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CHARAN
BHATTAC-
CHARJEE.

made by a "lawful guardian" within the meaning of section 21 of the Indian Limitation Act. It is well settled that, under the Hindu Law, in the absence of the father, the mother is entitled to be the guardian of her infant sons in preference to their brother: *Muhtaboo v. Gunesh Lal* (1).

The Rule is made absolute and the order for execution as against the petitioners is set aside.

L. R.

Rule absolute.

(1) (1854) (Beng.) S. D. A. 329.

APPELLATE CIVIL.

Before Mookerjee and Walmsley JJ.

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SARAJU BALA DASI

June 21.*v.***JOGEMAYA DASI.***

Court-fee—Suit for administration or account—Valuation for purposes of court-fees—Jurisdiction—Court-fees Act (VII of 1870) s. 7, cl. IV (f).

In an administration suit valued at Rs. 30,000 for purposes of jurisdiction, and at Rs. 100 for adjustment of account, and wherein court-fees were paid on the latter sum only, together with Rs. 10 for the approximate value of the claim for account:—

Held, that such a suit was in essence a suit for account within the meaning of s. 7, cl. IV (f) of the Court-fees Act, and that adequate court-fees had been paid on the plaint which could not be rejected.

Khatija v. Shekh Adam Husenally Vasi (1), *Sasi Bhushan Bose v. Maharaja Sir Manindra Chandra Nandy* (2), *Satya Kumar Banerjee v. Satya Kripal Banerjee* (3) followed.

APPEAL by the plaintiff, Saraju Bala Dasi.

*Appeal from Original Decree, No. 515 of 1914, against the decree of Upendra Chandra Mukerjee, Subordinate Judge of Hooghly, dated June 18, 1914.

(1) (1915) I. L. R. 39 Bom. 545. (2) (1916) 24 C. L. J. 448.

(3) (1909) 10 C. L. J. 593.

The facts necessary for the purposes of this report are shortly these. The plaintiff, Saraju Bala Dasi, the widow of one Basanta Kumar Roy, instituted a suit for administration, for account and other incidental reliefs against the executors of the estate of her father-in-law, one Rajendra Nath Roy. The plaint contained the following : "Suit for administration. For the purposes of jurisdiction the claim is laid at Rs. 30,000 and the present claim for adjustment of account at Rs. 100." The plaintiff paid court-fees *ad valorem* on this sum of Rs. 100, and also paid an additional sum of Rs. 10, for the approximate value of the claim for account. The defendants contended amongst other things that, inasmuch as the plaintiff had valued the suit at Rs. 30,000, she was bound to pay the court-fees thereon, otherwise the suit should fail. On an issue framed accordingly, the learned Subordinate Judge held that, "the plaint should be stamped with the *ad valorem* fees according to the value of the claim, viz., Rs. 30,000," and called upon the plaintiff to pay the additional court-fee of Rs. 965. The plaintiff failed to carry out this order, whereupon the Court below rejected the plaint.

From this decision the plaintiff appealed to the High Court.

Babu Braja Lal Chakravarti and *Babu Biraj Mohan Majumdar*, for the appellant, contended that the present suit for administration and account was really a suit for account within the meaning of section 7, cl. IV (f) of the Court-fees Act, and the plaintiff need approximately value the claim for account only and pay court-fees accordingly: see *Khatija v. Shekh Adam Husenally Vasi*(1). If the suit were decreed for an amount larger than the claim, additional court-fees would have to be paid before such decree could be

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executed. In a suit for administration of trust in favour of creditors the same view found support: *Sasi Bhushan Bose v. Maharaja Sir Manindra Chandra Nandy* (1). In *Satya Kumar Banerjee v. Satya Kripal Banerjee* (2), this Court accepted the same view. *Babu Manomohan Bose*, for the respondents.

MOOKERJEE AND WALMSLEY JJ. This is an appeal by the plaintiff against an order of rejection of the plaint, in a suit instituted by her against the executors of the estate of her father-in-law for administration, for accounts and for other incidental reliefs. She stated that the value of the estate left by her father-in-law was Rs. 30,000, but she valued the claim for accounts at Rs. 100. She paid court-fees *ad valorem* on this sum of Rs. 100, and also paid an additional sum of Rs. 10, apparently on the ground that the claim for administration was incapable of accurate valuation, at least at that stage. The defendants contended that the court-fee paid by the plaintiff was inadequate and that the suit could not consequently proceed. Their argument in substance was that, as for purposes of jurisdiction, the plaintiff had valued the suit at Rs. 30,000, she was bound to pay the court-fees upon that valuation. The Subordinate Judge thereupon framed an issue to the following effect: "Has the plaint been insufficiently stamped?" On the trial of this issue, he held that the plaint was insufficiently stamped and called upon the plaintiff to pay additional court-fees of Rs. 965. This order was not carried out, with the consequence that the plaint was rejected. In our opinion, the view taken by the Subordinate Judge cannot be supported.

The decision of the Bombay High Court, in the case of *Khatija v. Shekh Adam Husenally Vasi* (3),

(1) (1916) 24 C. L. J. 448. (2) (1909) 10 C. L. J. 503.

(3) (1915) I. L. R. 39 Bom. 545.

shows that a suit for administration and account is in essence a suit for accounts within the meaning of section 7, clause IV (*f*) of the Court-fees Act, 1870, and, that, in a suit of this description the plaintiff is competent to value the claim for accounts approximately and to pay court-fees thereon. Sir Basil Scott C. J. pointed out that if ultimately a decree should be passed in favour of the plaintiff for a larger amount than that covered by the court-fees already paid, the plaintiff would be precluded by the provisions of section 11n of the Court-fees Act, from executing the decree until the fee payable on the whole amount of the decree had been paid. This view is confirmed by a reference to Form 43 of Schedule I of the Civil Procedure Code of 1908, and was adopted by this Court in *Sasi Bhushan Bose v. Maharaja Sir Manindra Chandra Nandy* (1), which arose out of a suit for administration and accounts brought by one of the creditors of a debtor against the trustee of his estate. A similar position had been accepted as sound in the earlier case of *Satya Kumar Banerjee v. Satya Kripal Banerjee* (2). We are clearly of opinion that adequate court-fees had been paid upon the plaint, which could not consequently have been rejected.

The result is that this appeal is allowed, the order of the Court below set aside, and the case remitted to the Subordinate Judge, in order that it may be tried on the merits. An order will be made in favour of the plaintiff appellant under section 13 of the Court-fees Act, entitling her to obtain a return of the court-fees paid on the memorandum of appeal presented to this Court. The appellant is entitled to her costs both here and in the Court below.

L. R.

Appeal allowed.

(1) (1916) 24 C. L. J. 448.

(2) (1909) 10 C. L. J. 503.

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