

APPELLATE CIVIL.

Before Edgley J.

GOKUL CHANDRA DAS

1939

Aug. 10.

v.

MANAGER, BENIACHANG MAJUMDARI
WARD ESTATE.*

Court of Wards—*Manager of wards estate, if a public officer and entitled to notice before being sued*—Code of Civil Procedure (Act V of 1908), ss. 2, cl. (17) (g), (h) ; 80—Court of Wards Act (Ben. IX of 1879), ss. 20, 40.

A manager of a wards estate, appointed under s. 20 of the Court of Wards Act, is an officer in the service of Government and a public officer within the meaning of cl. (17) (h) of s. 2 of the Code of Civil Procedure and is, therefore, entitled to the benefit of a notice under s. 80 of the Code.

Nanda Lal Bose v. Ashutosh Ghose (1) not followed.

APPEAL FROM APPELLATE DECREE preferred by the plaintiff.

The facts of the case are sufficiently stated in the judgment.

Hemendra Kumar Das for the appellant. The manager of a Court of Wards does not come under cl. (17)(g) of s. 2 of the Civil Procedure Code, for according to ss. 40, 41 and 48 of the Court of Wards Act, which prescribe the duties of the manager, he is to "take, receive, keep or expend" the ward's property, not, on behalf of the Government, but of the disqualified proprietor. He is not in the service or pay of the Government and does not come under cl. (h) of s. 2 of the Code either.

*Appeal from Appellate Decree, No. 1322 of 1937, against the decree of H. Banerji, Additional District Judge of Sylhet, dated April 19, 1937, affirming the decree of Mohammad Abdur Rouf, Second Munsif of Habiganj, dated Sep. 4, 1936.

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He is, therefore, not a public officer and is not entitled to a notice under s. 80 of the Code. *Nanda Lal Bose v. Ashutosh Ghose* (1).

Hamidul Huq and *Obaidul Huq* for the respondent. As Government receives a certain percentage of the income of the wards estate, it is evident that the manager, who works under official control, does so on behalf of the Government. He, therefore, comes under cl. (17)(g) of s. 2 of the Code. Clause (17)(h) also applies to him. He works under the authority, not of the estate, but of the Court of Wards, by which he is appointed and controlled. Section 20 of the Court of Wards Act. As the Court of Wards is a Government department, the manager is in the service of Government within cl. (17)(h) of s. 2 of the Code and he is a public officer.

EDGLEY J. The plaintiff is the appellant in this case and, in the suit out of which this appeal arises, the plaintiff sued for the cancellation of a certificate under the Public Demands Recovery Act, by which the Beniachang Majumdâri Ward Estate sought to recover rent on the basis of a *kabuliyat*, which was executed on Bhadra 20, 1334 B.S. The landlords' case was to the effect that the plaintiff held under them certain *patit* lands described in Sch. 1 attached to the plaint. It was alleged that he was unable to pay arrears of rent and had, therefore, executed a bond for the sum of Rs. 100 on Bhadra 10, 1334 B.S. Subsequently, the Court of Wards assumed charge of the landlords' estate and filed the certificate which the plaintiff sought to cancel. The plaintiff's case was to the effect that he did not hold the land included in Sch. 1 under the Beniachang Majumdâri Ward Estate but under another landlord. He also maintained that the *kabuliyat* dated Bhadra 20, 1334 B.S. had been executed while he was insane. He filed an

objection to the certificate under the relevant provisions of the Public Demands Recovery Act, but his objection was over-ruled.

The first Court decided that the *kabuliyat* had been duly executed by the plaintiff and the learned Munsif, therefore, dismissed the plaintiff's suit. The lower appellate Court took the view that the plaintiff was insane at the time of the execution of the *kabuliyat* and that this document was therefore not binding on him. He held, however, that the Manager of the Court of Wards, who had instituted proceedings under the Public Demands Recovery Act, was a public officer and was, therefore, entitled to a notice under s. 80 of the Code of Civil Procedure.

The only point, which has been urged on behalf of the appellant in this Court, is that the lower appellate Court ought to have held that the Manager of the Beniachang Majumdâri Ward Estate was not a public officer within the meaning of s. 80 of the Code of Civil Procedure.

The learned Additional District Judge has decided that notice under s. 80 of the Code of Civil Procedure was necessary having regard to the language of s. 2, cl. (17)(g) of the Code, and in this connection, he considers that, as Government receive a certain percentage of the income of the Wards Estate, it follows that a Manager of such an estate is working on behalf of the Government.

The relevant words in s. 2, cl. (17)(g) of the Code of Civil Procedure are as follows:—

Every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government.

The remaining words of this clause are irrelevant for the purposes of this particular appeal. Under the provisions of the Court of Wards Act it is clear

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that managers may be appointed by the Court of Wards under s. 20 of the Act, which is in the following terms :—

The Court may appoint one or more managers for the property of any ward, and one or more guardians for the care of the person of any ward, under the charge of the Court, and may control and remove any manager or guardian so appointed.

Sections 40 and 41 of the Act prescribe the general and specific duties of the manager. Section 40 is to the effect that :—

Every manager shall manage the property committed to him diligently and faithfully for the benefit of the proprietor, and shall, in every respect, act to the best of his judgment for the ward's interest as if the property were his own.

With regard to the specific duties mentioned in s. 41, it is clear that many of these duties must be performed under the directions of the Court of Wards. Section 48 makes provision for the application of the moneys received by the manager; and the first purpose for which such moneys must be applied is indicated under item (1) of Class I, namely, the payment of all charges necessary for the management and supervision of the property of the ward.

It, therefore, follows that, although the manager is appointed, controlled and removable by the Court of Wards, he is actually paid by the estate which he manages, and it also follows from the sections of the Act, to which I have referred, that his duties in connection with the property of such estate are "to take, "receive, keep or expend" such property, not on behalf of Government, but on behalf of the disqualified proprietor.

In this view of the case, I do not think that cl. 17(g) of s. 2 of the Civil Procedure Code can have any application in this case.

It is, however, urged that the manager of a ward's estate must be regarded as a public officer within the

meaning of s. 2, cl. (17)(h) of the Code of Civil Procedure. This clause refers to:—

Every officer in the service or pay of the Government, or remunerated by fees or commission for the performance of any public duty.

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It is argued on behalf of the appellant that this clause also can have no application in the present case, because a manager of an estate appointed under the provisions of the Court of Wards Act, 1879, is not in the "service" or the "pay" of the Government. For the reasons which I have already discussed, I agree that it cannot be said that he is in the "pay" of the Government. The question, however, remains for consideration whether or not such a person is in the "service" of the Government. One of the definitions of "service" which is to be found in the Oxford English Dictionary is as follows:—

The condition of a being a servant, the fact of serving a master.

In view of the abovementioned provisions of the Court of Wards Act, especially s. 20, it seems to be quite clear that the authority which is actually served by a Court of Wards manager is not the estate which he is appointed to manage, but the Court of Wards, which actually appoints him. There can be no doubt that Court of Wards managers are subject to the discipline and control of the Court of Wards and they are required to carry out the orders of the Court of Wards for the purpose of protecting the interests of disqualified proprietors, who presumably are not in a position to exact proper service from the manager or any other officer of the estate.

Further, there can be no doubt that the Court of Wards is a Government department, and, this being the case, I think that the Court of Wards managers must be regarded as being in the "service" of Government within the meaning of s. 2, cl. (17)(h) of the Code of Civil Procedure.

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The learned advocate for the appellant, in support of his argument, relies upon a decision of Walmsley J. in the case of *Nanda Lal Bose v. Ashutosh Ghose*, (1). In that case the point seems to have been raised whether a Court of Wards manager was a public servant within the meaning of s. 2, cl. (17) of the Code of Civil Procedure; and, in this connection, the learned Judge recorded the following observations:—

The third point is that the defendant was a public servant and therefore entitled to the benefit of a notice under s. 80 of the Code of Civil Procedure. I cannot find that he falls within any of the classes enumerated in cl. (17), s. 2 of the Code of Civil Procedure, and I therefore think he was not entitled to a notice.

It will be observed that the learned Judge recorded no reasons in support of the view which he adopted, and this being the case, I am not prepared to follow his decision on this point.

The result is that, in my view, the decision of the lower appellate Court is correct. It is, therefore, affirmed and this appeal is dismissed with costs.

Leave to appeal under s. 15 of the Letters Patent is refused.

Appeal dismissed.

A. A.