

to give such directions as it may deem necessary, for ascertainment of all disputed questions of fact, to enable it to decide whether sanction should be granted or refused.

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 v.
 CHATTU
 GOPH.

O. M.

Case remanded.

Attorney for the appellant: *Sailendra Mohan Dutt.*

Attorney for the respondent: *J. T. Hume.*

APPELLATE CIVIL.

Before Fletcher and Richardson JJ.

NAKIMO DEWANI

v.

PEMBA DITCHEN *

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 Jan. 19.

Compromise—Minor—Court of Wards, compromise by, on behalf of minor ward, whether subject to sanction of Civil Court—Court of Wards Act (Beng. IX of 1879), ss. 13, 51—Civil Procedure Code (Act XIV of 1882), ss. 462, 464.

The sanction of the Civil Court (required by s. 462 of the Civil Procedure Code of 1882) is not necessary for a compromise entered into under the authority and by the direction of the Court of Wards on behalf of a minor under their charge.

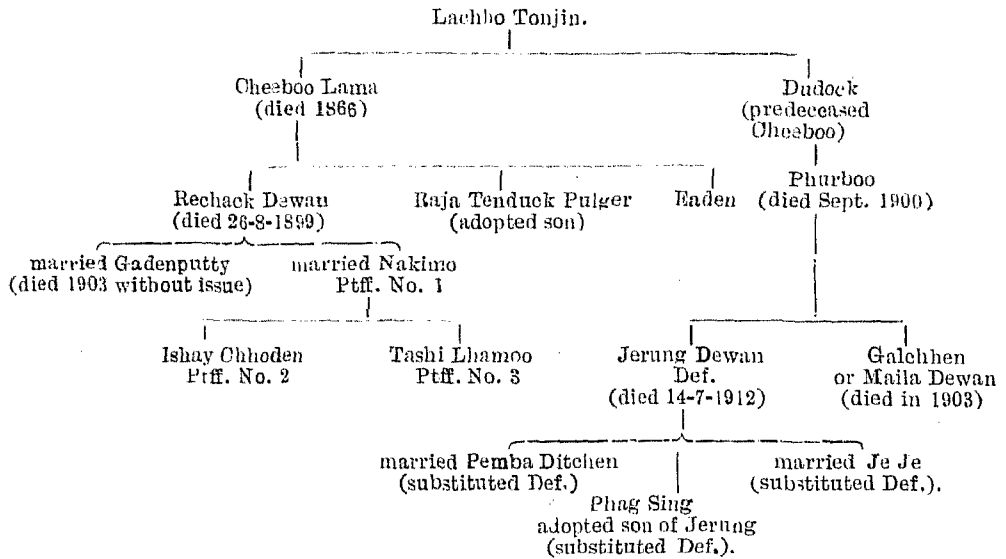
APPEAL by Musammat Nakimo Dewani and others, the plaintiffs.

The following genealogical table shows the relationship of the parties who are Buddhist subjects of

* Appeal from Original Decree, No. 58 of 1914, against the decree of Bernard V. Nicholl, District Judge of Darjeeling and Dinajpur, dated Dec. 1, 1913.

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the Sikkim State settled in Darjeeling or British Sikkim :—



In 1862 the British Government made a grant of an extensive tract of country (74,016 acres) lying between the States of Nepal and Sikkim to one Cheeboo Lama, a Sikkimese nobleman, in return for political services during the Sikkim War. On Cheeboo's death the grant was split up among his successors, in August 1877 the Government making a lease of this property to Rechak, one Tenduck Pulger, who was then manager of the property, and Phurboo in three equal shares. The portion that fell to Rechak is known as the Reilling Estate. In 1881 the Forest Department acquired 44,000 acres of forest out of this property, and on 17th July 1889 there was a partition between Rechak and Phurboo, Rechak getting the properties in the district of Darjeeling and Phurboo getting all the properties in the State of Sikkim. Thereafter on 10th March 1893 the Government granted a lease of 19,000 acres out of the Reilling Estate to Rechak. On Rechak's death in 1899 Phurboo put forward his claim to succession as the nearest male agnate, but the District Judge on 31st March 1900 decided in favour of Rechak's widows on a reference

being made to him by the Deputy Commissioner in the mutation proceedings. For the purpose of carrying on litigation against Phurboo Dewan, Rechak's widows, Gadenputty and Nakimo, had contracted debts amounting to Rs. 65,000. Accordingly on 29th May 1905, Nakimo, the surviving widow, applied to the Court of Wards to take over charge of the estate representing herself to be the sole owner thereof. This petition followed a previous one made by her with the same object upon which the Board of Revenue had directed that the Court of Wards would take over charge of the estate under section 6 (c) of the Act provided that Jerung Dewan also made a similar application. This dispute was compromised by a deed dated 19th August 1905, executed by Nakimo on her own behalf and as trustee for her two daughters, Ishay Chhoden and Tashi Lhamoo, on one side and Jerung Dewan on the other. Jerung's title was admitted and he made certain provisions for Nakimo's and her daughters' maintenance. In consequence of this arrangement Nakimo on the 6th November 1905 petitioned the Court of Wards for the withdrawal of her application of 29th May 1905. But, before this petition had reached it, the Board of Revenue had passed an order on the 7th November placing the Reilling Estate under the Court of Wards, and effect was in due course given to this order. On 17th February 1906 the Board made an order making Nakimo's two minor daughters wards of the Court under section 35 of that Act. On 7th March 1906 the Board passed another order on a joint petition submitted by Nakimo and Jerung Dewan asking that the estate might be released and made over to the latter. The order was to the effect that the Court of Wards being of opinion, as then advised, that Nakimo's daughters were the rightful heirs of Rechak's estate could not, without disregarding its

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duty towards these minors, give up charge of the Reilling Estate unless Jerung's title as preferential heir was satisfactorily established. The result of this was that on the 5th February 1907 Jerung Dewan instituted a suit against Nakimo and her daughters, represented by the Court of Wards, for establishment of his title. Chubbi Lal, a Sub-Deputy Collector, who had been appointed manager by the Court of Wards, appeared as guardian for the wards as required by section 51 of that Act, he alone having been served with a summons, none being served on Nakimo or her daughters. Ultimately the suit was compromised on terms which, though less advantageous to Nakimo and her daughters, had previously received the express approval of the Court of Wards, and which were embodied in decrees made on 16th December 1907 and 12th March 1908. The present suit was instituted by Nakimo on 20th April 1910 impugning the validity of those decrees as the sanction of the Civil Court had not been obtained under section 462 of the Code of Civil Procedure. She made Jerung and her two daughters defendants. On the application of the latter they were joined as plaintiffs. Jerung died in 1912 and his two widows and adopted son Phag Sing were substituted as defendants. On 24th May 1913 the District Judge of Darjeeling rejected plaintiff's application for the appointment of a receiver. When the case came on for final hearing on the 3rd November 1913 time was granted till 8th November for effecting a compromise, the defendants being anxious to settle the dispute, especially as, on appeal in the mutation proceedings, the Deputy Commissioner had deferred passing orders until the adjudication of the question of title by the Civil Court, and further as the Sikkim *Durbar* had resumed the Chakung Estate in Sikkim for failure of male heir to Jerung. Though

almost two-thirds of the Reilling Estate was now offered to Nakimo, she refused to sign the petition of compromise and her vakil brought this to the notice of the Court. However, after trial the District Judge dismissed her suit on 14th November, 1913, holding that section 462 of the Code of Civil Procedure did not apply to the suit instituted by Jerung on 5th February 1907. Thereupon, Nakimo preferred this appeal to the High Court.

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Babu Provash Chandra Mitter and *Babu Tarakeswar Pal Chowdhuri*, for the appellants, (after stating the facts) submitted that Nakimo, who came into the hands of the Court of Wards with the whole estate, walked out with nothing except a little plot. The approval of the Civil Court not having been taken to that compromise under the provisions of section 462 of the Code of Civil Procedure then in force, it was voidable against the two minors. [Read sections 14, 18 and 51 of the Court of Wards Act, as to the powers of the Court of Wards.] Section 462 of the Code of Civil Procedure had placed an additional restriction on the Court of Wards. Though section 464 as originally enacted did not require the sanction of the Civil Court to a compromise entered into by the Court of Wards, the change in the wording of section 464, effected in the year 1888, had altered that provision; and section 462 did not derogate from the provision of any local law. If the compromise decree were set aside, Jerung's original suit must proceed, the *status quo ante* being restored.

[FLETCHER J. That is so.]

The *Standing Counsel* (*Mr. B. C. Mitter*, with him *Mr. S. N. Banerjee* and *Babu Sarat Kumar Mitra*), for the respondents, submitted that the view taken by the learned District Judge was correct. Section 51 of the Court of Wards Act took away from the Civil

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Court the duty of appointing a next-friend or guardian *ad litem* of a minor and appointed the Manager under the Court of Wards as the statutory next-friend or guardian. Then section 18 of the same Act gave power to the Court of Wards to compromise generally including both suits in and claims out of Court. To cut down the provisions of section 18 by applying to it the provisions of section 462 of the Code of Civil Procedure would derogate from the provisions contained in section 18. Further, the change in the wording of section 462 did not take away the plenary powers of the Court of Wards, which had never obtained the sanction of the Civil Court. Then as there was no specific allegation of fraud, that matter could not be gone into.

The *Senior Government Pleader (Babu Ram Charan Mitra)*, for the Court of Wards. I support the principal respondent. As I have been unnecessarily made a party here, I ask for a separate set of costs.

Babu Provash Chandra Mitter, in reply. The amendment of the plaint and giving up of the question of title by plaintiffs' vakil does not bind them, so I am entitled to read the evidence as to plaintiffs' title and fraud by Chubbi Lal on the Court of Wards.

FLETCHER J. This is an appeal preferred by the plaintiffs against the decision of the learned District Judge of Darjeeling and Dinajpur, dated the 1st December 1913, dismissing their suit. The suit was brought for the purpose of setting aside a compromise that had been entered into in a former suit which is said to have been in contravention of section 462 of the Code of Civil Procedure which was then in force. The facts out of which the case arises are as follows:— One Lachho Tonjin had two sons, Cheebo and Dudock. The parties came from the State of Sikkim and the

law applicable to the parties is the Buddhist or the customary law as is recognised and which is in force in the State of Sikkim. Cheeboo, who seems to have rendered important political services to the British Government, was awarded for such services a grant of 74,016 acres of land in the district of Darjeeling. Cheeboo died in 1866, having been predeceased by his brother Dudock. Cheeboo left one son named Rechak Dewan and daughter named Eaden. Rechak died on the 26th August 1899, having been married twice, his first wife being Nakimo Dewani, who is the first plaintiff in the present suit, and the other wife being one Gadenputty, who died in 1903 without issue. Nakimo has had two children both of whom are daughters, namely, Ishay Chhoden and Tashi Lhamoo who are the other plaintiffs. Cheeboo's brother Dudock left an only son Phurboo. Phurboo had two sons, the eldest being Jerung Dewan. There seems to have been some controversy at the earlier stage of these proceedings and in the former suit as to whether Jerung was, in fact, a son of Phurboo; but the fact is that he claimed to be so and so far as the evidence goes, he was recognised as being the son of Phurboo. There was another younger son of Phurboo and that younger son was named Galchhen. He died in May 1903. The dispute arose as follows:—On the 10th August 1877, after Cheeboo's death, the Government made a lease of this property to Rechak, one Tenduck Pulger who was then the manager of the property and Phurboo in three equal shares. The Forest Department acquired 44,000 acres out of this property in 1881 and, on the 17th July 1889, there was a partition between Rechak and Phurboo, Phurboo getting all the properties in the State of Sikkim and Rechak getting the properties in the district of Darjeeling. On the 10th March 1893, the Government granted a lease of 19,000

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odd acres of land to Rechak. Then, after the death of Rechak, there having been certain disputes in the Civil Court which arose out of certain land registration proceedings, Nakimo applied to the Court of Wards to take charge of the estate. The Court of Wards at first intimated that Jerung Dewan must also be a party to the petition. However, in the result, on the 7th November 1905, the Court of Wards declared Nakimo to be a disqualified proprietor and took over charge of the property. On the 17th February 1906, the Court of Wards declared the two daughters of Nakimo, namely, Ishay Chhoden and Tashi Lhamoo to be minors and, on the 7th March of that year, the Court declared them also to be the heirs of Rechak Dewan. From the 17th February 1906, the two minors, Ishay Chhoden and Tashi Lhamoo, were disqualified proprietors and wards under the Court of Wards. Next, on the 5th February 1907, Jerung Dewan instituted a suit against Nakimo and the two minors, Ishay Chhoden and Tashi Lhamoo. In the course of that proceeding, a compromise was arrived at. That compromise was, as it appears from the petition of compromise and the letter of the Board of Revenue annexed to that petition, approved of by the Court of Wards.

The first point that has been argued both here and in the Court below and which apparently is the only point argued in the case is this: That the approval of the Civil Court not having been taken to that compromise under the provisions of section 462 of the Code of Civil Procedure, then in force, the compromise is voidable as against the two minors. That depends purely on an examination of the sections in the Civil Procedure Code and in the Court of Wards Act. The Court of Wards Act contains two sections that are material to the matter. The first is the 18th section. That

provides that "the Court may sanction the giving of leases or farms of the whole or part of any property under its charge, and may direct the mortgage or sale of any part of such property, and may direct the doing of all such other acts as it may judge to be most for the benefit of the property and the advantage of the ward."

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The section by itself clearly authorises the Court of Wards to compromise a claim on behalf of the ward—whether a minor or an adult ward—if the Court judges it to be most for the benefit of the property or the advantage of the ward. The other section is the 51st section. That provides that, in all suits instituted by or against a minor ward, the Collector of the district or the manager shall be named, as the case may be, the next friend or the guardian of the minor for the suit. That is how the matter stands under the Court of Wards Act. It is said that the Code of Civil Procedure has placed an additional restriction on the Court of Wards by further enacting under the terms of section 462 that any compromise entered into by the Court of Wards on behalf of a minor litigant requires also the approval of the Civil Court. That turns purely on a consideration of the various sections that are in the Civil Procedure Code. It is, however, a matter to be noticed that section 464 of the Code as originally passed by the Legislature clearly did not require the sanction of the Civil Court to a compromise entered into by the Court of Wards. It is said, however, that the alteration in the wording of section 464, which was effected in the year 1888, altered that provision. Section 464 as it ran after the amendment of 1888 was in these terms:—"Nothing in this Chapter shall be construed to affect, or in any way derogate from the provisions of any local law for the time being in force relating to suits by or against minors." The view that the learned Judge took in

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the Court below was that to give the effect that was suggested by the plaintiffs to the provisions of section 462 would, in fact, derogate from the provisions of the Court of Wards Act so far as regards suits relating to minors under their charge were concerned. The argument is as follows:—Section 51 of the Court of Wards Act takes away from the Civil Court the duty of appointing a next-friend or guardian *ad litem* of a minor and appoints the manager under the Court of Wards as the statutory next-friend or guardian. Clearly, therefore, the Civil Court has nothing to do with the appointment of a next-friend or guardian. Then section 18 of the same Act gives power to the Court of Wards to compromise generally which includes both suits in and claims out of Court, and to cut down the provisions of section 18 by stating that, when the ward is a minor, no compromise in a suit should be binding on the minor ward unless the approval of the Civil Court has been obtained as mentioned in the Civil Procedure Code would derogate from the provisions contained in section 18 of the Court of Wards Act. I am of opinion that that argument is well founded, and to hold that the sanction of the Civil Court to every compromise that is entered into under the authority and by the direction of the Court of Wards on behalf of a minor under their charge would seriously affect, or derogate from, the provisions contained in the Court of Wards Act. This point, as appears from the judgment of the Court below, was the only point argued before the learned Judge because the learned gentleman who conducted the case in that Court on behalf of the plaintiffs stated that he rested his case solely on the issue concerning the vulnerability of the decree of the 12th March 1908 and did not invite the Court to decide the issue of title by succession.

The case has also been attempted to be argued before us on the question of fraud, the fraud alleged being that the Court of Wards were deceived in giving their consent to the compromise by having been given false information relating to the course of succession under the Sikkim law. It is almost sufficient to deal with that case by stating that no evidence was given in the case as to what the fraud practised on the Court of Wards was. The Court of Wards had before them, as appears from the record, a full statement from the Deputy Commissioner as to what was proposed to be done and, before acting on the information and authorising the compromise, they took the precaution of sending all the papers that they had before them to the Legal Remembrancer asking him as to what ought to be done with regard to the matter, and it was only when the Legal Remembrancer had dealt with the matter fully that the Court authorised the compromise. An allegation like this seems to be wholly insufficient to disturb the act of the Court regularly and properly entered into. Moreover, the evidence that we have in this case raises a serious doubt as to whether the plaintiffs under the Bhutan law had the right of succession to Rechak's properties. There is a considerable body of evidence, notwithstanding some statements more or less loose of His Highness the Maharaja of Sikkim, as to the course of descent which would go to show that the course of succession was not through females, but was confined to agnatic relationship. In that view, it is not denied that Jerung Dewan would be wholly entitled to succeed to Rechak's properties after his death. The statement of the Maharaja of Sikkim that has been read to us seems to vary and nothing definite can be drawn from that. I think that the evidence does show that there was clearly a case in which the Court

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could enter into the compromise so as to secure the best terms possible for the two minors and there is nothing to suggest that better terms could have been obtained. The alleged fraud is wholly unproved and the gentleman conducting the case in the Court below stated that he did not intend to ask the Court for a decision upon the issue of title by succession. If the Court of Wards acted to the best of their judgment to secure for the two minors, out of the property to which they had no right at all, 2,000 acres of land and a property of some value in Darjeeling *plus* the payment of their father's debts which amounted to Rs. 64,000, I think the compromise was highly advantageous to the wards that the Court had under their charge. There is no evidence to support the case of fraud as set up in the 23rd paragraph of the plaint, namely, that a fraud of some sort was practised on the Court of Wards to get them to approve of that compromise. No evidence was given in support of such a case nor do I think that there is any truth in the story. The Court recognised that these minors had, in fact, under the terms of the law by which they were governed no right to their father's property, and they entered into the compromise to secure the best terms they could so that something might be got for these female wards. Whatever might be the state of affairs, I am quite clear that the evidence adduced is wholly insufficient to establish a case of fraud practised on the Court of Wards in the manner suggested. I think the result arrived at by the learned District Judge is correct. The present appeal, therefore, fails and must be dismissed with costs. There will be two sets of costs to the two sets of respondents.

RICHARDSON J. I agree.

G. S.

Appeal dismissed.