

## APPELLATE CIVIL.

Before Mr. Justice Miller and Mr. Justice Pinhey.

1908  
September  
1, 2, 23.

SOWCAR LODD GOVINDA DOSS KRISHNA DOSS VARU

(PLAINTIFF), PETITIONER IN ALI,

v.

LEPATI MUNEPPI NAIDU (DEFENDANT), RESPONDENT.\*

*Court of Wards Act (Madras). Act I of 1902, ss. 43, 57—Dispossession of usufructuary mortgagee—Termination of possession of Court of Wards—Usufructuary mortgagee's right—Negotiable Instruments in the name of Manager of Court of Wards—Right of suit—Real payee.*

Where the Court of wards assumes superintendence of the estate of a disqualified proprietor, and, in exercise of the powers conferred by section 43 of the Court of Wards Act, ousts an usufructuary mortgagee from possession, and the manager of the Court, in the course of his management, takes from the tenants of the property, promissory notes payable to himself or order for the rents and profits of the mortgaged premises, it is competent to such mortgagee or his heirs to maintain a suit on such promissory notes when the Court's superintendence comes to an end and it delivers to the mortgagee the promissory notes without however endorsing or otherwise assigning the same in writing.

Dispossession of an usufructuary mortgagee under section 43 of the Act does not convert the usufructuary into a simple mortgage.

*Per MILLER, J.*—The position of the Court of Wards on the dispossession of the usufructuary mortgagee, is analogous to that of a receiver for the collection of rents and profits, in respect of such mortgaged properties.

The real payee of the promissory note is the landlord by his agent, the manager. Before dispossession the mortgagee was the landlord for the purpose of collecting rents and profits, and subsequent to dispossession, the Court of Wards to such extent was the landlord.

When the Court's superintendence terminated, its receivership came to an end and the mortgagee as the landlord was the real payee entitled to sua and recover on the promissory notes.

The plaintiff was the usufructuary mortgagee of Narayanavanam taluk of the Karvetnagar zamindari. When the Court of Wards assumed superintendence of the Karvetnagar Estate, the plaintiff was dispossessed under section 43 of the Court of Wards Act. During the period of superintendence, the defendants who were tenants in Narayanavanam executed the plaint promissory

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\* Civil Revision Petition No. 10 of 1908, presented under section 25 of Act IX of 1887, praying the High Court to revise the decree of M.R.Ky. A. Ramasami Sastriar, District Munsif of Tirupati, in small Cause Suit No. 100 of 1907—*vide* Civil Revision Petition Nos. 11 and 12 of 1908.

notes in favour of the manager of the Court of Wards for arrears of rent.

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The promissory notes were in the following form—

Bond or promissory note executed and given on 14th March 1904 in favour of M. R. Ry. Velamuru Krishnamacharyulu Varu, B.A., Manager of Karvetinagaram Estate, by Vepati Muneppa Naidu, ryot No. 187 and son of Vepati Muneppa Naidu, ryot of Kotta Aruru village No. 61 in Mangadu Payakat, Narayana-  
vanam taluk, is as follows:—

“In respect of the taxes I have to pay for fasli 1312 in the said Aruru village, after allowing for payment, the balance I still owe, inclusive of the attachment expenses is Rs. 21 (in words twenty-one rupee) which I owe you. So, I shall pay on demand to you or to your order the said principal amount together with interest at Re. 1 per Rs. 100 per month, and shall take back the bond. To this effect is this note of hand caused to be written and given.”

On the death of the Zamindar, the Court of Wards gave up superintendence and placed the plaintiff in possession of the taluk, and handed over possession to him of the promissory notes. There was no endorsement or assignment in writing of the promissory notes.

The contention of the defendants appears from the judgment of the lower Court, the material portions of which are as follows:—

“The defendants contend that (1) no suit is sustainable because there is no endorsement of transfer in favour of plaintiff, (2) the plaintiff is not the person for whom the Court of Wards was in management of the estate.

“It was contended for the plaintiff that a negotiable instrument was negotiable otherwise than by endorsement under *Muthar Sahib Maraikar v. Kadir Sahib Maraikar*. But having regard to the observations in *Subba Narayana Vathiyar v. Ramaswami Ayyar* followed in *Arunachella Reddi v. Subba Reddi*, I must hold that, even as a chose in action, the plaintiff cannot sue, as under section 130 of the Transfer of Property Act an instrument in writing is necessary. There is no such instrument in these cases, all that exist being a list of promissory notes made by one of the gumasthas of the manager's office. This list does not show that it relates to documents handed over to the plaintiff, nor is it signed by the manager.

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“It is in evidence that other promissory notes obtained in the name of the manager relating to the Pallipat taluk were handed over to the plaintiff after having been actually endorsed by the Regulation Collector, and it was contended for defendant that it was not meant that the property in these plaint promissory notes should pass to the plaintiff.

“It was also argued that the manager of the Court of Wards had no power to transfer, and that he is merely a trustee, and section 36 of the Trust Act was quoted.”

“Another argument advanced was that the Court of Wards was in management of the Narayanavanam taluk not for the benefit of the plaintiff but of the Karvetnagar Zamindar, and therefore was the agent of the Zamindar, and that the latter was the proper person to sue. I think it is not necessary for me to express myself on these points as, in view of the finding that the plaintiff cannot sue by reason of want of endorsement on the promissory notes or of some other instrument, the suits must fail.

“The suits are accordingly dismissed, but in the circumstances without costs.”

Plaintiff applied to the High Court under section 25 of Act IX of 1887.

*P. R. Sundara Ayyar* and *A. S. Balasubrahmania Ayyar* for petitioners in Civil Revision Petition No. 10 of 1908.

The Respondent was not represented.

*A. S. Balasubrahmania Ayyar* for petitioner in Civil Revision Petition Nos. 11 and 12 of 1908.

*Mr. M. A. Tirumarayanachariar* for respondent in the above.

JUDGMENTS—MILLER, J.—The Court of Wards, under direction of the Local Government, acting under section 43 of Madras Act I of 1902, dispossessed the plaintiff's father, an usufructuary mortgagee, of a portion of the Karvetnagaram Estate and administered the property itself. After some years the disqualified proprietor died, and the Court of Wards released the property from its superintendence and handed over to the plaintiff's father *inter alia* certain promissory notes taken from tenants for arrears of rent due from them; and among them the notes in respect of which the present suits are instituted.

The notes are payable to “M.R.Ry. Velamuru Krishnama Charyulu Varu, B.A., Manager of the Karvetnagaram Estate” or his order, and are not therefore transferable by delivery. They

are not endorsed to the plaintiff, nor are they assigned in writing to him by the holder or the Court of Wards. The question is whether the plaintiff can sue on them.

The principal difficulty I have felt in the case is in deciding whether the notes run in the name of an agent so as to enable the plaintiff to sue on them as the principal. Seeing, however, that they are expressed to be for payment of arrears of rent and run in the name of the manager of the landlord's property, I think it is not improper to hold that the landlord by his agent is sufficiently indicated as the payee. The landlord can therefore sue on them. The Court of Wards on taking possession under section 43 of the Act undoubtedly became the landlord for the time being, at any rate to this extent that it had the right to collect the rents. Before the taking of possession by the Court of Wards, the plaintiff's father was the landlord to this extent, and I do not find anything in the Act to indicate that his right as usufructuary mortgagee to collect the rents is forfeited and vested in the Court of Wards or the disqualified proprietor so as to require a reconveyance on the release of the property from superintendence.

On the assumption of charge by the Court of Wards under section 43, the collection of the rents is entrusted to it, but the effect of section 43 is not, I think, to turn the usufructuary mortgagee into a simple mortgagee. So long as the Court of Wards remains in possession, the usufructuary mortgagee has open to him for the recovery of his money only the remedies open to a simple mortgagee of the land and of its rents and profits, but he does not become a mere simple mortgagee of the land, and the Court of Wards has to furnish him with an account of the rents and profits received by it. If the legislature had intended to enact that at the will of the Local Government an usufructuary mortgagee is to become a simple mortgagee, it would have been easy for it to say so in clear language. It has certainly not done so. The true view seems to me to be that suggested by Mr. Sundara Aiyar that the Local Government is empowered to appoint the Court of Wards to a position analogous to that of a receiver of the rents and profits of that part of the ward's property of which it cannot take immediate possession as guardian of the wards.

• On the death of the disqualified proprietor, the Court of Wards took no action under section 57, and the property ceased to be

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the property of a ward within the meaning of section 43 : the receivership therefore terminated and the receiver having been appointed for the better preservation of the property (section 43 (1)) there being no dispute as to the right of the mortgagee, his possession is in respect of the right to recover rents that of the mortgagee, and his hand being withdrawn, the mortgagee regains the right to collect the rents and profits

He is therefore the landlord, the title to the notes vests in him and he is entitled to sue on them.

The written statement of the defendants raise in paragraph 3 a question of facts, but the argument on both sides in this Court proceeded on the footing that the promissory notes were handed over to the plaintiff's father by the officers of the Court of Wards, and I take it that that is now admitted. The execution of the notes is admitted and payment to the plaintiff or his father is not alleged. There is therefore no necessity to remand the suit and the plaintiff must get a decree with costs throughout.

PINNEY, J.—These were suits on promissory notes executed by tenants for arrears of rent in favour of the Court of Wards, Manager of Karvetnagaram zamindari. The Court of Wards assumed the superintendence of the zamindari under section 18, Act I (Madras), 1902. The Narayanavanam taluk, where the defendants are tenants, was at the time in the possession of the plaintiff's father as mortgagee. The plaintiff's father was dispossessed under section 43 of the Act.

The ward died before the debts and liabilities binding on the estate were discharged. But the Court of Wards declined to exercise its option to retain superintendence under section 57. The Narayanavanam taluk was accordingly handed back to the plaintiff's father, and with it were delivered the promissory notes taken from tenants for arrears of rent. The plaintiff's father having died, the plaintiff sued on the notes in the Small Cause Court.

The present suits are test cases. The District Munsif dismissed the suits on the short point of law that the notes had not been endorsed in favour of the plaintiff's father or duly assigned as a chose in action under section 130, Transfer of Property Act. The notes are admittedly negotiable instruments. The District Munsif appears to have overlooked the fact that property in a note may also pass by operation of law.

The Court of Wards having omitted to apply for Government sanction to retain superintendence of the zamindari, its powers of superintendence ceased *ipso facto* on the death of the ward. The question arose to whom should possession be given in such an event. It was apparently decided by the Court of Wards that the principles of section 55 of the Act applied, and, in accordance with Clause (2) of that section, the incumbrancer was replaced in possession of the Narayanavanam taluk. I am of opinion that this decision was correct. The promissory notes relating to the taluk were simply handed over to the plaintiff's father, because, on the death of the ward, the power of the Court of Wards having ceased, there was no one who could legally endorse the notes. The manager's powers, as such, had determined. When the plaintiff's father died, property in the notes again descended to the plaintiff by operation of law. I am of opinion that the plaintiff is entitled to sue on the suit notes. It seems to me this is the only equitable decision that can be given. There is no reason why the defendants should escape liability. Under section 43 of the Act the mortgagee though dispossessed, was something more than a simple mortgagee, as he was entitled to all the surplus rents and profits of the taluk. If, for any reason, it should be held in a suit between the present Raja of Karvetnagaram and the plaintiff that the mortgagee's rights ceased on the death of the late Raja, the sum realized by the plaintiff in the present suits could not be recovered from him as it would not be part of the mesne profits that accrued after the death of the ward. I would therefore reverse the decree of the District Munsif and allow the plaintiff's claim with costs throughout.

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