, a proposal of marriage of the girl was brought before the Court, which sanctioned it at first; but the sanction was later rescinded. A second proposal was similarly brought up and sanctioned by the Court. An application having been made to the High Court against the order:—

Held, that though the order as to the temporary custody of the girl was a proper order under section 12 of the Guardians and Wards Act, 1890, yet the

* Civil Extraordinary Application No. 269 of 1919.

order as to the marriage could not be brought under that section or section 43 of the Act and was made without jurisdiction.

THIS was an application against an order passed by V. M. Ferrers, District Judge of Kanara.

On the 14th December 1918, the opponent Parvatibai applied to the District Judge of Kanara to be appointed a guardian of the person of a minor girl named Sagunabai. The Court made an order, pending the disposal of the application, that Sagunabai should be left in the custody of her grandmother and she should give security in Rs. 1,000 that the girl would not be married without the previous permission of the Court. The applicant Laxminarayan also applied to the Court to be appointed a guardian of the person of the minor.

Whilst these applications were pending in the Court, a proposal to marry the girl was brought up in Court and was duly sanctioned. But the Court later rescinded the sanction on the 14th March 1919.

On the 2nd April 1919, a second proposal of marriage was sanctioned by the Court.

The applicant appealed to the High Court against the order; but the appeal was converted into an extraordinary civil application by permission of the High Court.

G. P. Murdeshwar, for the appellant:—This appeal was filed under section 47 of the Guardians and Wards Act on the footing that the orders made by the District Judge in Laxminarayan's applications were orders under section 43 of that Act. In the proceedings reference has been made to an *interim* guardian having been appointed but in fact the record does not contain any order relating to such appointment. When Parvatibai, the maternal grandmother of the minor, had applied to be appointed a guardian of the minor's

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person, the Court had previously made an order presumably under section 12 of the Act. It was wrongly assumed by the parties that by that order Parvatibai was in the position of an *interim* personal guardian. Parvatibai's application is still pending; so also Laxminarayan's. No guardian has yet been appointed and the orders relating to the marriage of the minor are without jurisdiction. As the orders do not fall under section 43, there can be no appeal. I ask leave to argue the appeal as an extraordinary application. The orders complained of are wholly without jurisdiction.

Nilkanth Atmaram, for the respondent:—Admittedly no appeal lies. The orders against which the appeal was preferred are not orders under section 43. The orders being without jurisdiction will not affect any party. In such a case, there is nothing to revise, because there is no *decision* as such in the matter. As no person is affected by the orders, there being no guardian, the matter may be left where it is now.

SHAH, J. :—In this case an application was made by Parvatibai to be appointed a guardian of the person of the minor Sagunabai 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, but there was no guardian of the person of the minor. On that very day the District Judge made an order under 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 appointing 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 certain facts having been brought to the notice of the District Judge, he suspended that sanction and warned all persons concerned not to proceed further 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.

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 under section 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 under section 12 of the Act.

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 under 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 be 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

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order which was made on the 14th of December 1918 was a proper order under section 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. Under section 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 under section 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.

In this view of the matter it is clear that no appeal lies to this Court under section 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.

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

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

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.

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

Orders discharged:

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