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Deciphering the Legal Enigma: Unraveling Guardianship after the Demise of the Ward and its Ramifications for Legal Heirs in the Banking Realm

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ABSTRACT

The Guardians and Wards Act, 1890 lacks explicit provisions regarding the termination of guardianship upon the death of the ward. This loophole can be exploited by appointed guardians and representatives who may obtain legal guardian and heir documents, thereby gaining control over the deceased ward's property. Judicial interpretations and Law Commission Recommendations have called for including the death of the ward as a cause for the cessation of guardianship to prevent such exploitation. To protect the interests of legal heirs, a valid succession certificate is required for accessing bank accounts and lockers. The competent authority must follow necessary procedures to grant the certificate, ensuring only recognized legal heirs are eligible. Court cases emphasize the importance of establishing legal heir status to obtain a succession certificate and prevent potential exploitation of the deceased ward's property. Clarifying the termination of guardianship upon the ward's death and establishing legal heir status for succession certificates are necessary to safeguard the interests of the deceased's legal heirs.

Keywords: *Legal Guardian, Succession Certificate, Legal Heir, Summary Enquiry.*

I. INTRODUCTION

Section 41 of the **Guardians and the Wards Act, 1890**² enumerates the circumstances under which the termination of legal guardianship can occur. **Subsection 3**³ of this section stipulates that "*In the event of the guardian's powers ceasing for any reason, the Court may require the guardian or their representative, if the guardian is deceased, to surrender, as directed, any property under their possession or control that belongs to the ward, along with any accounts they possess or control related to the ward's past or present property.*"⁴ **Nowhere within the act is it explicitly stated that guardianship ends upon the death of the ward.** This provision

¹ Author is a student at National Law University, Jodhpur, India.

² Guardians and the Wards Act, 1890, § 41.

³ Guardians and the Wards Act, 1890, § 41(3).

⁴ *Ibid.*

creates susceptibility for exploitation by appointed legal guardians and representatives. **They can acquire a legal guardian certificate and, by producing additional documents, obtain legal heir documents.** Consequently, they can gain control over all of the ward's property that should have rightfully belonged to the legal heirs of the deceased ward, had guardianship been terminated. To mitigate this issue, various interpretations of this clause have been carried out by the judiciary. Furthermore, the Law Commission has recommended the inclusion of a clause clarifying that "for any cause" also encompasses the death of the ward.

To ensure the safeguarding of the interests of the deceased's legal heirs, a succession certificate is necessary for accessing bank lockers for banking purposes. The competent authority must follow the requisite procedures when granting the succession certificate to prevent unauthorized access to the ward's bank accounts. This measure is implemented to protect the legal heirs' stake in the deceased's assets.

II. DOES THE CESSATION OF GUARDIANSHIP OCCUR UNDER THE GUARDIANS AND THE WARDS ACT, 1890, IN THE EVENT OF THE DEMISE OF THE WARD?

The termination of guardianship is only valid in cases of death of guardian, when ward ceases to be a minor. Nowhere in the act, the cessation of termination of guardianship, is defined in case the ward dies. There exists some ambiguity as to whether sub-section (3) of Section 41 is applicable in cases where the minor ward themselves passes away. The **Law Commission Report on The Guardians and Wards Act, 1890 and Certain Provisions of The Hindu Minority and Guardianship Act, 1956 (1980)**⁵ also enunciated this point. It recommended to amend section 41(1)⁶ and 41(2)⁷ and observed that, even at present; the language of section 41(3)⁸ is wide enough to include the case of a guardian ceasing to be such by reason of the death of the ward.

(A) The interpretation of the term "for any cause"

In the case of *Nataraja Pillai v. Subbaraya Pillai*⁹, the scope of Section 41(3) was expanded. The court held that the phrase "**for any cause**" in Clause 3 of Section 41 of the Guardians and Wards Act encompassed situations where a minor ward had passed away, even though such a circumstance was not explicitly anticipated or addressed earlier in the section. Reliance can also

⁵ Law Commission Report, The Guardians and Wards Act, 1890 and certain provisions of the Hindu Minority and Guardianship Act, 1956 (1980), Recommendation no. 8.6.

⁶ Guardians and the Wards Act, 1890, § 41 (1).

⁷ Guardians and the Wards Act, 1890, § 41 (2).

⁸ Supra note 3.

⁹ *Nataraja Pillai v. Subbaraya Pillai*, (1918) M.W.N. 410.

be placed on ***Kullappa Mudaliar v. Palaniappa Mudaliar and Ors.***¹⁰. The Court held that, after the death of a ward, the person who was appointed his guardian does not continue to be his guardian, and the language of Section 41, Sub-section (3) is wide enough to be so read as to include the case of a guardian ceasing to be such by reason of the death of the ward. This case was reiterated in ***Umed Ram and Ors. v. Oevku***¹¹.

(B) Extending Section 41: The Significance of Law Commission Report on Guardianship After the Ward's Death

The Law Commission Report (1980) recommended extending the applicability of section 41 in case of death of the ward. **Recommendation no. 8.9**¹² stated that amendment is required in section 41(3). Transferring the property to the heir would initially appear to be a practical solution. However, there is no specific provision allowing such a transfer. The absence of authority to direct the delivery of the deceased ward's property to an heir could result in severe hardships in certain cases. To this, they recommended that if the ward dies, the court may instruct the legal representative or guardian to deliver the mentioned property or accounts under sub-section (3) to the person determined by the Court, after a summary inquiry, to be legally entitled to it due to the ward's death¹³.

The report findings were that justice requires that the Court should be given a wide discretion in the matter. To avoid needless controversy, the law should be amended to recognise by express enumeration the powers of the Court in this respect so as to obviate the doubt expressed in some decisions¹⁴. They further recommended that in case the ward dies, the court may direct the legal representative or the guardian *to deliver the property or accounts referred to in sub-section (3) to such person as the Court may, after a summary inquiry, determine to be the person legally entitled thereto by reason of the death of the ward.*

Shadi Lal C.J. argued that if the termination of guardianship is due to the death of the ward, the court should not be considered as having fulfilled its duty.¹⁵ He questioned why the court would lose jurisdiction in such cases, stating that the court that appointed the guardian and is familiar with their management of the property is better positioned to handle disputes regarding the

¹⁰ *Kullappa Mudaliar v. Palaniappa Mudaliar and Ors.* [AIR 1950 Mad 574].

¹¹ *Umed Ram and Ors. v. Oevku* [ILR 1970 Delhi 295].

¹² Law Commission Report, The Guardians and Wards Act, 1890 and certain provisions of the Hindu Minority and Guardianship Act, 1956, (1980); Recommendation no. 8.9.

¹³ Law Commission Report, The Guardians and Wards Act, 1890 and certain provisions of the Hindu Minority and Guardianship Act, 1956, (1980); Recommendation no. 8.11.

¹⁴ *Tulasidas v. Madhavdas*, AIR 1926 Mad 148 (149) (Srinivas Ayyangar, J.).

¹⁵ Law Commission Report, The Guardians and Wards Act, 1890 and certain provisions of the Hindu Minority and Guardianship Act, 1956, (1980).

property. He emphasized that allowing the court to settle matters related to the nature, extent, and the guardian's responsibility towards the property provides an effective, affordable, and efficient remedy. Therefore, he saw no reason to deprive the court of this jurisdiction when the guardianship ends due to the death of the ward¹⁶. This precedent was subsequently upheld in the case of *Sankar Prasad Khan v. Ushabala Dasi*¹⁷, wherein it was determined that similar to the termination of guardianship upon the death of the guardian, the death of the ward also brings an end to the guardianship, even though it is not explicitly mentioned in Sub-section (3).

(C) Securing Valid Succession Certificates: The Importance of Falling under the Legal Heirs Category to Prevent Unjust Enrichment of Legal Guardians

In the case of *Pooja Deepak Patil v. Savita Vasant Rao Patil*¹⁸, the court ruled that a succession certificate can only be granted to an individual who is recognized as the lawful heir of the deceased. As the petitioner failed to establish her status as the legal heir, the court rejected her claim for a succession certificate.

Similarly, in the case of *Rampali v. State Govt of NCT (Delhi)*¹⁹, the Hon'ble High Court of Delhi observed that the appellant, who was the sister of the deceased, filed an appeal seeking to revoke the succession certificate granted to the daughter and husband of the deceased. The appellant argued that since the deceased had not lived with the defendants for over 35 years and had named the appellant as the nominee according to official government records, she should inherit the property. However, the court clarified that nomination does not hold the same legal weight as a Will. In the absence of a valid will, only the legal heirs (as defined by the Hindu Succession Act) are entitled to inherit the deceased's property. Consequently, the appeal was dismissed.

The mentioned case laws highlight the importance of establishing the status of a legal heir in order to obtain a succession certificate. This requirement is in place to prevent potential exploitation of the deceased ward's property by legal guardians in the event of the ward's death.

(D) when can a succession certificate be granted?

The court observed in *P.Meenambal v. R.Rajeswari and others*²⁰ that if a prima facie case is shown, a succession certificate can be given to that person who can collect the asset. Such a certificate is only for the purpose of collection and while issuing the certificate title is not

¹⁶ Shiv Charan Lal v. Bhawani Shankar, AIR 1928 Lah 495 (496).

¹⁷ Sankar Prasad Khan v. Ushabala Dasi, AIR 1978 Cal 525.

¹⁸ Pooja Deepak Patil v. Savita Vasant Rao Patil [Miscellaneous Petition No.33 of 2017 in Testamentary Petition No.294 of 2012, Bombay High Court].

¹⁹ Rampali v. State Govt of NCT (Delhi) [FAO No. 184/2017, Delhi High Court].

²⁰ P.Meenambal v. R.Rajeswari and others, (1997 (2) MLJ 510).

decided.

The Hon'ble High Court of Delhi in the case of *Rampali v.State Govt of NCT(Delhi)*²¹ where appellant was the sister of the deceased who had filed an appeal to revoke the succession certificate granted to the daughter and husband of the deceased on the ground that the deceased had not been residing with the defendant for over 35 years and had named the appellant as the nominee as per official government records. The court held that nomination is not a Will in law and in the absence of any will, only legal heirs (as per the Hindu Succession Act) shall be entitled to inherit the property of the deceased. Hence, the appeal was dismissed.

(E) summary enquiry is necessary while issuing succession certificate to safeguard the interests of the legal heirs

According to the ruling in *Madhvi Amma Bhawani Amma & Ors. v. Kunjikutty Pillai Meenakshi*²², proceedings for the grant of a succession certificate are meant to be conducted in a summary manner. The court's role is to determine the person who, on prima facie examination, appears to have the strongest claim to the certificate, without delving into complex and intricate questions of law or fact. The objective is to facilitate the provision of information to the public and invite objections from all surviving legal heirs in cases of succession and probate. It is the petitioner's responsibility to ensure that the court is informed about the presence of all legal heirs by either including them as parties or filing a separate memorandum of parties.

In the case of *Surjit Kaur Gill v. State & Ors.*²³, it was held that if a legal heir is not included as a party in the proceedings, they can challenge the grant of a succession certificate or probate on the grounds that they were alive, available, and their objections were not heard due to their exclusion. This highlights the importance of including all relevant legal heirs and giving them an opportunity to present their claims and objections during the proceedings.

(F) Grant Of Succession Certificate Does Not Create An Absolute Right To Debt

The Indian Succession Act of 1925 provides a definition for a succession certificate as a certificate granted by a court to verify the rightful heirs of a deceased individual. This certificate serves to establish the authenticity of the heirs and grant them the authority to inherit the deceased person's debts, securities, and other assets. The scope of a succession certificate is specifically limited to debts and securities, such as provident funds, insurance proceeds, bank deposits, shares, and other securities owned by the deceased, whether by the central government

²¹ Rampali v.State Govt of NCT(Delhi), 2017 SCC OnLine Del 7999.

²² Madhvi Amma Bhawani Amma & Ors. v. Kunjikutty Pillai Meenakshi [AIR 2000 SC 2301].

²³ Surjit Kaur Gill v. State & Ors., [CM (M) No. 667 of 2008].

or the state government. Its primary objective is to streamline the process of debt collection upon succession and offer protection to individuals making debt payments to the representatives of the deceased individual. Strictly speaking, a succession certificate does not determine the ownership rights of the deceased or even the holder of the certificate in relation to the debts and securities mentioned in it. Its primary purpose is to provide protection to the parties who are making payments towards the debts and securities.

In *Chattisgarh & Ors v. Dhirjo Kumar Sengar*²⁴ the court settled the position regarding the grant of succession certificate and whether it creates any right in favour of the certificate holder. The Court held that that succession certificate issued under the Indian Succession Act, 1925²⁵ does not confer any right or status on the certificate holder, rather he only becomes trustee to distribute the amounts, payable to the deceased, to his legal heirs or legal representatives. In the case of *Smt. Sarbati Devi & Another-Vs-Smt. Usha Devi*²⁶ submits that the role of a nominee is to receive the benefits accrued on the demise of the concerned person, but he/she owes the obligation to distribute the benefits among the legal heirs of the deceased according to the relevant law of succession. Citing another decision in the case of *Vishin N.Khanchandani & Another-Vs-Vidya Lachmandas Khanchandani & Another*²⁷ learned counsel submits that the nominee is entitled to receive the dues under the saving certificates on behalf of the persons entitled to receive the amount under the relevant law of succession.

III. CONCLUSION

The issue of the cessation of guardianship under the Guardians and the Wards Act, 1890, when the ward dies is not explicitly addressed in the Act itself. However, through judicial interpretation, it has been established that the termination of guardianship is valid in cases where the ward ceases to be a minor or in the event of the ward's death. The courts have expanded the scope of the relevant sections to encompass the situation where a minor ward passes away. It is important to note that the court may require the guardian or their representative to surrender any property belonging to the ward in such cases. Additionally, the requirement of falling under the legal heirs category to claim a valid succession certificate has been emphasized in various judgments. The courts have emphasized that only recognized legal heirs are entitled to obtain a succession certificate, and establishing one's status as a legal heir is crucial for obtaining such a certificate. Furthermore, the grant of a succession certificate does not confer absolute rights

²⁴ *Chattisgarh & Ors v. Dhirjo Kumar Sengar* (2009) 13 SCC 600.

²⁵ Indian Succession Act, 1925, § 372.

²⁶ *Smt. Sarbati Devi & Another v. Smt. Usha Devi* (1984) 1 SCC 424.

²⁷ *Vishin N.Khanchandani & Another v. Vidya Lachmandas Khanchandani & Another* (2000) 6 SCC 724.

to the debts and securities of the deceased. Instead, the certificate holder becomes a trustee responsible for distributing the amounts to the legal heirs or representatives according to the relevant laws of succession.

the interpretation of the Guardians and the Wards Act, 1890, regarding the cessation of guardianship when the ward dies has been clarified through judicial decisions. While the Act itself does not explicitly define the termination of guardianship in such circumstances, courts have expanded the scope of relevant provisions. It has been established that the phrase "for any cause" in Section 41(3) of the Act includes the situation where a minor ward passes away, even though it may not have been specifically anticipated.

The courts have also emphasized the significance of establishing oneself as a legal heir to claim a valid succession certificate. The requirement to fall under the legal heirs category ensures that the rightful individuals inherit the assets of the deceased. Various cases have highlighted that only recognized legal heirs are entitled to obtain a succession certificate, and failing to establish legal heir's status can result in the rejection of a claim for such a certificate.

Furthermore, it is important to note that the grant of a succession certificate does not confer absolute rights to the debts and securities of the deceased. Instead, the certificate holder acts as a trustee, responsible for distributing the amounts to the legal heirs or representatives in accordance with the relevant laws of succession. This ensures that the benefits accrued on the demise of the deceased are distributed among the legal heirs as per the applicable laws.

Overall, the judicial interpretations provide clarity on the issues surrounding the cessation of guardianship when the ward dies and the necessity of establishing legal heir status for claiming a valid succession certificate. These interpretations serve to protect the interests of rightful heirs and ensure a fair distribution of the deceased's assets in accordance with the law.
