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BABU LAL
v.
GHAN HAM
DAS.

PIGGOTT and WALSH, JJ :—The facts out of which this appeal arises are so clearly stated in the judgment under appeal that it is unnecessary for us to recapitulate them. The question in issue is whether an insolvent of the name of Mehdi Hasan did or did not inherit a fractional share in a certain house on the death of one Wazir Muhammad. Wazir Muhammad's interest in that house was derived from a deed of gift and before his death he had executed another deed by which he returned his share in the house to his own donor, Ahsan-ullah Khan. If Wazir Muhammad had a right to gift this property back to Ahsan-ullah Khan, then it did not belong to him at his death and under no circumstances could Mehdi Hasan inherit anything. It is contended that Wazir Muhammad himself held only a life-estate. The court below has discussed the matter only with reference to the terms of the Transfer of Property Act; but the parties are Muhammadans, and we do not see our way to take this case out of the operation of the principle recognized by this Court in *Abdul Karim Khan v. Abdul Qayum Khan*, (1) and by the Bombay High Court in *Nizam-ud-din Ghulam v. Abdul Ghajur* (2). It would seem that this point was not brought to the notice of the learned District Judge when he was dealing with this matter. We must allow the appeal. We set aside the order of the court below and affirm the objection of the appellant. The appellant is entitled to his costs in both courts, which the receiver may charge against the insolvent's estate.

Appeal allowed.

Before Mr. Justice Lindsay and Mr. Justice Kanhैया Lal.

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May, 8.

SRI THAKURJI AND ANOTHER (PLAINTIFFS) v. HIRA LAL (DEFENDANT).*

Act (Local) No. IV of 1912 (Court of Wards Act), section 55—Disqualified proprietor—Suit by disqualified proprietor as manager of an idol.

Section 55 of the Court of Wards Act, 1912, has no application to cases where a disqualified proprietor has no personal interest in the property by virtue of which a right to sue is claimed. His disability extends to the property he owns and not to that which he holds as a trustee. A person who happens to be the manager of an endowed property cannot be regarded as a disqualified proprietor in respect of the property which he so holds as manager, and the idol, in whom the endowed property is supposed to be vested, cannot be treated as a Ward within the meaning of section 55 of the Act.

* Second Appeal No. 1432 of 1920, from a decree of L. S. White, District Judge of Cawnpore, dated the 7th of June, 1920, reversing a decree of Kshirod Gopal Banerji, Subordinate Judge of Cawnpore, dated the 10th of February, 1919.

(1) (1906) I. L. R., 28 All., 342.

(2) (1888) I. L. R., 13 Bom., 261.

THE facts of this case sufficiently appear from the judgment of the Court.

Munshi *Gulzari Lal*, for the appellants.

Babu *Harendra Krishna Mukerji*, for the respondent.

LINDSAY and KANHAIYA LAL, JJ :—The dispute in this case relates to a plot of land situate in the village Sisamau in the Cawnpore district. The plaintiffs claimed to be co-sharers of a mahal to which this land appertains. One of the plaintiffs is an idol whose property is under the management of Ajodhya Prasad. The other two plaintiffs are Ajodhya Prasad and Baldeo Prasad, whose property is under the management of the Court of Wards. There is another co-sharer, Sheo Prasad, whose property is also under the management of the Court of Wards. The allegation of the plaintiffs was that the defendant Hira Lal had taken wrongful possession of the disputed land and started making constructions thereon without any right. The defence of Hira Lal was that the plaintiffs had not been in possession of the disputed land and that he had been in possession thereof for more than twelve years. The court of first instance found against him and decreed the claim. On appeal one of the pleas taken up for the first time on behalf of Hira Lal was that the plaintiffs had no right to maintain the suit because their property was under the management of the Collector of Cawnpore as Manager of the Court of Wards. An issue was thereupon remitted by the lower appellate court to the court of first instance to ascertain whether the property of the plaintiffs was under the superintendence of the Court of Wards. The finding on that issue was that Ajodhya Prasad and Baldeo Prasad had been declared to be disqualified proprietors and that their property had been taken possession of by the Court of Wards under its superintendence along with that of Sheo Prasad. It was found, however, that the property of the idol, who is the first plaintiff, was not under the superintendence of the Court of Wards. On that finding the learned District Judge proceeded to dismiss the suit, holding that Ajodhya Prasad, who was the Sarbarahkar of the property of the idol, was not entitled to maintain the suit on behalf of the idol, any more ~~than~~ the other plaintiffs, under section 55 of the Court of Wards Act (IV of 1912). That section has, however, no application to cases where a disqualified proprietor has no personal interest in the property by virtue of which a right to

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sue is claimed. His disability extends to the property he owns and not to that which he holds as a trustee. A person who happens to be the manager of an endowed property is not the owner of that property and holds no beneficial interest therein. He cannot be regarded as a disqualified proprietor in regard to the property which he so holds as manager, and the idol, in whom the endowed property is supposed to be vested, cannot be treated as a ward within the meaning of section 55 of the Act. The property of the idol was never in fact taken over by the Court of Wards under its management. The plea was clearly untenable. Indeed, as pointed out in *Mannu v. Nasrat-ullah Khan* (1), one of the co-sharers can sue to eject a trespasser from the joint land, and the suit was maintainable.

We accordingly allow the appeal, set aside the order of the lower appellate court and remand the case under order XLI, rule 23, to that court with a direction to reinstate it on its file of pending cases and dispose of it according to law. The costs here and hitherto will abide the result.

Appeal decreed.

FULL BENCH.

Before Sir Grimwood Mears, Knight, Chief Justice, Justice Sir Pramada Charan Banerji and Mr. Justice Stuart.

SHIB DAYAL AND ANOTHER (PLAINTIFFS) v. JAGANNATH PRASAD (DEFENDANT)*

1922
February, 27.

Act No. IX of 1908 (Indian Limitation Act), section 5—*Appeal filed after time owing to erroneous advice given by vakil—Extension of period of limitation:*

Held that an honest mistake on the part of a litigant caused by erroneous advice given to him by his vakil in the district, by reason of which an appeal was not filed until the period of limitation therefor had expired, is a good ground for the application in favour of the would-be appellants of the provisions of section 5 of the Indian Limitation Act, 1908.

Wazir Ali Khan v. Zainab (2), *Kura Mal v. Ram Nath* (3) and *Anjora Kunwar v. Babu* (4) followed. *Coles v. Ravenshear* (5) and *In re Helsby* (6) referred to.

THE period for filing a certain second appeal expired on the 3rd of May, 1921. On the 2nd of May, the appeal was laid before the Court, but it was accompanied only by copies

* Application in Second Appeal No. 742 of 1921.

(1) Weekly Notes, 1901, p. 36.

(2) Weekly Notes, 1903, p. 32.

(3) (1906) I. L. R., 28 All., 414.

(4) (1907) I. L. R., 29 All., 638.

(5) (1907) 1 K. B., 1.

(6) (1894) 1 Q. B., 742.