

[3 Mad. 11.]

APPELLATE CIVIL.

The 16th March, 1881.

PRESENT :

SIR CHARLES A. TURNER, KT., CHIEF JUSTICE, AND MR. JUSTICE KERNAN.

Periyasami *alias* Kottaisami Tevar.....(Plaintiff) Appellant

versus

Seshadri Ayyangar and others.....(Defendants) Respondents.*

† *Indian Majority Act 1875, Sec. 31—Minor under the jurisdiction of the Court of Wards—Meaning of.*

A 'minor under the jurisdiction of the Court of Wards' means a person of whose estate the Court of Wards has actually assumed the management, not a person of whose estate the Court of Wards might with the sanction of Government take charge.

THIS was a suit brought against defendant as agent and executor of the will of plaintiff's father for an account of testator's estate both before and after testator's death.

The defendant contended *inter alia* that the Court of Wards had jurisdiction over the estate, and that the plaintiff having only completed his 18th year was incompetent to sue without a next friend.

The Subordinate Judge (from whose Court the case was called up by the District Judge) found that the plaintiff being 18 years old was entitled to sue, and the District Judge decreed *inter alia* that an account should be taken of the testator's estate only from the time of testator's death.

[12] The plaintiff appealed.

Mr. *Johnstone* for Appellant.

The Advocate-General (Hon. *P. O'Sullivan*) and *V. Bhashyam Ayyangar* for Respondent.

For the respondent a preliminary objection was taken that the plaintiff was a minor and incompetent to prosecute the appeal without the intervention of a next friend.

Upon this point the Court (*TURNER, C.J., and KERNAN, J.*) ruled as follows :—

“The Indian Majority Act of 1875 declares that every minor of whose person or property a guardian has been or shall be appointed by any Court of Justice, and every minor under the jurisdiction of a Court of Wards shall, notwithstanding anything contained in any other enactment, be deemed to

* R.A. 48 of 1880 against a decree of *P. P. Hutchins*, District Judge of Madura, dated 27th December, 1879.

† [Sec. 3.—Subject as aforesaid, every minor of whose person or property a guardian has been or shall be appointed by any Court of justice, and every minor under the jurisdiction of any Court of Wards, shall, notwithstanding anything contained in the Indian Succession Act (No. X of 1865) or in any other enactment, be deemed to have attained his majority when he shall have completed his age of twenty-one years and not before :

Subject as aforesaid, every other person domiciled in British India shall be deemed to have attained his majority when he shall have completed his age of eighteen years and not before.]

have attained his majority when he shall have completed his age of 21 years and not before."

The appellant, who has attained the age of 18 but has not attained the age of 21 years, is under the will of his father, entitled to one-third share in immoveable property paying revenue directly to the Government, the other sharers being his two brothers who are minors. It is admitted that no guardian of the appellant has been appointed by any Court, and assuming he is a person of whose estate the Government might authorize the Court of Wards to take charge, it is admitted that the Court of Wards has not taken charge of his estate nor has the Government authorized it to do so. By the expression "minor under the jurisdiction of the Court of Wards" we understand not a person of whose estate the Court of Wards might, with the sanction of Government, take charge, but a person of whose estate the Court of Wards has actually assumed the management under the orders of Government. If the Legislature did not, as it clearly did not, intend to extend the period of majority in the case of a minor subject to, but not brought under, the jurisdiction of the District Court in the matter of guardianship, it may be presumed it did not intend to do so in the case of a minor subject to, but not actually brought under, the jurisdiction of the Court of Wards. We, therefore, overrule the objection.

[13] APPELLATE CIVIL.

The 28th March, 1881.

PRESENT :

MR. JUSTICE INNES AND MR. JUSTICE KINDERSLEY.

Undi Rajaha Raja Velugoti Kumara Yachama Nayadu Bahadur, Panch Hazar
Munsubdar Raja of Venkatagiri.....(Plaintiff) Appellant
in R. A. 52 and Respondent in R. A. 63 of 1880

versus

Mahomed Rahimtulla Sahib..... (Defendant) Respondent in R. A. 52
and Appellant in R. A. 63 of 1880.*

Civil Procedure Code, Sec. 540, Order directing part of claim to be dismissed, Appeal from, before final decree.

Where a Judge, after the defendant's written statement was put in, framed certain preliminary issues and decided them directing part of plaintiff's claim to be dismissed and part to be tried on the merits (which trial might necessitate the taking of an account from defendant).

Held that no appeal lies from such an order either on the part of the plaintiff because the Civil Procedure Code only allows an appeal against a portion of the decision when there has been a decision relating to the disposal of the entire suit, or on the part of the defendant inasmuch as there had been no final order to take an account.

In this case plaintiff sued the defendant for Rs. 3,14,085-8-3 due from him as lessee of the five northern taluks of plaintiff's zamindari and for moneys received and misappropriated by defendant as plaintiff's Dewan from 1864-1875

*R. A. 52 and 63 of 1880 against the decree of J. D. Goldingham, District Judge of Nellore, dated 19th February, 1880.