1904
May 3.

Before Mr. Justice Blair and Mr. Justice Banerjee.

SHAM LAL (PLAINTIFF) *v.* BINDO (DEFENDANT).*

Act No. VIII of 1890 *(Guardians and Wards Act), sections* 10, 25 *and* 45—*Suit by Hindu father for establishment of his right as guardian and for custody of his infant child—Jurisdiction.*

A suit was brought by a Hindu father alleging himself to be the guardian of his infant child for establishment of his right as such guardian and for the custody of the child, detained by the defendant, who was the maternal grandmother of the child. *Held* that Act No. VIII of 1890 (the Guardians and Wards Act) was intended by the Legislature to be a complete Code defining the rights and remedies of wards and guardians, and that no such suit as that brought would lie. *Ghasita* v. *Wazira* (1) approved. *Krishna* v. *Reade* (2) and *Sharifa* v. *Munekhan* (3) distinguished. *In the matter of the petition of Kashi Chunder Sen* (4), *The Collector of Pubna* v. *Romanath Tagore* (5) and *Mussamat Hara Sundari Baistabi* v. *Mussamat Jayadurga Baistabi* (6) referred to.

IN this case the plaintiff filed a suit in the Court of the Munsif of Moradabad in which he alleged that his infant daughter, Har Piari, aged about 5 years, was detained against his will by her maternal grandmother, the defendant, and prayed that "by establishment of the plaintiff's right, Musammat Har Piari, the minor daughter of the plaintiff, may be caused to be duly delivered to the plaintiff by the defendant." The defendant pleaded *inter alia* that "the plaintiff ought to have made an application to the District Judge for the custody of the minor's person under the provisions of Act VIII of 1890; the suit in a Civil Court is improper." On the issue as to jurisdiction thus raised the Munsif dismissed the suit, and on the same question the District Judge dismissed the appeal which was filed by the plaintiff from the Munsif's decree. The plaintiff accordingly appealed to the High Court.

Pandit *Moti Lal Nehru*, for the appellant.

Pandit *Sundar Lal* and Dr. *Tej Bahadur Sapru*, for the respondent.

BLAIR and BANERJI, JJ.:—The suit out of which this second appeal arises is a suit brought by a Hindu father alleging

*Second Appeal No. 598 of 1902 from a decree of T. C. Pigott, Esq., District Judge of Moradabad, dated the 11th of April 1902, confirming a decree of Lala Deoki Nandan Lal, Munsif of Moradabad, dated the 24th of January 1902.

(1) (1896) 32 Punj. Rec., 41.
(2) (1885) I. L. R., 9 Mad., 31.
(3) (1901) I. L. R., 25 Bom., 574.
(4) (1881) I. L. R., 8 Calc. 266.
(5) (1870) B. L. R., F. B., 66—67, 690.
(6) (1881) 4 B. L. R., App., 36.

himself to be the guardian of his infant child for establishment of his right as such guardian and for the custody of the child, detained by the defendant, who is the maternal grandmother of the child. Both the Courts have dismissed the suit on the ground that the remedies provided by Act No. VIII of 1890 are exhaustive, and that after the passing of that Act all proceedings of the kind must be taken by way of application under that Act and not by regular suit. This is the question we have to decide, and so far as we know, there has been no decision in this Court upon the point. Cases have indeed been cited to us, namely, *Abasi* v. *Dunne* (1), *Balmakund* v. *Janki* (2) and *Pukhandu* v. *Manki* (3). It is obvious that none of these cases is in point. The case relied upon by the appellant here is the case of *Krishna* v. *Reade* (4). In that case it was explicitly ruled that a suit would lie under the provisions of the law as it then stood. That decision was, however, passed in 1885 and was a decision when Act No. IX of 1861 was in force. The matter also came up for discussion in *Sharifa* v. *Munekhan* (5), which has been cited to us. That case was decided after the passing of Act No. VIII of 1890. However, it appears to us that in the judgment of the Chief Justice the law on the subject was not laid down, but reference was made to a past decision, which, as far as we know, is not reported. The following observation was made in the judgment:—"It appears to me under the circumstances profitless to enter on any discussion of the question, for even if we disagreed with that decision we could only refer the matter to a Full Bench." The case was ultimately decided upon a different point. In the judgment of Mr. Justice Chandavarkar, however, certain cases are referred to as indicating, in the opinion of that learned Judge, that a remedy by suit still continued to exist, although a special remedy had also been provided. The learned Judge relied upon the decision in *In the matter of the petition of Kashi Chunder Sen* (6) and *The Collector of Pubna* v. *Romanath Tagore* and *The Magistrate of Maldah* v. *Bebee Golebunnessa* (7).

(1) (1878) I. L. R., 1 All., 598.
(2) (1881) I. L. R., 3 All., 403.
(3) (1881) I. L. R., 3 All., 506.
(4) (1885) I. L. R., 9 Mad., 31.
(5) (1901) I. L. R., 25 Bom., 674.
(6) (1881) I. L. R., 8. Calc., 266.
(7) (1867) B. L. R., F. B., 66—67, 630.

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We have examined those cases, and in our opinion they do not bear out the conclusion at which the learned Judge has arrived. The matter, however, has come up before the Chief Court of the Punjab, and there has been heard and decided in Full Bench in the case of *Ghasita* v. *Wazira* (1) That case seems to us precisely in point and to have been rightly decided. We find that Act No. VIII of 1890 is expressly called a consolidating Act. That expression, like the word 'Code,' implies an exhaustive treatment of all the matters that fall within its purview. Under section 10, cl. *(j)*, of that Act an application may be made to declare a person the guardian of a minor. Under section 25, if a ward leaves or is taken out of the custody of a guardian, an order on application can be made to arrest the ward and to deliver him to the custody of the guardian. Section 45 provides most drastic remedies for the detention of a minor by an unqualified person, who can be punished with a fine of Rs. 100 under an order of the Court and with a further fine for every day during which such detention lasts. He can in addition be detained in a civil jail until he undertakes to produce the minor, and if after so undertaking he fails to produce him, he can be ordered by the Court to be re-arrested and re-committed to jail. Now if we were to yield to the contention of the appellant in this case, it would be possible for a civil suit to be instituted in the Court of the Munsif and to be maintained against the person detaining a ward. A decree might be passed against him and an order for restoration of the ward to the plaintiff. At the same time proceedings might be held under section 45 by which, for the very same act, he might be punished with fine and imprisonment. We are face to face with this anomaly that whilst a suit was brought by A against B for recovery of the custody of a minor, and possibly for damages, an application might be made to the District Court by C, also claiming to be entitled as guardian to the custody of the minor against the person who was the defendant in the civil suit; and an order might be granted against B upon the application under Act VIII of 1890. In that case there would be extant two conflicting orders,

(1) (1896) 32 Punj. Rec., 41.

the decree of the Civil Court ordering B to deliver to A the person of the ward, and an order under this Act directing the same person B to deliver the ward to C. There is nothing in terms in the Act to make one of those orders prepotent over the other, if only the civil suit had been instituted and the decree obtained prior to the application made under this Act. Had the proceedings by suit taken place after an order had been made upon application under this Act, then, by the provisions of section 48, the order made upon the application would be final and conclusive, and not liable to be contested in any suit whatever. We are unable to believe that the Legislature intended to produce a dead-lock of this kind. We are driven to the conclusion which has been arrived at by the Chief Court of the Punjab, that this Act was intended to be a complete Code defining the rights and remedies of wards and guardians. Indeed, the expression used in the preamble points in that direction. Act No. VIII of 1890 is a Code to consolidate and amend the law relating to guardians and wards, which in our opinion indicates that the intention of the Legislature was the disposal of all the questions touching the relations of guardians and wards by proceedings under the provision of this Act only. Even before the passing of Act No. VIII of 1890, when Act No. IX of 1861 was in operation, the Calcutta High Court in *Mussamat Hara Sundari Baistabi* v. *Mussamat Jayadurga Baistabi* (1) held that no suit would lie for the custody of a minor in the Court of a Munsif. We think therefore that the Courts below were right in dismissing this suit. We accordingly dismiss the appeal with costs.

Appeal dismissed.

(1) (1870) 4 B. L. R., App. 36.