

1908

GANGA DEVI
v.
BADAM.

that behalf. In the case of *Sheikh Abdool Rohoman v. Data-ram Bashee* (1) the learned Judges laid down that while a zamindar has a right in the trees which the Court should maintain, the tenant has a right to enjoy all the benefits that the growing timber may afford him during his occupancy, but has no power to cut down the timber and convert it to his own use. We hold therefore that our learned brother was correct in his decision and we accordingly dismiss the appeal with costs.

Appeal dismissed.

1908
January 18.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir William Burkitt.

SHEORAM TIWARI (DEFENDANT) v. THAKUR PRASAD AND OTHERS
(PLAINTIFFS).*

Civil Procedure Code, section 578—Procedure—Irregularity—Disposal of a suit on a Sunday.

Held that the fact that a suit was decided on a Sunday did not vitiate the decree. *Semble* that the Lord's Day Act (21 Geo. III, Cap. XLIX) does not apply to India. *Param Shook Doss v. Rashood Ood Dowlah* (2) referred to.

THIS was a suit for a declaration of the plaintiffs' ownership of a certain wall and for an injunction against the defendant's interfering with it. The suit was filed in the Court of a Munsif. During the proceedings the Munsif made an inspection of the spot on Sunday, the 18th of June 1905. While he was there the parties came to terms. Thereupon a rubkar was drawn up then and there compromising the case. This was signed by the pleaders on either side, and the Munsif on the same day wrote and signed his judgment. The defendant appealed upon the sole ground that the decree was void, the suit having been decided on a Sunday. The District Judge dismissed the appeal. The defendant then appealed to the High Court, and his appeal coming before a single Judge of the Court was dismissed (*Cf. Weekly Notes, 1907, p. 168*). The present appeal was thereupon preferred by the defendant under section 10 of the Letters Patent.

Babu Satya Chandra Mukerji, for the appellant.

Mr. Abdul Majid, for the respondents.

* Appeal No. 51 of 1907 under section 10 of the Letters Patent from a judgment of Griffin, J., dated the 1st of May 1907.

(1) Weekly Reporter, January to July 1864,
page 367.

(2) (1874) 7 Mad., C.,
Rep., 235.

STANLEY, C.J., and BURKITT, J.—We are of opinion that the proceeding of the Munsif was not vitiated by the fact that it was taken on a Sunday. At the utmost it seems to us that the proceedings may have been irregular, but that any irregularity was cured by the consent of the parties. It is not necessary for us to determine whether the Lord's Day Act applies to this country, but we should be slow to hold that it did, as it would be manifestly inconvenient to do so, the Act being entirely unsuited to the circumstances of the country. We may mention that in the case of *Param Shook Doss v. Rasheed Ood Dowlah* (1) it was held that it had no application in this country. We dismiss the appeal with costs.

Appeal dismissed.

Before Mr. Justice Aikman and Mr. Justice Karumat Husein.
MAHADEO PRASAD (OPPOSITE PARTY) v. BINDESHRI PRASAD
(APPLICANT). *

Act No. VIII of 1890 (Guardians and Wards Act)—Guardian and minor—Arbitration—Appointment of guardian not to be settled by arbitration.

The appointment of a guardian to a minor, not being a matter of private right as between parties, is not a question which can be settled by reference to arbitration.

THE facts of this case are as follows:—One Bindeshri Prasad, the managing member of a joint Hindu family governed by the Mitakshara, applied to the District Judge of Allahabad under section 10 of the Guardians and Wards Act (No. VIII of 1890) to be appointed guardian of the person and property of his minor brother Kedar Nath. The application was opposed by Sukhdeo Ram and Mahadeo Prasad, grandfather and father of Kedar Nath's wife, Musammat Janki.

The District Judge with the consent of the parties referred the matter to the arbitration of a gentleman of high social position, Kunwar Bharat Singh, and the arbitrator by his award dated the 4th March 1907 recommended that Bindeshri Prasad be appointed guardian of the person and property of Kedar Nath. In accordance with this award the District Judge on the 30th of April 1907 appointed Bindeshri to be the guardian of the person and

* First Appeal No. 71 of 1907 from an order of C. Rustomjee, District Judge of Allahabad, dated the 30th of April 1907.

(1) (1874) 7 Mad., H. C., Rep., 285.

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SHEORAM
TIWARI
v.
THAKUR
PRASAD.

1908

January 28.