

FULL BENCH.

1907

June 11.

Before Sir George Knor, Acting Chief Justice, Mr. Justice Bauerji and Mr. Justice Richards.

SADHO LAL (DEFENDANT) v. MURLIDHAR (PLAINTIFF).*

Act No. VIII of 1890 (Guardians and Wards Act), section 52—Act No. IX of 1875 (Indian Majority Act), section 3—Guardian and minor—Effect of appointment of guardian—Civil Procedure Code, section 410.

Where a guardian has once been appointed under the provisions of Act No. VIII of 1890, the attainment of majority by the ward is postponed until he reaches the age of twenty-one years notwithstanding that the guardian appointed by the Court may be discharged before that time arrives. *Gordhandas Jadwaji v. Harivallubhdas Bhaidas* (1) followed, *Patesri Partap Narain Singh v. Champa Lal*, (2) distinguished.

THE facts out of which this appeal arose are as follows :—

On the 6th of January 1904 the District Judge of Agra, acting under the provisions of Act No. VIII of 1890, appointed one Sadho Lal guardian of the person and property of one Murlidhar, who was then a minor of about fifteen years of age. Sadho Lal continued to act as guardian until the 11th of January 1906, when he applied to be permitted to resign his office as guardian. Upon this application the District Judge passed an order to the following effect :—“He is discharged under section 40 of Act No. VIII of 1890, and has handed over Rs. 19-9-9, which Murlidhar’s pleader accepts under protest, stating that he does not admit the correctness of the accounts. The discharge will not absolve Sadho Lal from liability for any fraud that may subsequently be discovered.” After the passing of this order Murlidhar, who was then between the ages of eighteen and twenty-one, filed in person a suit against his late guardian claiming certain money, which he alleged to be still in the hands of the defendant. The Court of first instance overruled the plea taken by the defendant that the plaintiff was still a minor, but dismissed the suit on other grounds. The plaintiff appealed, and the lower appellate Court reversed the decree of the first Court and remanded the suit under the provisions of section 562 of the Code of Civil Procedure. From this order the defendant appealed to the High Court.

* First Appeal No. 105 of 1906 from an order of Babu Shiva Prasad Subordinate Judge of Agra, dated the 7th of September 1906.

(1) (1896) I. L. R., 21 Bom., 281.

(2) Weekly Notes, 1891, p. 118.

Lala Kedar Nath, for the appellant, contended that the effect of the appointment of a guardian was to postpone the attainment of majority by the ward to the age of twenty-one, and it made no difference that the guardian had been discharged. He referred to section 3 of Act No. IX of 1875 and section 52 of Act No. VIII of 1890. It was submitted that the ruling in *Patesri Partap Narain Singh v. Champa Lal* (1), upon which the Courts below had relied, was in conflict with the later ruling in *Khwahish Ali v. Sarju Prasad* (2) and had been wrongly decided. In the latter case the earlier ruling had apparently not been brought to the notice of the Court. Reliance was also placed on *Gordhandas Jadwaji v. Harivalubhdas Bhaidas* (3) and *Rudra Prokash Misser v. Bholu Nath Mukherjee* (4).

Dr. Satish Chandra Banerji, for the respondent, contended that the case of *Patesri Partap Narain Singh v. Champa Lal* had been rightly decided. The words "has been or shall be" in section 3 of Act No. IX of 1875 imply that the guardian is in existence; otherwise the Legislature might have said "a guardian was at some time appointed." The perfect tense was deliberately used to imply continuity. If no guardian were appointed, the minor would attain majority at eighteen and be competent to maintain a suit. This right should not be restricted where the appointment of a guardian is more nominal than real, and by the time the minor completes his eighteenth year the guardian ceases to exist. The Statute should be strictly construed. Maxwell on the Interpretation of Statutes, 3rd edition, pp. 122, 427.

KNOX, ACTING C.J., and BANERJI and RICHARDS, JJ.—The parties to this appeal are respectively Murlidhar, who was plaintiff in the Court below, and Sadho Lal, the present appellant, who was defendant. On the 6th of January 1904 the District Judge of Agra, acting under the provisions of Act No. VIII of 1890, appointed Sadho Lal guardian of the person and property of Murlidhar, who was then a minor of about 15 years of age. Sadho Lal continued to act as guardian up to the 11th of January 1906. He then applied to resign his office as guardian. The District Judge passed an order which was the subject of argument in the Court below, and which in the present appeal the appellant

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(1) Weekly Notes, 1891, p. 118.

(3) (1896) I. L. R., 21 Bom., 281.

(2) (1881) I. L. R., 3 All., 593.

(4) (1886) I. L. R., 12 Calc., 612.

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claimed to be an order of absolute discharge. As we are able to decide this appeal upon the other pleas taken in the memorandum of appeal, we do not intend to do more than point out that all that the learned Judge of Agra in his order says is as follows :—

“ He is discharged under section 40 of Act No. VIII of 1890 and has handed over Rs. 19-9-9, which Murlidhar's pleader accepts under protest, stating that he does not admit the correctness of the accounts. The discharge will not absolve Sadho Lal from liability for any fraud that may be subsequently discovered.”

The learned Judge does not, as he might have done, declare him to be discharged from liability. After this order passed by the learned Judge, Murlidhar in person filed a suit in Court, in which he lays claim to certain money as being in the hands of Sadho Lal. The defence to the suit was that Murlidhar was still a minor and being a minor could not sue without a next friend. At the time when he instituted the suit Murlidhar had attained 18 years of age, but was admittedly below the age of 21. The Court of first instance overruled the plea of minority, but dismissed the suit on other grounds. The lower appellate Court agreed with the Court of first instance on the question of minority, but held that the suit was not barred by Act No. VIII of 1890, as held by the first Court. It accordingly remanded the case to the Court of first instance under the provisions of section 562 of the Code of Civil Procedure for disposal on the merits. In appeal before us it was contended that, the respondent not having attained the age of 21 when he brought the suit was not competent to maintain it, and under the provisions of section 444 of the Code of Civil Procedure the order of the lower Court ought to be discharged. Reliance was placed on the provisions of section 3 of Act No. IX of 1875 as amended by section 52 of Act No. VIII of 1890. The language of that section is plain and free from all ambiguity, and it would not really have been necessary to have this appeal decided by a Full Bench of this Court, but for the ruling in the case of *Patesri Partap Narain Singh v. Champa Lal* (1). The learned Judges who decided that case held that the mere fact of the appointment of a guardian would not operate to postpone the attainment of majority by a minor till he reaches the age of 21. That case was, however, a case instituted

(1) Weekly Notes, 1891, p. 118.

before section 3 of Act No. IX of 1875 had been amended. The amendment makes it very clear that the Legislature does intend that when a guardian has been appointed, even if that guardian afterwards resigns or for any other reason ceases to act as guardian, the attainment of majority by a minor is postponed until he has completed his age of 21 years. The same view was taken by the Bombay High Court in the case of *Gordhandas Jadowji v. Harivalubhdas Bhaidas* (1). As the suit was instituted before the plaintiff had attained the age of 21, the institution of the suit by the minor before he attained majority was a violation of the provisions of section 440 of the Code of Civil Procedure. In view of the order that we are about to make we think it well to draw attention to the provisions of section 36 of Act No. VIII of 1890. The appeal is decreed; the orders of both the Courts below are set aside, and the case is sent back to the Court of first instance with directions to return the plaint to be represented, if thought desirable, by a next friend, after that next friend has obtained the necessary sanction from Court. We make no order as to costs.

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Appeal decreed.

APPELLATE CIVIL.

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 July 12.

Before Sir George Know, Acting Chief Justice, and Mr. Justice Richards.

RAMCHANDRA DAS (DEFENDANT) v. JOTI PRASAD

AND OTHERS (PLAINTIFFS).*

Civil Procedure Code, section 444—Guardian ad litem—Duty of Court as regards appointment of a guardian ad litem.

Where the defendant or respondent to a suit or appeal is a minor it is the duty of the Court not only to appoint a guardian, but to satisfy itself that the proposed guardian is a fit and proper person to represent the minor, to put in a proper defence, and generally to act in the interests of the minor. The duty of the Court is not a mere matter of form. *Musammal Bibi Waliyan v. Banke Behari Pershad Singh* (1) distinguished.

THE facts of this case are as follows:—

THE plaintiffs instituted a suit asking for a declaration as to an alleged right of way over the defendant's land. The Court of

* First Appeal No. 133 of 1906, from an order of L. M. Stubbs, Esq., District Judge of Saharanpur, dated the 17th of July 1906.

(1) (1896) I. L. R., 21 Bom., 281. (2) (1903) L. R., 30 I. A., 182.