1900

MANMOTHO-NATH BOSE MULLICK v. BASANTO KUMAR BOSE MULLICK.

Judges who decided that case evidently considered that the law governing a relationship of the special nature must be looked for within the four corners of the Statute which created that relationship; the same law governs the present case; and they held that under section 21 of Act No. XL of 1858 the Judge had no power to require the heirs of a guardian to account for moneys received and disbursed by the father in the capacity of a guardian. The provisions of section 21 are personal to the guardian himself, and refer to cases in which his certificate has been recalled for incompetency, dishonesty or some other good cause, and not where his appointment has lapsed through death. This precedent was presumably known to the Legislature when they enacted Act No. VIII of 1890, and from the words used by them in section 41 of that Act, it seems to have been considered as the law which should prevail upon the point. The respondent has filed objections, and one of them is to the effect that the present suit would not lie. The objection is a good one and fatal to the suit.

We dismiss the appeal, and upon the objection taken we set aside the order of remand, and further direct that the suit as brought stand dismissed with costs in all Courts.

Appeal dismissed.

1900

May 3.

Before Sir Arthur Strachey, Knight Chief Justice, and Mr. Justice Banerji.

MALIK MUHAMMAD KARIM AND OTHERS (PLAINTIFFS) *v.* GANGA PANDE AND OTHERS (DEFENDANTS).*

Act No. XII of 1881 (*N.-W. P. Rent Act*), *sections* 93, 94—*Suit for recorded share of profits—Suit for settlement of accounts—Limitation.*

Where for the purposes of a suit in which a share of profits is claimed by a recorded co-sharer, either against the lambardár or against one or more or all of the other co-sharers, the Court is asked to adjust the accounts, what has to be looked to is the main and substantial object of the suit. If the main and substantial object of the suit is to obtain a settlement of accounts, and the obtaining a decree for a share of the profits is only the ulterior object of obtaining such settlement of accounts, then the suit is to be regarded as a suit for settlement of accounts. If the main and substantial object of the suit is to recover a share of profits which the defendant has received in excess of what he is entitled to, and if the Court is only asked to go into the accounts

* Appeal No. 5 of 1899 under section 10 of the Letters Patent.

incidentally to that main object, and for the purpose of determining whether the sum claimed is due, then the suit is not a suit for settlement of accounts merely, but it is a suit for a share of profits within the first category of section 93 (*h*) of the N.-W. P. Rent Act, 1881. *Rohan* v. *Jwala Prasad* (1), explained. *Indo* v. *Indo* (2), referred to.

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

Mr. *Abdul Raoof*, for the appellants.

Babu *Parbati Charan Chatterji*, for the respondents.

STRACHEY, C. J., and BANERJI, J.—We need not call upon the learned counsel for the appellants to reply. The suit clearly falls within section 93 (*h*) of the Rent Act (XII of 1881). The only question is whether it falls within the first category of suits mentioned in that clause, namely, suits by recorded co-sharers for their recorded share of the profits of a mahál, or within the second category of suits for a settlement of accounts. If it falls within the first category, then under the first paragraph of section 94 the period of limitation is three years from the day when the share became due: if it falls within the second category, then, under the third paragraph of section 94, the period of limitation is one year from the day on which the right to sue accrued. Mr. Justice Burkitt has held that the suit is one for a settlement of accounts, and that having been brought more than one year from the day on which the right to sue accrued, it was barred by paragraph 3 of section 94. Now in order to see whether the suit falls within the first or the second category mentioned in section 93 (*h*), it is necessary to look at the plaint. The suit purports to be brought by certain co-sharers of the village against certain other co-sharers. It is headed as a "claim for the recovery of Rs. 516-11-6 principal and interest after adjustment of account from 1301 to 1303 Fasli, on account of lands in mauza Poni, pargana Ghosi." It sets forth that the profits arising from the plaintiff's share during the years in question amounted to Rs. 2,000 odd, out of which the plaintiff's received from the tenants Rs. 1,600 odd, and that the remaining sum of Rs. 436-11-6 due to the plaintiffs was appropriated by the defendants, first party. It further alleges that out of the profits for the years in question the defendants have collected Rs. 436-11-6 on account of the plaintiffs' share in excess of the defendants'

(1) (1894) I. L. R., 16 All., 333. (2) (1893) I. L. R., 16 All., 26.

1900

MALIK MUHAMMAD KARIM v. GANGA PANDE.

own share of the profits, and have not paid it in spite of repeated demands. The only relief prayed in the plaint, apart from costs, is that a decree for the recovery of Rs. 436-11-6 principal, and Rs. 80 interest, in all Rs. 516-11-6 may be passed in favour of the plaintiffs against the defendants. There is no specific prayer referring to accounts. The only allusion to an account is in the heading of the plaint, where the claim is described as one for the recovery of Rs. 516 "after adjustment of accounts." It is thus clear that the main and substantial object of the suit is to recover from the defendants with interest a specific sum which the defendants are alleged to have recovered from the tenants in excess of their own share of the profits and to hold on account of the plaintiffs' share. For the purpose of ascertaining the correctness of the amount claimed, but for no other purpose, the Court is asked to adjust the accounts. Now this being the nature of the claim, the ruling of the Full Bench in *Rohan* v. *Jwala Prasad* (1) appears to us to show clearly that the suit falls within the first category mentioned in section 93 *(h)* and not within the second category. The Full Bench held in effect that where for the purposes of a suit in which a share of profits is claimed by a recorded co-sharer, either against the lambardár or against one or more or all of the other co-sharers, the Court is asked to adjust the accounts, what has to be looked to is the main and substantial object of the suit. If the main and substantial object of the suit is to obtain a settlement of accounts, and the obtaining a decree for a share of the profits is only the ulterior object of obtaining such settlement of accounts, then the suit is to be regarded as a suit for settlement of accounts. If the main and substantial object of the suit is to recover a share of profits which the defendant has received in excess of what he is entitled to, and if the Court is only asked to go into the accounts incidentally to that main object and for the purpose of determining whether the sum claimed is due, then the suit is not a suit for settlement of accounts merely, but it is a suit for a share of profits within the first category of section 93 *(h)*. Now the claim in that case very closely resembled the claim in the present case. There a specific sum was claimed by a recorded co-sharer against four

(1) (1894) I. L. R., 16 All., 333.

other co-sharers in the village, not against the lambardár, as a share of the profits which the defendants were alleged to have realized in excess of what they were entitled to. The plaint asked for the recovery of the amount claimed "by means of adjustment of account," the same expression as is used in the plaint before us in the only reference which it makes to accounts. The prayer was there, as here, not any prayer referring to a settlement of accounts, but a decree for the specific amount claimed with interest. It was held by the Full Bench that, notwithstanding the reference to an adjustment of accounts, the suit fell within the first category of section 93 *(h)* and was for the purposes of limitation to be regarded as a suit for a share of the profits of a mahál. We cannot agree with the learned Judge who heard this appeal that the present suit falls within the second category of cases mentioned by the Full Bench. We think that it clearly falls within the first category. The learned pleader for the respondent has referred to an earlier Full Bench case of *Indo* v. *Indo* (1). It is not necessary to discuss that case beyond saying that if the decision lays down anything inconsistent with the case of *Rohan* v. *Jwala Prasad* (2), it must be taken to have been overruled by that case, which was decided by six Judges of the Court, including the three Judges who were parties to the former case.

Mr. Justice Burkitt does not in his judgment discuss the other points raised by the memorandum of appeal to this Court. We have heard the pleader for the respondent in support of these pleas, and we think there is no force in any of them.

We allow this appeal, set aside the judgment of Mr. Justice Burkitt and dismiss the appeal to this Court with costs.

[A similar case was decided by Banerji, J., on the 6th June, 1900, S. A. No. 891 of 1899, the judgment in which is given below *.—ED.]

Appeal decreed.

* BANERJI, J.—The suit which has given rise to this appeal was brought under cl. (*h*) of section 93 of Act No. XII of 1881, for the plaintiffs' recorded share of profits for the years 1302, 1303 and 1304 Fásli. The plaintiffs own a fourth share in Khata No. 21, and an eighth share in Khata No. 22, and they seek to recover the amount claimed as arrears of profits in respect of those

(1) (1893) I. L. R., 16 All., 28. (2) (1894) I. L. R., 16 All., 333.