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IN THE DISTRICT COURT OF COLOMBO

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In the matter of the estate of Hameeda also known as
Sithy Zubeida (minor).

A. H. M. ABDUL CADER of No. 10, Elliot Place, Borella... *Petitioner*

No. 4518/Guardian

vs.

UNIVERSITY OF LONDON

21 JUL 1953

INSTITUTE OF ADVANCED
STUDIES

- 1. A. R. A. RAZIK,
- 2. AMEENA UMMA, wife of A. R. A. Razik both of Fareed
Place, Bambalapitiya,
- 3. ALAVEE MAZAHIMA, wife of M. S. M. Shafeek of
No. 10, Elliot Place, Borella..... *Respondents*

On this 29th day of May, 1947.

The petition of the 1st and 2nd respondents abovenamed appearing by Don Hector Nicholas Jayamaha and Senerath Lakshman Moonesinghe their proctors practising in partnership under the name style and firm of "Moonesinghe & Jayamaha" states as follows :—

1. The minor abovenamed is the grand-daughter of the 1st and 2nd respondents being a daughter of their only child the late Sithy Hajara who died on 17th October, 1932.

2. Since her birth the abovenamed minor Hameeda *alias* Sithy Zubeida has been living with the 1st and 2nd respondents and they have brought her up and maintained and educated her.

3. The second respondent as maternal grandmother is the natural guardian of the said minor and is entitled to be the guardian of the person as well as guardian *ad litem* over the said minor and is also entitled to the management and custody of her property if any.

4. In an *Habeas Corpus* application No. 808 the petitioner attempted to obtain the custody of the said minor but the custody of the said minor was given over to the 1st and 2nd respondents and the petitioner withdrew his application thereby confirming the rights of the 2nd respondent as natural guardian of the person and property of the said minor.

5. Save the jewellery deposited in Testamentary Case No. 6980 of this Court the minor is at present not possessed of any property that should form the subject of curator proceedings. Even the said jewellery was saved for the minor by the 1st and 2nd respondents by paying the debts due from the estate and waiving certain costs due to the 2nd respondent from the estate and thereby preventing the sale of the jewellery by the Public Trustee. The petitioner did not contribute a cent for the payment of the debts due from the estate and was only anxious to sell the jewellery and draw his share of the proceeds of sale. In fact the petitioner has initiated these proceedings merely to harass and annoy the

1st and 2nd respondents and further his ends in prosecuting the cases in respect of the property which he alleges belonged to the Estate of the 1st and 2nd respondents' deceased daughter and not in any way primarily to benefit or safeguard the interests of the minor.

6. Since the death of the 1st and 2nd respondents' daughter, the father of the minor the petitioner has married three times. His second wife divorced him in 1937 on the ground of adultery, drunkenness and cruelty and ill-treatment on the part of the petitioner. The petitioner himself admitted the said charges in the said divorce proceedings. His third wife a Miss Gillard the 1st and 2nd respondents understand has also left him and for the fourth time he married this year another lady. Under 10 the circumstances neither the petitioner nor any one under his control or influence is fit or proper to have control of the property and guardian of the person or guardian *ad litem* of the minor. Further the petitioner along with the 3rd respondent and the said Miss Gillard were running a Hotel cum Guest House business in Pondichchery during the years of the war and were away from Ceylon during the said period and returned to Ceylon only last year and there is every likelihood of the petitioner and the 3rd respondent returning to Pondichchery once again.

7. The 3rd respondent whom the petitioner proposes to be appointed guardian of the person of the minor is herself a minor being under 21 20 years of age and is living with the petitioner and under his control and influence and is not in any way fit to be appointed guardian of the person or guardian *ad litem* of the minor.

8. Further as administrator is Case No. 6980 Testamentary of this Court the interests of the petitioner are adverse to those of the said minor and in case a curator has to be appointed over the minor's property, the petitioner is not entitled to be appointed curator. In the said Case No. 6980 one Abdul Hameed Mohamed Fuard has been appointed guardian *ad litem* of the minor and if a curator has to be appointed over the minor's 30 property the 1st and 2nd respondents submit that the said Abdul Hameed Mohamed Fuard is entitled to be appointed curator of the minor's property and he is a fit and proper person to be so appointed curator and he has no interest adverse to that of the said minor.

9. Until the proceedings in the said Case No. 6980 are finally closed and the property belonging to the estate are definitely ascertained no useful purpose will be served in initiating curator proceedings for property alleged to belong to the minor through her late mother.

10. The petitioner applied for letters of administration in Case No. 6980 of this Court in respect of the estate of the late Sithy Hajara the mother of the minor in 1934 and at that date he disclosed as belonging to 40 the estate of the deceased only (a) premises No. 423 Wellawatta and (b) premises Nos. 187 and 187A Norris Road and Nos. 1, 3, 5, 79 and 11 Second Cross Street and (c) the articles of jewellery now deposited in Court in the said case. Till 1938 the petitioner failed to obtain letters of administration to the said estate and in 1938 the estate was handed to the Public Trustee. The Public Trustee having obtained Letters of Administration

to the said estate, at the instance of the petitioner and with his active collaboration and assistance filed two cases against the 2nd respondent to wit : Case No. 1542/L in respect of premises No. 423 Wellawatta and Case No. 1543/L in respect of premises Nos. 187, 187A Norris Road and 1, 3, 5, 7, 9 and 11 Second Cross Street.

11. The Public Trustee lost the said Case No. 1542/L in this Court and in the appeal and the estate had to pay costs to the 2nd respondent. The Public Trustee thereafter did not want to prosecute Case No. 1543/L as he had been advised that Case No. 1543/L will also fail. The only
 10 asset the Public Trustee had to distribute in the said estate was the articles of jewellery and he wanted to close his administration. But as there were no assets to pay off the debt due from the estate the Public Trustee had to sell the jewellery. The amount due to the Public Trustee for Testamentary expenses was paid by the 1st respondent and the 2nd respondent waived the costs due in Case No. 1542/L as the Public Trustee was to close the estate and the jewellery were to be given to the minor and her sister. Thus the Public Trustee was able to close the estate without the sale of the jewellery. Thereafter when the Public Trustee applied to close the estate the petitioner asked that the Letters issued to
 20 the Public Trustee be recalled and he be appointed administrator. At the inquiry into the application for the recall of the letters of administration from the Public Trustee the only ground urged by the petitioner was that the Public Trustee refuses to continue Case No. 1543/L:

12. The Supreme Court by its order dated 20th December, 1946, allowed letters of administration *de bonis non* to be issued to the petitioner or some other person in the said Case No. 6980 to enable the petitioner to continue Case No. 1543/L and certain conditions were imposed on the petitioner and the petitioner was ordered to give security to safeguard the estate against any actions the petitioner may file as such administrator.
 30 Subject to the said conditions and variations indicated in the Supreme Court judgment the order of the District Judge to close the estate was to stand. But the petitioner has now in violation of the Supreme Court order taken steps in the said Case No. 1543/L as well as the said Case No. 6980 and is seeking to recover property alleged to belong to the said estate without complying with the conditions imposed on him by the Supreme Court and which will ultimately involve the said estate in costs and damages. The 1st and 2nd respondents have now filed papers in the said Case No. 6980 asking that the letters of administration issued to the petitioner be recalled or that he be compelled to comply with the Supreme
 40 Court order and give adequate security to safeguard the estate against any loss or damage. The 2nd respondent has already filed answer in the said Case No. 1543/L disputing the claim that the lands which form the subject of the said action belong to the estate of the late Sithy Hajara.

13. Except the jewellery deposited in the said Case No. 6980 the other property which the petitioner alleges in the 2nd paragraph of his petition belong to the minor does not belong to the minor and until the title to the said property is established by the petitioner in Case No. 1543/L

and in any other case and until the administration of the estate of the said Sithy Hajara in the said Case No. 6980 is brought to a finality it will be to the detriment of the minor to proceed on with this curator case and to appoint a curator over the minor's property.

14. It is to further the ends of the petitioner that he has brought this action and not for the benefit or advantage of the minor.

15. The minor herself who has attained years of discretion does not want the petitioner appointed curator of the property and the 3rd respondent her guardian of her person and she wishes curator proceedings to be initiated after the decision of Case No. 1543/L and the Testamentary 10 proceedings in Case No. 6980 are brought to a finality.

Wherefore the 1st and 2nd respondents pray that Court be pleased—

- (a) To dismiss the present application of the petitioner (A. H. M. Abdul Cader) or in the alternative,
- (b) If an appointment of "Curator and guardian" of the person and guardian *ad litem* is necessary that Abdul Hameed Mohamed Fuard be appointed curator of the minor's property and the 2nd respondent be appointed guardian of the person and guardian *ad litem* of the minor ;
- (c) For costs and for such other and further relief as to this Court 20 shall seem meet.

(Sgd.) MOONESINGHE & JAYAMAHA,
Proctors for 1st and 2nd Respondents.

IN THE DISTRICT COURT OF COLOMBO

In the matter of the estate of Hameeda also known as Sithy Zubeida, minor.

A. H. M. ABDUL CADER of No. 10, Elliot Road, Borella.....*Petitioner*
No. 4518/G. *vs.*

1. A. R. A. RAZIK,
2. AMEENA UMMA, wife of A. R. A. Razik both of Fareed 30
Place, Bambalapitiya,
3. ALAVEE MAZAHIMA, wife of M. S. M. Shafeek of
No. 10, Elliot Place, Borella..... *Respondents*

We, Abdul Rahman Abdul Razik and Ameena Abdul Razik husband and wife both of Fareed Place, Bambalapitiya, do solemnly sincerely and truly declare and affirm as follows :—

1. We are the 1st and 2nd respondents abovenamed.

2. The minor abovenamed is our grand-daughter being a daughter of our only child the late Sithy Hajara who died on 17th October, 1932.

3. Since her birth the abovenamed minor Hameeda *alias* Sithy Zubeida has been living with us and we have brought her up and maintained and educated her.

4. The second named of us as maternal grandmother is the natural guardian of the said minor and is entitled to be the guardian of the person as well as guardian *ad litem* over the said minor and is also entitled to the management and custody of her property if any.

10 5. In an *Habeas Corpus* application No. 808 the petitioner attempted to obtain the custody of the said minor but the custody of the said minor was given over to us and the petitioner withdrew his application thereby confirming the rights of the second named of us as natural guardian of the person and property of the said minor.

6. Save the jewellery deposited in Testamentary Case No. 6980 of this Court the minor is at present not possessed of any property that should form the subject of curator proceedings. Even the said jewellery was saved for the minor by us by paying the debts due from the estate and thereby preventing the sale of the jewellery by the Public Trustee.
20 The petitioner did not contribute a cent for the payment of the debts due from the estate and was only anxious to sell the jewellery and draw his share of the proceeds of sale. In fact the petitioner has initiated these proceedings merely to harass and annoy us and further his end in prosecuting the cases in respect of the property which he alleges belong to the estate of our deceased daughter and not in any way primarily to benefit or safeguard the interests of the minor.

7. Since the death of our daughter the father of the minor the petitioner has married three times. His second wife divorced him in 1937 on the ground of adultery, drunkenness and cruelty and ill-treatment on
30 the part of the petitioner. The petitioner himself admitted the said charges in the said divorce proceedings. His third wife a Miss Gillard we understand has also left him and for the fourth time he married this year another lady. Under the circumstances neither the petitioner nor any one under his control or influence is fit or proper to have control of the property and guardian of the person or guardian *ad litem* of the minor. Further the petitioner along with the 3rd respondent and the said Miss Gillard were running a Hotel cum Guest House business in Pondichchery during the years of the war and were away from Ceylon during the said period and returned to Ceylon only last year and there is every likelihood
40 of the petitioner and the 3rd respondent returning to Pondichchery once again.

8. The 3rd respondent whom the petitioner proposes to be appointed guardian of the person of the minor is herself a minor being under 21 years of age and is living with the petitioner and under his control and influence and is not in any way fit to be appointed guardian of the person or guardian *ad litem* of the minor.

9. Further as administrator in Case No. 6980 Testamentary of this Court the interests of the petitioner are adverse to those of the said minor and in case a curator has to be appointed over the minor's property, the petitioner is not entitled to be appointed curator. In the said Case No. 6980 one Abdul Hameed Mohamed Fuard has been appointed guardian *ad litem* of the minor and if a curator has to be appointed over the minor's property we submit that the said Abdul Hameed Mohamed Fuard is entitled to be appointed curator of the minor's property and he is a fit and proper person to be so appointed curator and he has no interest adverse to that of the said minor. 10

10. Until the proceedings in the said Case No. 6980 are finally closed and the property belonging to the estate are definitely ascertained no useful purpose will be served in initiating curator proceedings for property alleged to belong to the minor through her late mother.

11. The petitioner applied for letters of administration in Case No. 6980 of this Court in respect of the estate of the late Sithy Hajara the mother of the minor in 1934 and at that date he disclosed as belonging to the estate of the deceased only (a) premises at No. 423 Wellawatta and (b) premises Nos. 187 and 187A Norris Road and Nos. 1, 3, 5, 7, 9 and 11 Second Cross Street and (c) the articles of jewellery now deposited in Court 20 in the said Case. Till 1938 the petitioner failed to obtain letters of administration to the said estate and in 1938 the estate was handed to the Public Trustee. The Public Trustee having obtained letters of administration to the said estate, at the instance of the petitioner and with his active collaboration and assistance filed two cases against the second named of us to wit : Case No. 1542/L in respect of premises No. 423 Wellawatta and Case No. 1532/L in respect of premises Nos. 187, 187A Norris Road and 1, 3, 5, 7, 9 and 11 Second Cross Street.

12. The Public Trustee lost the said Case No. 1542/L in this Court and in the appeal and the estate had to pay costs to the second named of us. The Public Trustee thereafter did not want to prosecute Case No. 1543/L as he had been advised that Case No. 1543/L will also fail. The only asset the Public Trustee had to distribute in the said estate was the articles of jewellery and he wanted to close his administration. But as there were no assets to pay off the debt due from the estate the Public Trustee had to sell the jewellery. The amount due to the Public Trustee for Testamentary expenses was paid by the first named of us and the second named of us waived the costs due in Case No. 1542/L as the Public Trustee was to close the estate and the jewellery were to be given to the minor and her sister. Thus the Public Trustee was able to close the estate 40 without the sale of the jewellery. Thereafter when the Public Trustee applied to close the estate the petitioner asked that the letters issued to the Public Trustee be recalled and he be appointed administrator. At the inquiry into the application for the recall of the letters of administration from the Public Trustee the only ground urged by the petitioner that " the Public Trustee refuses to continue Case No. 1543/L ".

13. The Supreme Court by its order dated 20th December, 1946, allowed letters of administration *de bonis non* to be issued to the petitioner or some other person in the said Case No. 6980 to enable petitioner to continue Case No. 1543/L and certain conditions were imposed on the petitioner and the petitioner was ordered to give security to safeguard the estate against any actions the petitioner may file as such administrator. Subject to the said conditions and variations indicated in the Supreme Court judgment the order of the District Judge to close the estate was to stand. But the petitioner has now in violation of the Supreme Court
 10 order taken steps in the said Case No. 1543/L as well as the said Case No. 6980 and is seeking to recover property alleged to belong to the said estate without complying with the conditions imposed on him by the Supreme Court and which will ultimately involve the said estate in costs and damages. We have now filed papers in the said Case No. 6980 asking that the Letters of Administration issued to the petitioner be recalled or that he be compelled to comply with the Supreme Court order and give adequate security to safeguard the estate against any loss or damage. The second named of us has already filed answer in the said Case No. 1543/L
 20 disputing the claim that the lands which form the subject of the said action belong to the estate of the late Sithy Hajara.

14. Except the jewellery deposited in the said Case No. 6980 the other property which the petitioner alleges in the 2nd paragraph of his petition belong to the minor does not belong to the minor and until the title to the said property is established by the petitioner in Case No. 1543/L and in any other case and until the administration of the estate of the said Sithy Hajara in the said Case No. 6980 is brought to a finality it will be to the detriment of the minor to proceed on with this curator case and to appoint a curator over the minor's property.

15. It is to further the ends of the petitioner that he has brought
 30 this action and not for the benefit or advantage of the minor.

15. The minor herself who has attained years of discretion does not want the petitioner appointed curator of her property and the 3rd respondent the guardian of her person and she wishes curator proceedings to be initiated after the decision of Case No. 1543/L and the Testamentary proceedings in Case No. 6980 are brought to a finality.

Signed and affirmed to at Colombo
 on this 28th day of May, 1947

(Sgd.) AMEENA A. RAZIK
 (Sgd.) A. R. A. RAZIK

Before me :

(Sgd.) P. B. BULANKULAME,
 J. P.

IN THE DISTRICT COURT OF COLOMBO

In the matter of the estate of Hameeda also known as Sithy Zubeida, minor.

A. H. M. ABDUL CADER of No. 10, Elliot Road, Borella.....*Petitioner*

No. 4512/G.

vs.

1. A. R. A. RAZIK,
2. AMEENA UMMA, wife of A. R. A. Razik both of Fareed Place, Bambalapitiya,
3. ALAVEE MAZAHIMA, wife of M. S. M. Shafeek of Elliot Road, Borella.....*Respondents.* 10

I, Sithy Zubeida Rasheed Bin Hassan of Fareed Place, Bambalapitiya, not being a Christian, do solemnly sincerely and truly declare and affirm as follows :—

1. I am the “ minor ” abovenamed and wife of Rasheed Bin Hassan.
2. I am over 15 years of age and was born at the residence of my grand-parents.
3. My mother died about two months after my birth, and I have all throughout been living with my grand-parents who brought me up maintained and educated me.
4. The petitioner abovenamed did not at any time maintain or 20 educate me. He did not at any time visit me or look after my interests.
5. For a considerable period the petitioner was living at Pondichery in India with one Miss Gillard.
6. The petitioner is not a fit and proper person to be my curator or guardian over my property or properties belonging to me. The 3rd respondent, my sister, who is a nominee of the petitioner is not a fit and proper person to be my guardian and I do not consent to her being appointed guardian of my person.
7. I am now married to Rasheed Bin Hassan who is a member of the Colombo Municipal Council and who is related to me and has been 30 known to me since my childhood, and I am living very happily with him.
8. The 1st and 2nd respondents in or about last month requested me to visit the petitioner, but I refused to comply with the said request.
10. I am now a major having been married. I can look after my properties.
11. If, however, the Court is of the view that a curator is necessary I pray that my husband be appointed curator of my property and guardian of my person.

Signed and affirmed to at Colombo
this 22nd day of January, 1948.

(Sgd.) ZUBEIDA RASHEED. 40

Before me :

(Sgd.) P. B. BULANKULAME,
J. P.