

P. C. * MUHAMMAD MUMTAZ ALI KHAN (PLAINTIFF) v. SHEORUTTANGIR
1896. AND ANOTHER (DEFENDANTS).
Feb. 26
and
May 9.

[On appeal from the Court of the Judicial Commissioner of Oudh.]

Minor—Invalid decree against minor on an alleged consent—Proof of authority to bind minor by consent—Regulation X of 1793—Court of Wards.

A decree-holder, who rests his case upon his decree having been made against a minor by consent, is under the necessity of proving that the consent was given by some one having authority to bind the minor thereby.

In 1872, in the Settlement Court, a decree for land was made adversely to a minor, of whose person, or for the suit, no guardian had been appointed. The minor's estate was under the charge of the Court of Wards, consisting, in the first instance, of the Deputy Commissioner of the District, who had appointed a manager of the estate. The *mukhtar* of the Court of Wards informed the Settlement Court that the manager consented to a decree, which was thereupon made in favour of the claimant.

Held, that there was no occasion to decide whether the minor was substantially a party to the suit in the Settlement Court, or whether his interests had not been prejudiced by his not having been impleaded through a guardian, or whether there had been fraud in the giving or alleging consent. But that the affirmative of the question whether the consent had been competently given on the minor's behalf was upon the defendant in the present suit, who had obtained the decree upon it.

Their Lordships were of opinion that it had not been shown that the manager was authorized by the Court of Wards to give to the *mukhtar* authority to make the admission. It was not enough that the *mukhtar* was the *mukhtar* of the Court of Wards, and said that he had authority to admit the claimant's right. The decree of the Settlement Court was set aside on this last ground. The decision of the Original Court in this suit, that the claimant in the settlement suit had not proved the title claimed by him, was also affirmed.

APPEAL from a decree (7th July 1890) of the Judicial Commissioner, reversing a decree (20th August 1889) of the District Judge of Fyzabad.

The plaintiff, now appellant, *talukdar* of Bilaspur, in the Gonda District (entered in 1 and 2 of the lists prepared under the Oudh Estates' Act, 1869), brought this suit on the 26th November 1888 to recover, as part of his ancestral property,

* Present: LORDS WATSON, HOBHOUSE, and DAVEY, and SIR R. COUCH.

a village named Katra, in that district, in the possession of Manjgir Gushain, the defendant, who died in 1892, while this appeal was pending. The respondents, Sheoruttangir and Ramsarangir, disciples and heirs of Manjgir, had their names placed on the records instead of his by order of the Judicial Commissioner of the 23rd December 1892. Mesne profits Rs. 3,565, from Fasli 1293, or 1886, were claimed.

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The right to the under-proprietary possession of village Katra was decreed by a Settlement Court, on the 9th July 1872, in the course of a Settlement then in progress, in favour of Manjgir Gushain, who claimed this right in virtue of a *birt patra*, or grant for maintenance, which he alleged to have been made to his predecessor in Fasli 1225, corresponding to 1818, by one of the predecessors in title of the present plaintiff, the *talukdar*. The latter in 1872 was a minor aged only a few years.

On this appeal the principal question was whether the decree of 1872, which had been made upon what purported to be a consent, had been founded upon a consent shown to have been given by a person having authority to bind the minor. Upon this question the Courts below had differed. The first Court held that there had been no legal authority for the consent. The Appellate Court held that the consent had been given by a person duly authorized.

The decree of the Settlement Court declared Manjgir entitled to hold the village as *birtia*, or holder of a *birt*, on payment of the *jumma*, with fifty per cent. of the same in addition, and half of the village expenses.

In October 1886 the Rajah, now plaintiff, attained his full age of twenty-one years, according to the Indian Majority Act, 1875, section 3, his estate having been, during all his minority, in charge of the Court of Wards. Suing for the proprietary right in village Katra, "by cancellation of the decree of the Settlement Court," he stated in his plaint that this village had always been included in the *kabuliyat* of his ancestors, and was his by inheritance; and that he had not legally been made a party to the Settlement suit; that the decree of the Settlement Court had been obtained through a fraudulent admission stated by Thakur Parshad, *mukhtar* of the Court of Wards.

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The answer of Manjgir Gushain was that the decree of 1872 had been validly made upon a consent, given with due authority, admitting his title, which was a *birt patra*, given in 1818, comprising the lands of the village, which had since been established by him.

Among the issues framed by the District Judge were: Whether the plaintiff had been a party to the decree of 1872 through the Court of Wards; whether the *mukhtar* had authority, and the consent had been given by a person empowered to bind the minor, or there had been fraud and collusion; and whether the defendant had title as *birtia*.

The facts and recorded proceedings appear in their Lordships' judgment. The District Judge of Gonda in his judgment found that there was no trace of a *birt patra* in any record, and that the claim made by the Gushain in 1871 was a false one. He observed that Salik Ram, the manager, who could have explained the admission, had not been called by the defendant, and it remained unexplained. If the manager had acted under the orders of the Deputy Commissioner, who represented the Court of Wards, that might have supported the decree. The *mukhtar*, however, according to the record of the Settlement Officer, inquired of the manager, and, as the latter alone was impleaded, the conclusion must be that he admitted the claim without referring to the Court of Wards. Thus, in the opinion of the District Judge, the claim was wrongly admitted. He cited *Mrinamoyi Dabia v. Jogodishuri Dabia* (1), *Suresh Chunder Wum Chowdhry v. Jugut Chunder Deb* (2), and *Ganga Prosad Chowdhry v. Umbica Churn Coondoo* (3). He decreed to the plaintiff proprietary possession, cancelling the decree of 1872, and decreed Rs. 3,560, mesne profits down to decree, and afterwards as the executing Court might determine them.

This was reversed by the Judicial Commissioner, who found that the minor had sufficiently been made a party to the settlement suit through the Court of Wards. The presumption of *omnia rite esse acta* should be regarded. The burden of proving

(1) I. L. R., 5 Calc., 450.

(2) I. L. R., 14 Calc., 204.

(3) I. L. R., 14 Calc., 754.

that the decree of 1872 had been obtained by fraud and collusion, lying, as it did, according to the opinion of the Appellate Court, entirely upon the plaintiff in this suit, had not been discharged. Upon this state of things, coupled with other reasons, it followed in the opinion of that Court that the settlement decree of 1872 must be held binding upon the parties, and that thus the plaintiff's claim was barred.

The suit was accordingly dismissed, with costs of both Courts, and interest thereon.

The plaintiff appealed.

Mr. J. D. Mayne, and Mr. C. W. Arathoon, for the appellant, contended that in the settlement suit, which resulted in the decree of 1872, the minor was not to be considered as having been in Court at all. Being under disability to act himself, he was not properly represented by either the Court of Wards or an appointed guardian. The manager, as to whom there was nothing to show that he had been appointed guardian of the minor, could not exercise the authority of the Court of Wards to make the admission. Regulation X. of 1793, in force in Oudh, enacted rules for the establishment and guidance of the Courts of Wards in relation to disqualified landholders and their estates, and related to the appointment and powers of a manager, but contained nothing to show that he had the powers of a guardian of the minor or the powers of the Court of Wards itself in such a matter. Again, there had been no inquiry by the Settlement Officer as to the authority under which the consent to a decree had purported to be given. Had the admission been accepted by the Settlement Court, after full inquiry into that subject, then another and a different case would have been presented. But no discretion had been exercised as to the reception of the *mukhtar's* statement or the authority for the consent, which had merely been recorded as if the manager's reported compliance fully sufficed. Section 462 of the Civil Procedure Code was referred to. This was not a mere objection to an irregularity, but an objection to the entire absence of lawful guardianship which invalidated the proceedings against the minor. Having attained full age he had now made good his grounds for having the decree of 1872 set aside for the reason last stated. But it should be observed that the Settlement

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Officer's record and decree, from the point of view of the evidence and the merits, showed no adequate inquiry. It was so far from being improbable that collusion might have taken place that the reported consent was far from satisfactory. There had been no proof whatever of the *virt* having been granted, and against that title having existed the first Court had given reasons. Reference was made to *Ganga Prosad Chowdhry v. Umbica Churn Coondoo* (1).

Mr. A. F. Murison and Mr. A. J. Wallach, for the respondent, argued in support of the judgment of the Appellate Court below. Whether the exact words at the head of the plaint in the Settlement Officer's record had been given in the judgment of the first Court might be doubted; not corresponding with the words in this record given as correct. The validity, however, of the decree of the Settlement Court depended upon whether the minor was substantially a party to the suit in which that decree was made. In *Suresh Chunder Wum Chowdhry v. Jugut Chunder Deb* (2), the judgment of the High Court showed that the question must be whether the minor was substantially a party to the suit. It was contended that here he was such a party through the Court of Wards. By section 578 of the Civil Procedure Code no decree was reversible for mere irregularity, not affecting the merits of the case, or the jurisdiction of the Court. The sections 161, 175, 176 of Act XVII of 1876 showed that the Court of Wards (the Deputy Commissioner being himself by section 161 that Court, with appeal up to the Chief Commissioner whose order was final) had authority to dispose of the minor's estate. By section 175 no suit could be maintained or defended by any guardian without the sanction of the Court of Wards, and by section 176, if no such guardian had been appointed, the disqualified proprietor was to sue, and to be sued, in the name of the Court of Wards. Authority was thus vested in the Deputy Commissioner who, in the capacity of the Court of Wards, appointed the manager in conformity with the rules in Regulation X of 1793, and in due course would issue orders to the manager, who thus would have power to consent to the decree in question. The decree of the Settlement Court was regularly and legally obtained in 1872 without collusion or fraud, which could not be presumed, and that

(1) I. L. R., 14 Calc., 754.

(2) I. L. R., 14 Calc., 204.

decree was binding on the appellant. The respondent's title was supported by that decree, but existed apart from it, to a *birt* tenure of the village.

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Mr. J. D. Mayne was not called upon to reply.

Afterwards on the 9th May 1896 their Lordships' judgment was delivered by

SIR R. COUCH.—The suit in this case was brought by the appellant against Manjgir Gushain, since deceased, of whom the respondents are the heirs, in the Court of the District Judge of Fyzabad. The plaint stated that the village Katra was the ancestral property of the plaintiff; that on the 31st May 1871 the defendant, who was a lessee of a 12 annas share of the village from the Court of Wards, instituted in the Settlement Court a wrong claim for *birt* tenure against the plaintiff, who was then a minor about six years old; that the plaintiff's estate was in charge of the Court of Wards, and he was not made a party to the suit; that on the 9th July 1872 Thakur Parshad, agent, on the allegation that he was agent, made a verbal admission of the claim and got a decree of *birt* tenure passed in favour of the defendant, under which the defendant wrongfully held possession of the village. It was alleged that Thakur Parshad was not competent to make an admission of the claim, that the defendant was not a *birt* holder, and that the confession was collusive and fraudulent. The defendant in his written statement said that Thakur Parshad was competent to make confession, and he made the confession by direction of the Superintendent of the Court of Wards, that a *birt patra* (grant of land for subsistence) was filed with the settlement record, and the decree was passed after inspection thereof; that the claim in the Settlement Court was instituted in a valid manner and in accordance with the rules then in force; that there was no fraudulent or collusive proceeding on the part of the defendant, and the claim was admitted with the knowledge and permission of the Superintendent of the Court of Wards. These were the questions to be tried, and the following issues were settled by the District Judge: (1) Was Thakur Parshad competent to admit the claim? (2) Was he guilty of collusion and fraud? The District Judge found that there was no *birt patra*. He had examined the settlement record and there

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was no trace of a *birt patra* having been filed. The Judicial Commissioner in his judgment did not say anything upon this question. It does not appear that he considered it, but their Lordships are satisfied that there was no proof of a *birt patra*. With regard to the regularity of the proceedings in the Settlement Court the plaint in the copy filed in this suit is entitled *Manjgir Gushain v. Raja Mumtaz Ali Khan*. The District Judge who examined the settlement file says the plaint "was against Manager, Bilaspur Court, Raja Mumtaz Ali Khan, not against Raja Mumtaz Ali personally. Summons was served by notice on manager of defendant (Salik Ram), see endorsement on back of plaint. Thakur Parshad is stated to be *mukhtar* of the Court of Wards." Salik Ram was the manager of the estate; no guardian of the person of the minor was appointed. In the view which their Lordships take of the main question in the appeal, it is not necessary to decide whether, as was held by the Judicial Commissioner, the Raja was substantially a party to the suit, and his interests were in no way prejudiced by the fact that he was not impleaded through a guardian.

The recorded proceedings in the Settlement Court are as follows: The suit was filed on the 1st June 1871. On the 23rd June 1872 the Settlement Officer recorded "defendant by Thakur Parshad. I have sent to manager to have this claim admitted and will reply when report comes." Under date the 9th July 1872 the record is "defendant by Thakur Parshad says he has now authority to admit plaintiff's right as formerly set forth. Decree by admission. Plaintiff entitled to lease as *virtia* on payment of Government *jumma* plus 50 per cent. of same and half village expenses." At the time of the trial of this suit Thakur Parshad was dead, but Salik Ram, the manager, was alive. His evidence was not taken. The Judicial Commissioner in his judgment says it was for the plaintiff to call him if he believed that by his evidence fraud and collusion could be established. It would be so if that had been the only issue. But on the issue "Was Thakur Parshad competent to admit the claim?" the affirmative was on the defendant, and it was for him to prove that Thakur Parshad had authority to consent to a decree in that way by calling Salik Ram and also showing that he was authorized by the Court of Wards to give Thakur

Parshad authority to make the admission. It was not sufficient that Thakur Parshad was the *mukhtar* of the Court of Wards and said he had authority to admit the plaintiff's right. And this being the only evidence the District Judge rightly found on that issue that he had no legal authority to do so. It is necessary that one who rests his case on a decree made by consent against an infant should show that the consent was given by somebody having authority to bind the infant. Upon this question the Judicial Commissioner appears to have thought it was sufficient for a decision against the plaintiff that the Court of Wards was defendant, and on its behalf an appearance was put in by a person who represented himself to be, and was accepted by the Settlement Officer as being, the *mukhtar* or agent of the Court of Wards. On such a slight ground as this the decree of July 1872 was held to be binding and the minor to be deprived of his property. It is not necessary to determine whether there was fraud and collusion on the part of Thakur Parshad. There was no evidence of it, but, as is usual in India, the plaintiff, or more probably his pleader, was not satisfied with alleging in the plaint that Thakur Parshad was not competent to make the admission and thought to complete the case there should be a charge of fraud. In consequence of this both the lower Courts seem to have considered it was necessary to decide that question. Their Lordships are of opinion that the decree of July 1872 was not proved to be binding on the appellant, and that the deceased defendant had not the *birt* title which he claimed. They will therefore humbly advise Her Majesty to affirm the decree of the District Judge and to reverse the decree of the Judicial Commissioner and order the appeal to him to be dismissed with costs.

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The respondents will pay the costs of this appeal.

Appeal allowed.

Solicitors for the appellant : Messrs. *T. L. Wilson & Co.*

Solicitors for the respondent : Messrs. *Walker & Rowse.*

C. B.