

CIVIL ORIGINAL

*Before Falshaw and Dulat JJ.*SARDAR SEWA SINGH GILL AND ANOTHER,—Petitioners.
*versus*HIS HIGHNESS MAHARAJA RAJBIR SINGH OF JIND
AT SANGRUR IN PEPSU,—Respondent.

Civil Original No. 1-D/1954

Letters Patent of the Lahore High Court read with High Courts (Punjab) Order, 1947—Guardians and Wards Act (VIII of 1890), Section 3—Petition for the appointment of a guardian of person and property of a minor—Petition whether can be filed directly in the Punjab High Court—Punjab High Court when can hear petition as a court of first instance.

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Held, that there is nothing in the Guardians and Wards Act which gives ordinary original jurisdiction to the High Court to deal with the petition filed under the Act and that there is nothing in the various Acts relating to the Chief Court or in the Letters Patent of the High Court which gives the Court ordinary original civil jurisdiction in these matters, and it must, therefore, be held that the present petition could only be entertained in this Court in the exercise of its extraordinary civil jurisdiction, i.e., the petition must first be instituted in the District Court where it lies and then if that Court is subordinate to this Court it can, if the Court so thinks fit, be withdrawn from that Court and decided in this Court.

Petition under section 3 of the Guardians and Wards Act praying that the petitioners be appointed the Guardians of the persons and properties of the three minor sons of the deceased Maharani, and as the petitioners are unable to give a comprehensive list of the properties left by the deceased Maharani and which now belong to the minors, an Inventory be ordered to be made and petitioners may be allowed to retain possession of the property pending the decision of the application.

C. K. DAPHTARY and PARTAP SINGH, for Petitioners.

TEK CHAND and D. K. MAHAJAN, for Respondent.

ORDER

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J.

FALSHAW, J. This petition under section 3 of the Guardians and Wards Act was filed by S. Sewa Singh Gill and his wife Sardarni Bhupindar Kaur praying for their appointment as guardians of persons and property of Satbir Singh-Gajbir Singh

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and Ravindarbir Singh, the three minor sons of Maharani Satindar Kaur, the wife of the Maharaja of Jind, who died at Dehra Dun on the 10th of February 1954. S. Sewa Singh Gill, petitioner, is stated to be the brother of the mother of the deceased Maharani Satindar Kaur, and the petitioners' claim to be appointed as guardians of the persons and property of the minors in preference to their *prima facie* natural guardian, i.e., their father the Maharaja, who has been made the respondent in the petition, is based on the allegations that the Maharani had long since been estranged from her husband, whose cruel treatment had hastened her death, and that the late Maharani had been brought up by S. Sewa Singh Gill, petitioner, and she and her children had frequently been living with him. As an additional ground relating to jurisdiction it was stated in the petition that the late Maharani had left a house at New Delhi, No. 1, Sikandra Road, and it was further alleged that by a will executed two days before she died on the 8th of February 1954, she had appointed the petitioners as guardians of the persons and property of her minor sons.

This petition was filed in the Circuit Court at Delhi on the 17th of February and was admitted on the 18th of February 1954, by Kapur, J., who also passed a number of orders in the days immediately following on applications filed by the petitioners relating to the safeguarding of the property of the minors.

In the written statement filed on behalf of the respondent Maharaja some preliminary objections relating to jurisdiction had been raised. The first of these is that this Court had no jurisdiction to entertain the petition direct as it has no ordinary original civil jurisdiction in guardianship matters. It is further objected that in any case the Court to

which the petition would lie is outside the territorial jurisdiction of this Court, it being contended that it would either lie at Dehra Dun in Uttar Pradesh, where all three minor boys were at the time of her death, or else at Sangrur which is the place of residence of the Maharaja respondent and where the boys have been residing with him since the death of their mother. The mere fact that the late Maharani owned a house at Delhi, though it might furnish some ground for the Court at Delhi, to have jurisdiction to entertain a petition for appointment as guardian of the property of the minors, would not give that court jurisdiction to entertain a petition for appointment as guardian of both persons and property.

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In support of his objection to the jurisdiction of this Court to entertain the petition the learned counsel for the respondent has attempted to argue all aspects of the matter, but it is clear that if the first of his objections succeeds, namely, that the petition could not be entertained directly by this Court, then this Court would have no jurisdiction to go further into the matter or to decide in which particular District Court the petition should be filed, which in any case involves disputed questions of fact on which there are not at present sufficient materials before this Court for it to come to a conclusion.

The petition is headed "An application of Sardar Sewa Singh Gill, and his wife Sardarni Bhupindar Kaur residing at 11, Delhi Gymkhana Club, New Delhi, under INHERENT POWERS OF THE HIGH COURT reserved under section 3 of the Gaurdians and Wards Act" and in paragraph 9

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of the petition there is a further explanation of its being filed in this Court in the following words:—

“As the appointment of a guardian in this case by the Court is also urgently required and in the peculiar circumstances of this case and because important questions are involved and it is necessary that the last wishes of the deceased Maharani be carried out, whether under the Guardians and Wards Act or under the inherent powers of this Hon’ble Court reserved by section 3 of the Act, this application is filed in this Hon’ble Court. It is a fit case for the exercise of the extraordinary jurisdiction of the High Court under its inherent powers.”

Section 3 of the Act reads—

“This Act shall be read subject to every enactment heretofore or hereafter passed relating to any Court of Wards by any competent legislature, authority or person in any State to which this Act extends; and nothing in this Act shall be construed to affect, or in any way derogate from, the jurisdiction or authority of any Court of Wards, or to take away any power possessed by any High Court.”

In arguing the case for this Court’s jurisdiction to entertain the petition direct the learned Solicitor-General for the petitioners has relied almost entirely on the words of Clause 12 of the Letters Patent, dated the 31st of March 1919, under which the High Court at Lahore was constituted and which still govern this Court under the provi-

sions of the High Courts (Punjab) Order of 1947, enacted at the time of the partition. The clause in question reads—

“12. And we do further ordain that the High Court of Judicature at Lahore shall have the like power and authority with respect to the persons and estates of infants, idiots and lunatics within the provinces of the Punjab and Delhi as that which was vested in the Chief Court of the Punjab, immediately before the publication of these presents”.

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It is argued that these words are virtually meaningless unless in fact some jurisdiction with respect to guardianship matters had been vested in the Chief Court to which the High Court succeeded. The learned counsel had, however, to confess that he had been unable to trace any enactment by which ordinary original civil jurisdiction had been conferred on the Chief Court in guardianship matters, and it is worthy of note that the petition itself in the passage quoted above referred to the Court's extraordinary jurisdiction.

It certainly must be conceded that no such jurisdiction is conferred by the Guardians and Wards Act (Act VIII of 1890) itself. In section 4(5) the 'Court' is defined as meaning the District Court having jurisdiction to entertain an application under this Act for an order appointing or declaring a person to be a guardian and in subsection (4) it is stated that the 'District Court' has the meaning assigned to that expression in the Code of Civil Procedure and includes a High Court in the exercise of its ordinary original civil jurisdiction. There is, however, no clause in the Letters Patent of the Lahore High Court expressly conferring any powers of the ordinary original civil jurisdiction such as occurs in the Letters Patent of the High Courts of Calcutta, Bombay, and Madras in which

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ordinary original civil jurisdiction is conferred on those Courts regarding the areas of the cities in which they are situated, and there is only clause 9

“9. And we do further ordain that the High Court of Judicature at Lahore, shall have power to remove, and to try and determine as a Court of Extraordinary original jurisdiction, any suit being or falling within the jurisdiction of any Court subject to its superintendence, when the said High Court may think proper to do so, either on the agreement of the parties to that effect or for purposes of justice, the reasons for so doing being recorded on the proceedings of the said High Court.”

On behalf of the respondent Mr. Tek Chand has endeavoured to show and in my opinion has succeeded in showing, that from the time when the Chief Court was constituted the Court has never had any ordinary original civil jurisdiction except such as has been conferred on it by particular enactments, which do not include the Guardians and Wards Act. He first drew our attention to Act XXIII of 1865, by which the Punjab Chief Court was first constituted. The only relevant section in this Act appears to be No. 13, which makes the Chief Court the ultimate Court of Appeal from all civil and criminal courts in the Punjab, and section 14 which is essentially the same as the present clause 9 regarding extraordinary original civil jurisdiction.

This Act was superseded the following year by Act IV of 1866 in which sections 13 and 14 of the earlier Act were repeated. Next comes Act XVII of 1877, which seems to be the first Punjab Courts Act. Nothing in this Act helps the petitioners. It is

to be noted that section 14 was essentially the same as section 13 of the earlier Act relating to the Chief Court except that the word 'withdraw' was used instead of the word 'remove'. Another Punjab Courts Act (Act XVIII) came into force in 1884. In this Act Chapter II deals with the functions of the Chief Court, but it says nothing about the ordinary civil jurisdiction and even does not contain any reference to the extraordinary civil jurisdiction of the Court. It is, however, noteworthy that section 29 of this Act empowers the Chief Court to authorize any District Judge to transfer to a Subordinate Judge or Munsif under its control certain proceedings which include proceedings under Act XL of 1858, for making better provision for the case of the persons and property of minors in the Presidency of Fort William in Bengal, which was apparently in force in the Punjab before the Guardians and Wards Act came into force. This Act was amended by Act XIII of 1888 and Act XXV of 1899, which do not contain anything relevant to the discussion. The later Punjab Courts Act, III of 1914 and VI of 1918, do not alter the situation.

Then comes the Guardians and Wards Act (Act No. VIII of 1890), which, as I have said, clearly makes a District Court, the Court to entertain applications for appointment as guardian of person or property of a minor except in those cases where the High Court specifically enjoys ordinary original civil jurisdiction, which for all practical purposes is confined to the High Courts of Calcutta, Bombay and Madras with regard to their cites. It is worthy of note that in the Letters Patent of those High Courts there is both clause (12) which empowers them to *receive*, try and determine suits arising within the local limits of their ordinary original civil jurisdiction and also clause (13) which

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is the same *mutatis mutandis* as clause 9 in the Letters Patent of the Lahore High Court, empowering them to *remove*, try and determine as a Court of extraordinary original civil jurisdiction suits arising outside the limits of their ordinary original civil jurisdiction. There is also a clause (17) which *mutatis mutandis* is identical with clause 12 in the Lahore Letters Patent relating to infants and lunatics. In the case of those Courts this clause certainly had considerable significance since the Courts which they succeeded had some original jurisdiction in the matter of minors owing to the fact that their powers had been based on the powers of the Courts in England including the Courts of Chancery.

As I have said the learned Solicitor-General based his argument almost entirely on the contention that the very fact that this clause appeared in the Letters Patent of the Lahore High Court necessarily implied that the Chief Court had been vested with some jurisdiction in the matter of minors and lunatics, and the fact that in the rules framed under the Government of India Act, the Letters Patent and the Acts of the Indian Legislature, rule 1 gives a list of what cases should ordinarily be decided by a Judge sitting alone and item (xviii) reads—

“(xviii) a proceeding of a Civil nature under a special Act of the Imperial or Local Legislature coming before the Court in the exercise of its original jurisdiction, e.g., under the Indian Trusts Act, 1882, the Indian Companies Act, 1913, the Inventions and Designs Act, the Indian Divorce Act, the Indian Succession Act or the Guardians and Wards Act.”

It is, however, to be noted that in this clause only the words 'original jurisdiction' are used, which obviously cover either ordinary or extraordinary original jurisdiction.

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It must, therefore, be concluded that there is nothing in the Guardians and Wards Act which gives ordinary original jurisdiction to the High Court to deal with the petition filed under the Act and that there is nothing in the various Acts relating to the Chief Court or in the Letters Patent of the High Court which gives the Court ordinary original civil jurisdiction in these matters, and it must, therefore, be held that the present petition could only be entertained in this Court in the exercise of its extraordinary civil jurisdiction, i.e., the petition must first be instituted in the District Court where it lies and then if that Court is subordinate to this Court it can, if the Court so thinks fit, be withdrawn from that Court and decided in this Court. It follows from this that the petition must be returned to the petitioners for them to file in the Court where it lies, and that all the orders which have already been passed by the learned Single Judge relating to matters arising out of the petition are without jurisdiction and must be set aside.

DULAT, J.—I agree.

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