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was presented to the District Judge by one Bhagwanji on behalf of the minor. He was not the guardian *ad litem* and had never applied to be made guardian. On the appeal coming before him, the learned District Judge refused to hear it on the ground that there was no valid appeal before him. He held that the Nazir having been appointed guardian *ad litem*, his authority must be held to continue as long as the *lis* continued and that until he had been removed from the guardianship by the court, he and he only was competent to file an appeal. He, therefore, dismissed the appeal. It is from this decree dismissing the appeal that this second appeal was brought, and it is urged that the authority of the Nazir ended with the decree of the first court and that thereafter it was open to the minor defendant to appeal through his next friend. In *Jwala Dei* v. *Pirbhu* (1), a Bench of this Court decided that where a guardian *ad litem* has once been appointed, his appointment enures for the whole of the *lis* in the course of which it was made, unless and until it was revoked by the court. In *Venkata Chandrasekhara Raz* v. *Alakarajamba Maharani* (2), the same proposition was laid down. That case was followed by a Divisional Bench of this Court in *Bawan Das* v. *Bishnath* (3). These three cases were referred to and followed by a single Judge of this Court in *In the matter of the application of Sukhdeo Rai* (4). We see no reason to differ from this consistent authority. Our attention has been called to *Bhagwan Dayal* v. *Param Sukh Das* (5). In that case, however, this point did not arise and was not considered. The result is that the appeal fails and is dismissed with costs.

*Appeal dismissed.*

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*Before Mr. Justice Gokul Prasad and Mr. Justice Stuart.*

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*May*, 5.

KUNDAN LAL (DEFENDANT) *v.* KHEM CHAND AND OTHERS (PLAINTIFFS).*

*Act No. III of* 1907 (*Provincial Insolvency Act*), *section* 22—*Insolvency—Claim to property advertised for sale by the receiver as property of an insolvent—Suit—Application under section* 22.

*Held* that a person claiming as his own property which has been advertised by the receiver as the property of an insolvent is not precluded

* Second Appeal No. 28 of 1921, from a decree of Raghunath Prasad, Subordinate Judge of Mainpuri, dated the 11th of May, 1920, reversing a decree of Ganga Nath, Munsif of Mainpuri, dated the 24th of January, 1919.

(1) (1891) I. L. R., 14 All., 35.
(2) (1898) I. L. R., 22 Mad., 187.
(3) Weekly Notes, 1899, p. 203.
(4) (1905) 2 A. L. J., 489.
(5) (1916) I. L. R., 39 All., 8.

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from suing for a declaration of his title thereto by reason of his having made an application with the same object apparently under section 22 of the Provincial Insolvency Act, 1907, where as a matter of fact such application, though purporting to be made under section 22, was not made within the time prescribed. *Pita Ram* v. *Jujhar Singh* (1), distinguished.

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

Munshi *Girdhari Lal Agarwala*, for the appellant.

Babu *Saila Nath Mukerji*, for the respondents.

GOKUL PRASAD and STUART, JJ :—This appeal arises out of a suit brought by Khem Chand and others who had purchased certain property on the 18th of July, 1908, from one Pokhar Prasad. Pokhar Prasad was adjudicated an insolvent on the 30th of November, 1917; Kundan Lal was appointed receiver. Kundan Lal advertised the property, purchased by Khem Chand and Chuni Lal from Pokhar Prasad in 1908, for sale as the property of the insolvent. Khem Chand and Chuni Lal then applied to the District Judge under the provisions of section 22 of Act III of 1907 for an order setting aside the proposed sale and a declaration that the property was theirs. This application was dismissed on the ground that it had not been filed within 21 days of the act complained of. Khem Chand and Chuni Lal subsequently, with the permission of the District Judge, instituted a suit against the receiver and the insolvent for a declaration that the property in question belonged to them. The suit has been decreed in their favour on the merits. In second appeal it is urged on behalf of the receiver that the suit as brought by the plaintiffs must fail because they elected to pursue their remedy under section 22 and their claim had been decided against them and that therefore they could not file a separate suit with the same object. Reliance is placed on the decision in *Pita Ram* v. *Jujhar Singh* (1), but accepting the law laid down in that decision there is no force in this appeal. In order to debar a person from taking his remedy in such a case by way of a regular suit it is necessary to establish that he has in effect pursued a remedy under section 22. Here the plaintiffs did not pursue their remedy under section 22. Their remedy was by an application made within 21 days from the date of the order or decision complained of. They made no application within 21 days from the date of the order or decision complained of. It is true they made an applica-

(1) (1917) I. L. R., 39 All., 626.

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tion after 21 days, but that application, although purporting to be an application under section 22, was from its very nature not an application under section 22. We therefore hold that in this case the plaintiffs did not elect to pursue their remedy under section 22 and inasmuch as there was no determination on the merits before this suit was instituted, they were within their rights in seeking their remedy by a regular suit. We therefore dismiss this appeal with costs.

*Appeal dismissed.*

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*Before Mr. Justice Piggott and Mr. Justice Walsh.*

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*May*, 5.

MUFTI ALI JAFAR AND ANOTHER (PLAINTIFFS) *v.* FAZAL HUSAIN KHAN AND OTHERS (DEFENDANTS).*

*Civil Procedure Code* (1908), *section* 92—*Suit relating to a trust created for public purposes of a charitable or religious nature—Provisions of section* 92 *compulsory, where applicable—Act No. I of* 1877 *(Specific Relief Act), section* 42—*Suit for a declaration merely.*

Where circumstances are alleged to exist in which a suit relating to an express or implied trust created for public purposes of a charitable or religious nature, may be instituted under the provisions of section 92 of the Code of Civil Procedure, the suit must be instituted in accordance with those provisions. It is not open to the would-be plaintiffs to evade the requirements of the Code by framing their suit as one under section 42 of the Specific Relief Act, 1877.

THE facts of this case are fully set forth in the judgment of PIGGOTT, J.

Dr. *Surendra Nath Sen* and Maulvi *Mukhtar Ahmad*, for the appellants.

Babu *Piari Lal Banerji*, for the respondents.

PIGGOTT, J :—It is impossible to understand the questions raised by this first appeal without going back to the facts of a previous litigation, determined by a decree of this Court dated the 20th of March, 1914, and a subsequent compromise. One Ghazanfar Husain Khan, a Shia gentleman residing at Jaunpur, executed, shortly before his death, a deed of endowment by which he constituted a trust for public purposes of a charitable and religious nature and appointed three trustees for the management of the said trust. The heirs-at-law of the deceased founder of the trust brought a suit against the trustees contesting the validity of the entire transaction. The eventual result was that the deed of endowment was declared invalid and the heirs-at-law of Ghazanfar Husain Khan were found to be the rightful owners as regards the larger part of the property affected by the deed of endowment,

* First Appeal No. 393 of 1919, from a decree of Pyare Lal Chaturvedi, Second Additional Subordinate Judge of Jaunpur, dated the 15th of March, 1919.