BLOGS

Testamentary Guardians – Hindu Minority and Guardianship Act 1956

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Section 9 of the of the Hindu Minority and Guardianship Act 1956 (hereinafter referred as HMGA) deals with the concept of Testamentary Guardian under Hindu Law. Testamentary guardian is the guardian appointed by the way of will.

As per Section9 (1) of HMGA, Hindu Father (Natural Guardian of the minor child as per Section 6 of HMGA) can appoint a guardian by will for person and separate property. Being the Natural Guardian, he is entitled to exercise the power unless he has become disentitled to act as the Natural guardian of the minor by operation of proviso (2) of Section 6 or any other provision of law which may disentitle him to act as a Natural Guardian.



Upon reading Section 9(2) and Section 9(3) of the same Act together, If father in his will makes X as the guardian but father passed away before the mother, then X will not be the guardian and Mother will be the guardian as Natural Guardian always surpasses Testamentary Guardian.

Now, if Mother dies without will, the father’s will will revive and X will be the guardian. But if the mother has made Y as the guardian in her will, then Mother’s will will prevail and Y is the guardian.

But as per Section 9(4)of the Act, in the case of illegitimate child, only mother is entitled to make a will for minor illegitimate child.

Section 9(5) of HMGA gives the Testamentary Guardian all the rights of a Natural Guardian subject to various restrictions like on disposal of property. Section 9(6) states that the rights of Testamentary guardian ceases on the marriage of the girl.

Can a Minor be a Guardian?

As per Section 10 read with section 6(2) of HMGA, a minor shall be incompetent to act as a guardian of the property of any minor. A minor can be a guardian only for the person (in exceptional circumstances) and never for the property.

De facto Guardian

Section 11 of HMGA deals with the De facto Guardian. A de facto Guardian is referred to such a person who takes upon himself the general management of the minor. The expression de facto guardian aptly describes relations and friends who are interested in a minor who has no legal guardian and who out of love and affection for him assume the management of his estate. In case of ***Rajlakshmi v. Ramchandaran (1967) (Mad HC)*** , it has been held that an alienation made by a de facto guardian after the commencement of the Act would be void ab initio and alienee will not acquire any title to the property, nor can the minor after coming into force of this Act, can ratify any such transaction.

If such guardian has disposed off the property of the minor, then the remedy would be to institute a declaratory suit to set aside such a sale. Such a suit would have to be instituted within the period of 3 years of minor attaining majority.

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