

1896.  
*August 2.*

MANA PERERA, Petitioner, and PERERA APPUHAMY

*et al.*, Respondents.

In the Matter of ABRAHAM and ELIAS DE MEL, Minors.

*D. C., Kalutara, 51.*

*Civil Procedure Code, chapter XL.—Application for guardianship—Sale of minor's property by guardian—Powers of guardians.*

The Civil Procedure Code does not limit the powers conferred on guardians by the Roman-Dutch law.

A guardian may sell immovable property with the sanction of the Court.

Such sale should be by public auction with a reserve price put upon the property by Court, which should also give directions as to the manner of sale and of the investment of the proceeds thereof.

A mother, married in community and surviving her husband, has a preferential right to be appointed as a guardian of her children, but some other person should be named by the Court to act with her, so as to safeguard the interests of the children.

THE facts of the case appear in the judgment of the Chief Justice.

*Dornhorst*, for appellant, cited *D. C., Colombo, 392 (Vanderstraeten's Reports, p. 102)*, in the course of the argument.

2nd August, 1895. BONSER, C.J.—

1895.

BONSER, C.J.

This is an appeal from an order of Mr. de Livera, District Judge of Kalutara, refusing to appoint the petitioner curatrix over the property of her infant children. It appears that the petitioner and her late husband were married in community of property, and, therefore, the children and the appellant are jointly entitled to the estate. The estate, which is of very small value, consists in part of an undivided four-fifths share in some land situated at considerable distance from the home of the widow and the children, and it is therefore well-nigh impossible for the widow to look after the interest of herself and the children in the land. In these circumstances, she was of opinion that it would be better for all parties if the share were sold. Hence she applied to be appointed curatrix in order that she might sell the shares to certain persons whom she named, and whom she proposed that the sale should be effected by private contract. The District Judge refused the application on the ground that there is no provision in the Civil Procedure Code empowering a curator *ad litem* to sell property belonging to minors. But it is to be observed that the appellant did not apply to be appointed curator *ad litem*. She applied under chapter XL. of the Civil Procedure Code to be appointed guardian. Now, I do not understand that the Code anywhere limits, or is intended to limit, the powers of guardians.

It provides for their appointment and for the way in which they may be called upon to render accounts, and so on; therefore, when we wish to see what powers guardians have, we must have recourse to the law existing before the Code. I find it laid down in *Thompson's Institutes, vol. II., p. 60*, that a guardian may sell immovable property, but not without the leave of the Court. It is also stated by him (*p. 53*) that the surviving mother is to be preferred to anybody else as a guardian, but that she ought to have a colleague appointed with her. The reason for appointing a colleague is, I imagine, because it is the duty of the guardian to make an inventory of the children's property, or to demand it from the surviving parent. Therefore, in the present case, I think the mother should be appointed guardian together with some other person whom the District Judge may approve of; and that at the same time the District Judge should, if he is satisfied that the sale of the property will be of benefit to the children, make an order that the property be sold, and give directions as to the manner of sale and the investments of the proceeds, either by depositing in the Loan Board, or, if he thinks it will be more beneficial to the minors, allowing it to remain with the guardian on her giving

1895. good security in the shape of immovable property for its repayment. The sale should not be a sale by private contract, but should be a sale by public auction, and the Court should fix a reserve price so as to prevent the property from being sold for less than its value.

WITHERS, J.—

I fully concur in the order of the Chief Justice, and have only to add that, by section 64 of the Courts Ordinance, District Courts have jurisdiction over estates of minors. That being so, it is surely a proper exercise of jurisdiction to sanction the disposition of a minor's property when it is clearly to his benefit. See, for instance, the case reported in *Vanderstraaten, 1870, p. 102 (D. C., Colombo, 392)*, where the uncle of four minors was appointed guardian over them for the purpose of alienating their share in an estate which they owned with others, a purchaser having come forward who was prepared to give a fair price for the property.

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