

represented and that the decree was made without notice to them or their natural guardian, we think that they are entitled to the declaration sought in the present suit.

We accordingly allow the appeal, set aside the decrees of both the courts below and decree the plaintiffs' claim with costs in all courts.

Appeal allowed.

1915

BHAGWAN
DAYAL
v.
PARAM
SUKH
DAS.

Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada
Charan Banerji.

1915
January, 21.

JAGANNATH GIR (PLAINTIFF) v. TIRGUNA NAND AND OTHERS
(DEFENDANTS)*

Act No. I of 1877 (*Specific Relief Act*), section 42—*Suit for declaration of title—Property involved in possession of Court of Wards for person entitled thereto—Parties to suit.*

On the death of a mahant, the right of succession to whose *math* was disputed, the Court of Wards took possession of the *math* and declined to hand it over until some one should establish his right to the mahantship. *Held*, in a suit for a declaration of his title to the mahantship brought by a claimant thereto, (1) that the Court of Wards was not a necessary party, and (2) that this did not offend against the provisions of section 42 of the Specific Relief Act. *Goswami Ranchor Lalji v. Sri Girdhariji*, (1) distinguished.

THE facts of this case were as follows :—

The plaintiff sued for a declaration that he was entitled to certain *math* property as the mahant thereof in succession to the last mahant. It appears that the last mahant, one Narain Gir, was a minor and that the property was taken over by the Court of Wards. After his death the plaintiff made claim, as did certain other persons who are the defendants to the present suit. The Court of Wards, which is in possession of the property, declined to hand over possession until some one should establish his title to the mahantship.

The lower court without going into the merits dismissed the plaintiff's suit upon two grounds, namely, that the Court of Wards was not made party to the suit, and that the plaintiff did not claim possession.

The plaintiff appealed to the High Court.

* First Appeal No. 270 of 1913, from a decree of B. J. Dalal, District Judge of Benares, dated the 24th of Apr. 1, 1913.

(1) (1897) I. L. R., 20 All., 120.

1915

JAGANNATH
GIR
v.
TIBGUNA
NAND.

Dr. *Satish Chandra Banerji*, Babu *Purshotam Das Tandan* and Pandit *K. N. Laghate*, for the appellant.

Munshi *Kalindi Prasad*, for the respondents.

RICHARDS, C. J., and BANERJI, J.—This appeal arises out of a suit in which the plaintiff claimed a declaration that he was entitled to certain *math* property as the mahant thereof in succession to the last mahant. It appears that the last mahant, one Narain Gir, was a minor and that the property was taken over by the Court of Wards. After his death the plaintiff made claim, as did certain other persons who are the defendants to the present suit. The Court of Wards, which is in possession of the property, declined to hand over possession until some one should establish his title to the mahantship.

The lower court without going into the merits has dismissed the plaintiff's suit upon two grounds, namely, that the Court of Wards was not made party to the suit, and that the plaintiff did not claim possession.

It seems to us that the suit ought not to have been dismissed on either of these grounds. The Court of Wards made no claim to the property. If the Court of Wards wished to be made a party to the suit it could apply to the court to be made a party on its peril on the question of costs. If the court below thought that the suit could not be disposed of without the Court of Wards being a party, it could, and in our opinion, ought to have exercised its jurisdiction in making the Court of Wards a party to the suit. We, however, think that it is highly probable in the present case that the Court of Wards will be perfectly satisfied with the decision of the court in the present suit, and that it had no desire of any kind to be made a party to the proceedings.

On the second question we are of opinion that the possession of the Court of Wards is in trust for the person who shall establish his title to the mahantship. No one is entitled to get possession from the Court of Wards until such time as his title is established. Therefore the plaintiff was not entitled, at the time he brought his suit, to possession. We, therefore, think that section 42 of the Specific Relief Act does not apply to the circumstances of the present case. As we have already pointed out, the Court of

Wards does not deny the plaintiff's title but admits that it holds the property for the person legally entitled. The learned District Judge has referred to the case of *Goswami Ranchor Lalji v. Sri Giridhariji* (1). In our opinion this case has no bearing on the present case. The court in that case, we think, rightly held that the plaintiff's proper remedy was by way of a suit for possession against the parties who dispossessed him. The suit being a suit for possession, the period within which it could be brought was twelve years. This was the only matter which was discussed in the case.

We accordingly allow the appeal, set aside the decree of the court below, and remand the case to that court with directions to readmit the suit under its original number in the file and to proceed to hear and determine the same on its merits. Costs heretofore will be costs in the cause.

Appeal allowed and cause remanded.

REVISIONAL CRIMINAL.

Before Mr. Justice Piggott.

EMPEROR v. PARAS RAM DUBE.*

Act No. XLV of 1860 (Indian Penal Code), sections 32, 33—Offence of rape committed by a boy under fourteen—Presumption.

Held that the presumption of English law against the possibility of the commission of the offence of rape by a boy under the age of years 14 has no application to India.

THIS was a case called for by the High Court on perusal of the Sessions statement for November, 1914, from the district of Basti. The material facts were that a boy named Paras Ram of 12 to 14 years of age was charged with the commission of rape on a little girl of about 7 years of age. The Additional Sessions Judge convicted him in the alternative under section 376 or section 354 of the Indian Penal Code not because he had any doubt as to the facts, but because he considered that there was a difficulty as to whether a boy of the age of the accused could be legally convicted of the major offence charged.

The parties were not represented.

* Criminal Revision No. 33 of 1915.

(1) (1897) I. L. R., 20 All., 120.

1915

JAGANNATH
GIR
v.
TIRGUNA
NAND.

1915

January, 29.