

a question between the decree-holder and a "representative" of his judgment debtor.

It appears to us that the application was meant to be, and actually was, an application on the part of Raynor, praying that, in respect of the scrip, restitution of which was being enforced against him, the person to whom some interest in it, more or less, had come pending the suit, might, in addition to himself, in so far as such interest had passed from him, be brought under the operations of the execution proceedings. With the merits of this application and the propriety of the order passed on it, we have nothing to do. For it is an application under s. 372 of the Civil Procedure Code, and an appeal is allowed [s. 588, (21)] to a person whose objection under it has been disallowed. We therefore allow the preliminary objection, and reject the application with costs.

*Application refused.*

## APPELLATE CIVIL.

*Before Sir W. Comer Petheram, Kt., Chief Justice, and Mr. Justice Straight.*

MASUMA BIBI AND ANOTHER (PLAINTIFFS) v. THE COLLECTOR OF BALLIA  
ON BEHALF OF THE COURT OF WARDS (DEFENDANT).\*

*Court of Wards—Disqualified proprietor—Release of property from superintendence of Court—Act XIX of 1873 (N.-W. P. Land-Revenue Act), ss. 194, 195.—Act VIII of 1879 (N.-W. Land Revenue Act) s. 20.*

M, a female proprietor, brought a suit to recover possession of certain lands which were in the hands of the Collector, as manager of the Court of Wards, on the allegations that she had placed the property in the hands of the Court some years previously because she was not at that time in a position to manage it herself, but that she was now capable of managing it, and desired to get it back. The suit was dismissed, and the plaintiff appealed on the ground, *inter alia*, that inasmuch as she was not a "disqualified proprietor" within the meaning of Act XIX of 1873, (N.-W. P. Land Revenue Act), the Court of Wards had no jurisdiction to take the property, and that its possession was merely the result of an arrangement to which she was a consenting party, and which she now desired to terminate.

*Held* that, with reference to the provisions of Act XIX of 1873, and Act VIII of 1879 (N.-W. P. Land Revenue Acts), the suit as brought was not maintainable, inasmuch as there was no evidence that the plaintiff had obtained the

\* First Appeal No. 90 of 1884, from a decree of Babu Mrittonjoy Mukarji, Subordinate Judge of Ghazipur, dated the 5th February, 1884.

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previous sanction of the Local Government to the release of the property from the superintendence of the Court of Wards, as required by s. 20 of the latter Act.

*Held* also that the plaintiff could not be allowed in appeal entirely to change the nature of the grounds upon which she alleged herself to be entitled to claim relief, and that hence she could not now raise the plea that the Court of Wards, in taking the property under its management, had acted without jurisdiction.

The expression "Local Government" in ss. 194 and 195 of Act XIX of 1873, and s. 20 of Act VIII of 1879, means the Lieutenant-Governor of the North-Western Provinces.

THE plaintiffs in this case, Masuma Bibi and Nawab Ahmad Hasan Khan, sued the Collector of the Ballia district, as Manager on behalf of the Court of Wards, for possession of an estate called taluqua Sunwani and of certain houses. It was alleged in the plaint that the property in suit belonged to the plaintiff, Masuma Bibi; that, not being competent to manage her property, she had, in 1869, made the whole of it over to the Court of Wards; that the management of the property by the Court of Wards had not proved beneficial to it; that Masuma Bibi had therefore transferred the taluqua and the houses to Nawab Ahmad Hasan Khan, by an oral gift, made in October, 1882; that Masuma Bibi had applied to the Board of Revenue to confirm the gift, but that authority had declined to do so; that Nawab Ahmad Hasan Khan was qualified to manage the property; and that therefore there was no longer any necessity for the property to remain under the management of the Court of Wards. The Collector set up as a defence to the suit, *inter alia*, that under s. 205, Act IX of 1873, as amended by Act XII of 1879, the plaintiff, Masuma Bibi, was not competent to bring any suit, except on behalf of and in the name of the Collector of the district; that Ahmad Hasan Khan had no right to the property, the gift to him being void, Masuma Bibi being, under s. 205 of Act XIX of 1873, as amended by Act XII of 1877, incompetent to make a gift, and the gift being further void under the Muhammadan Law and s. 123 of the Transfer of Property Act; and that "the property, which has been taken under the management of the Court of Wards, under s. 194, clauses (a) and (g), Act XIX of 1873, cannot be released from its superintendence without the sanction of the Local Government,—*vide* s. 195, Act XIX of 1873, as amended by s. 20,

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Act XII of 1879." At the hearing of the case it was contended for the defendant that under s. 241 (*k*) of Act XIX of 1873, the Civil Courts had no jurisdiction to entertain the suit. The lower Court held that the suit was cognizable in the Civil Courts; that the plaintiff, Ahmad Hasan Khan, had no title to the property; and therefore could not maintain the suit; and that the plaintiff, Masuma Bibi, would be entitled to recover possession of the property, if she could show the Court of Wards had committed waste. On this last point, it held that there was no proof that the Court of Wards had committed waste, and it therefore dismissed the suit.

The plaintiffs appealed to the High Court. The second ground of appeal was as follows:—"Because, appellant, Masuma Bibi not being a 'disqualified proprietor,' the assumption of management by the Court of Wards did not disable her from dealing with her property in the manner adopted by her."

Mr. T. Conlan, and Mr. C. H. Hill, for the appellant.

Mr. G. E. A. Ross and the *Senior Government Pleader* (Lala Juala Prasad), for the respondent.

PETHERAM, C.J.—I am of opinion that this appeal should be dismissed as it stands. This was a suit brought by Masuma Bibi and Nawab Ahmad Husain Khan to recover possession of the property which, at the time when the suit was instituted, was in the hands of the Collector as Manager of the Court of Wards. The suit was brought on a statement that the plaintiff, Masuma Bibi, had placed the property in the hands of the Court of Wards some years ago, and had done so because she was not in a position to manage the property herself. She alleged that the Court had managed the property badly, and that its condition had become worse, and that she, having given it to her grandson, was now capable of managing it, and desired to get it back. Upon this state of things the case went to trial, and the plaintiff gave no evidence. The defendant did give some evidence, of which it is not necessary to say more than that its effect was to show that the estate had been managed properly. If this is the true state of things, and the plaintiff did hand over the property to the Court of Wards, and the property could be so handed over, I am

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of opinion that the action could not be maintained with reference to the provisions of Act XIX of 1873 and Act VIII of 1879. If she could hand over the property, it could only be on the ground that she, as a female, was incapable of managing it properly herself, and it would be necessary that she should be deemed incapable of the management by the Local Government, which, in my opinion, means the Lieutenant-Governor. The statement of claim was all that she put before the Court, and that says that she herself made over the property to the Court of Wards, and therefore she must have satisfied the Lieutenant-Governor that she was incapable of managing it. Then we come to s. 20 of Act VIII of 1879. The suit was in the form of an action for ejectment, and it is said that the Court of Wards properly had charge of the property, but was now desirous to release it to the persons entitled to it. S. 20 of Act VIII of 1879 enacts, by way of proviso to s. 195 of Act XIX of 1873, giving the Court power to release property under its management, that "the property of a proprietor who has been held disqualified under the same section [(s. 194), cl. (a), cl. (e), cl. (f), or cl. (g)] shall not be released from the superintendence of the Court of Wards without the previous sanction of the Local Government." Now there is no evidence of this sanction having been obtained, and I am therefore of opinion that the suit as brought and the appeal must both be dismissed.

It has been suggested during the argument before us that Masuma Bibi may be entitled to bring the action upon a different ground altogether, which is that this is property which the Court of Wards had no jurisdiction to take, that the Court's possession was merely the result of an arrangement to which the plaintiffs were consenting parties, and which they now desire to terminate. If this view is correct, and it is not necessary for me to express any opinion upon that point, they would be entitled to get back the property. But they cannot do so in the present suit. They cannot, now at least, contend that the Court of Wards should be compelled to release the property. Whether it was legally under the Court's management or whether the defendant-vendee is legally in possession, we need not now decide. The appeal is dismissed with costs.

STRAIGHT, J.—I concur in what has fallen from the learned Chief Justice, but I wish to add that the main ground upon which I hold that this appeal should be dismissed is, that the case which is now put forward by Mr. Hill, the nature of which was shadowed forth by the second plea in the memorandum of appeal, is not the case upon which his client came into Court, or that which is presented on the face of the plaint. It is an entirely new case which has been stated in this Court for the first time in appeal, and raises an issue, which necessarily was not considered by the Court below, nor did the plaintiff give any evidence in support of it.

Under such circumstances, I do not consider that we should allow the plaintiff in appeal entirely to change the nature of the grounds upon which she alleges herself to be entitled to relief, and for this reason I concur in dismissing this appeal with costs.

*Appeal dismissed.*

*Before Mr. Justice Oldfield and Mr. Justice Mahmood.*

DEBI PRASAD (PLAINTIFF) v. HAR DAYAL (DEFENDANT).\*

*Occupancy tenant—Suit for ejectment—Act by tenant inconsistent with purpose for which land was let—Mortgage of occupancy-holding—Cancellation of mortgage before institution of suit for ejectment—Act XII of 1881 (North-Western Provinces Rent Act), ss. 9, 93 (b), 149.*

An occupancy tenant made a usufructuary mortgage of his holding, and afterwards had the land and the mortgage deed returned to him, and the mortgage was cancelled. Subsequently, the landlord instituted a suit for ejectment, on the ground that by the mortgage the tenant had committed an act inconsistent with the purpose for which the land was let, within the meaning of Act XII of 1881 (N.-W. P. Rent Act), s. 93 (b).

*Held* by OLDFIELD, J., that, apart from the question whether executing a mortgage of his holding was an act within the meaning of s. 93 (b) of the Rent Act, the mortgage having been cancelled, there was no cause of action left, and the penalty should not be enforced, with reference to s. 149.

*Held* by MAHMOOD, J., that the occupancy tenure could not be brought to an end except on grounds clearly provided by the law; and the execution of the mortgage, though illegal and void, was not "any act or omission detrimental to the land" or "inconsistent with the purpose for which the land was let" within the meaning of s. 93 (b) of the Rent Act, and furnished no ground for ejectment. *Gopal Pandey v. Parsotam Das* (1), and *Naik Ram Singh v. Murli Dhar* (2) referred to.

\* Second Appeal No. 88 of 1885, from a decree of G. J. Nicholls, Esq., District Judge of Azamgarh, dated the 10th September, 1884, affirming a decree of Babu Jagmohan Singh, Deputy Collector of Azamgarh, dated the 21st July, 1884.

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