1897

MUHAMMAD HUSAIN v. NIAMAT-UN-NISSA.

The authorities will be found at page 505 of Baillie's Moohummudan Law, Hanifeea (2nd edition); Hamilton's Hedaya by Grady, 2nd edition, p. 560); Tagore Law Lectures 1873 (Shama Charan Sarcar) p. 534; Tagore Law Lectures, 1884. (Ameer Ali) 2nd edition, Vol. I, p. 603.

In this case Muhammad Hasan had not obtained possession. We allow the appeal, and, setting aside the order of remand, we restore the decree of the first Court, but upon different grounds. There will be no costs of the appeal to the Court below or of the appeal to this Court.

Appeal decreed.

1897
July 30.

Before Mr. Justice Knox and Mr. Justice Burkitt.

SHEORANIA (PLAINTIFF) *v.* BHARAT SINGH (DEFENDANT).*

Minor—Suit on behalf of a person alleged to be, but not in fact, a minor—Procedure on discovery that the plaintiff was of full age at the commencement of the suit.

A suit was instituted on behalf of a person alleged to be a minor, through her next friend. The plaintiff obtained a decree. The defendant appealed, and on this appeal the alleged minor applied to be placed on the record in her own right as respondent, stating that she had attained her majority since the institution of the suit. The affidavits, however, by which this application was supported, showed that she had been of full age at the time when the plaint was filed. *Held* that the suit must be dismissed. *Taqui Jan* v. *Obaid-ulla* (1), dissented from.

THE facts of this case sufficiently appear from the judgment of the Court.

Mr. *D. N. Banerji* for the appellant.

Pandit *Moti Lal* and *Kunwar Parmanand* for the respondent.

KNOX and BURKITT JJ.—The suit out of which this second appeal arises was instituted on a plaint signed and verified by one Lachmi Narain, calling himself the next friend of Musammat Sheorania, whom he described to be a minor.

* Second Appeal No. 650 of 1895, from a decree of W. Blennerhassett, Esq., District Judge of Allahabad, dated the 20th March 1895, reversing a decree of H. David, Esq., Munsif of Allahabad, dated the 24th September 1894.

(1) I. L. R., 21 Calc., 866.

Sheorania was his daughter, and the suit was instituted on the 23rd of April, 1894. On the 24th of September, 1894, a decree was given upon this plaint in favour of the plaintiff. The defendant presented an appeal, and, when the next friend got notice of the appeal, Sheorania herself came forward and applied to the court to be allowed to carry on the suit as a major. From the affidavit which she filed, and from the affidavit which her father Lachmi Narain filed, it is proved beyond doubt that Musammat Sheorania had attained her majority some time before the institution of the suit in April, 1894. Upon this the defendant, who was appellant in the Court below, represented to the Judge that the suit should be dismissed, and it was dismissed.

It is now contended in appeal to this Court that the Judge should not have dismissed the suit, but should have allowed the plaint to be amended and the suit to be carried on by Musammat Sheorania, or, if amendment could not be allowed, the phrase "Lachmi Narain as next friend" might be treated as mere surplusage. In support of this the learned counsel for the appellant cited the case of *Taqui Jan* v. *Obaid-ulla* (1). We find ourselves unable to follow the procedure adopted in that case. We have before us what is not a plaint by Musammat Sheorania, inasmuch as it is neither signed nor verified by her, and she, according to both her own statement and that of Lachmi Narain, is the only person, if any, entitled to sue as plaintiff. The person who signed and verified the plaint is Lachmi Narain, a person not duly authorized by Sheorania in that behalf. Musammat Sheorania was of full age when the plaint was filed, and Lachmi Narain therefore had no standing whatever in the case. The *vakalatnamahs* in the case are also signed by Lachmi Narain, and, so far as the record shows, the whole proceedings were carried on by Lachmi Narain, a man who had no interest whatever in the property in dispute and had no cause of action against the defendant. What purports to be a plaint by Musammat Sheorania is not a plaint by Musammat Sheorania, and

(1) I. L. R., 21 Calc., 866.

1897

SHEORANIA v. BHARAT SINGH.

cannot therefore be amended by her. The appeal fails and is dismissed with costs in all Courts, which will be borne throughout by Lachmi Narain, the person who signed and verified the plaint on the record.

Appeal dismissed.

1897 *July* 31.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Blair.

ABDUL HAI AND OTHERS (DEFENDANTS) *v.* NAIN SINGH AND ANOTHER (PLAINTIFFS).*

Pre-emption— Wajib-ul-arz—Partition without new wajib-ul-arz being framed—Act No. XIX of 1873 *(North-Western Provinces Land Revenue Act) section* 107.

When a mahal is divided by perfect partition into two or more separate mahals a separate record of rights should be framed for each of the new mahals.

Where under such circumstances no fresh records of rights are framed for the new mahals the co-sharers in any one of the new mahals cannot, unless under very exceptional circumstances, claim, under the terms of the old record of rights applicable to the original undivided mahal, pre-emption in respect of land situated in any of the other new mahals. *Ghure* v. *Man Singh* (1) referred to.

THIS was a suit for pre-emption of a share in a village. The village in which the property in suit was situated had originally consisted of one mahál, but prior to the sale which gave rise to the present suit had been divided by perfect partition into two separate mahals. On this partition, however, no new *wajib-ul-arzes* had been framed for the new mahals. The plaintiffs pre-emptors were owners of shares in one of the new mahals and the share sold was a share in the other new mahál. The existing *wajib-ul-arz*, framed when the village was undivided, stated that the custom of pre-emption prevailed in the village.

The Court of first instance (Subordinate Judge of Moradabad) dismissed the suit, holding that the plaintiffs, not being sharers in the mahál in which the share sold was situated, could not claim pre-emption by virtue of the old *wajib-ul-arz*. The Court followed the ruling of the High Court in *Ghure* v. *Man Singh* (1).

* First Appeal from Order No. 35 of 1897, from an order of H. W. Lyle, Esq., Additional Judge of Moradabad, dated the 20th April 1897.

(1) I. L. R., 17 All., 326.