

name removed from the village record on obtaining transfer of his property from him. In *Tulsa Kunwar v. Jageshar Prasad* (1) BANERJI, J., held on similar facts that the payment was not made voluntarily or gratuitously and that therefore the case fell within the purview of section 70 of the Indian Contract Act. A similar view was taken in the case of *Nath Prasad v. Baij Nath* (2) by a Full Bench in 1880. The learned counsel for the respondent quoted a ruling of 1881, *Chunia v. Kundan Lal* (3). So far as I understand the facts of that case, the plaintiff was not recorded either as a co-sharer or a lambardar at the date of the payment and was in no way bound to make any payment to Government.

I dismiss this application in revision with costs.

Before Mr. Justice Mukerji and Mr. Justice Niamat-ullah.

CHANDRIKA RAI (APPLICANT) *v.* SRIKANT RAI
(OPPOSITE PARTY).*

1929
April, 26.

Guardian and ward—Heir of deceased guardian in possession of ward's property—Order calling for accounts from person not appointed guardian—Order directing him to pay a certain sum upon the accounts—Jurisdiction.

On the death of a guardian appointed by court under the Guardians and Wards Act, his heir remained in possession of the ward's property, though the heir was never appointed guardian. Subsequently the court appointed another person as guardian, and ordered the heir to furnish accounts of the minor's property in his hands. Accounts being furnished accordingly, they were scrutinized and thereupon the court ordered the heir to pay a certain amount over to the newly appointed guardian. *Held* that the Judge had no jurisdiction to make an order against the heir, who was not a guardian appointed by him but was in possession of the

* Civil Revision No. 278 of 1927.

(1) (1906) I. L. R., 28 All., 563. (2) (1880) I. L. R., 3 All., 66.

(3) Weekly Notes, 1882, p. 150.

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minor's property as a trespasser. The proper remedy was to direct the newly appointed guardian to institute a suit for accounts against him.

Mr. *Shah Zamir Alam*, for the applicant.

Mr. *Jwala Prasad Bhargava*, for the opposite party.

MUKERJI and NIAMAT-ULLAH, JJ. :—This is an application by one Chandrika Rai against an order passed by the learned District Judge of Ghazipur on the 1st of September, 1927, directing the applicant to pay to the respondent a certain sum of money, which was to be reduced partially in the case of his returning certain bullocks.

It appears that the applicant's father Sukhdeo Rai was appointed the guardian of certain minors. Sukhdeo Rai having died, the applicant continued to be in possession of the minor's property. Sri Kant Rai, the respondent, was then appointed the guardian of the minors. At his instance, or that of the Judge himself, the applicant was called upon to furnish an account of the minor's properties he had in his possession. He furnished an account without any objection. The accounts were scutinized and a Commissioner was appointed. As the result of the Commissioner's investigation and report, the order complained of was made.

The points that have been taken in revision are that the learned District Judge has erred in not treating the report in a certain manner. In our opinion we cannot go into the merits of the case. The revision should, however, succeed on this simple ground that the learned District Judge had no jurisdiction to make an order against the applicant, who was not a guardian appointed by him. If he happened to be in possession of the minor's property, he was so as a

trespasser. The District Judge can certainly direct Sri Kant to institute a suit for accounts against the applicant and in that suit the question as to how much is payable by the applicant may be determined. The applicant will then have a chance of taking his case before an appellate court. As things stand, we cannot scrutinize the evidence that was taken before the District Judge, because we are not sitting in appeal against his order.

We set aside the order of the learned District Judge as passed without jurisdiction.

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Before Mr. Justice Mukerji and Mr. Justice Niamat-ullah.

YUDHISHTIR LAL (DECREE-HOLDER) v. FATEH SINGH
AND ANOTHER (JUDGMENT-DEBTORS).*

1929

April, 23.

Civil Procedure Code, section 151—Application for setting aside auction sale—Dismissal for default—Restoration.

Under section 151 of the Civil Procedure Code a court has jurisdiction to restore an application for setting aside an auction sale, which was dismissed for default of appearance.

Dr. M. L. Agarwala, for the applicant.

Messrs. Peary Lal Banerji and Satish Chandra Das, for the opposite parties.

MUKERJI and NIAMAT-ULLAH, JJ.:—This is an application by one, who was the decree-holder in the court below, for setting aside an order dated the 8th of December, 1927, passed by the second Subordinate Judge of Saharanpur, in the exercise of our revisional power.

The facts are these. The decree-holder brought about the sale of the judgement-debtors' property. The judgement-debtors applied for the setting aside

* Civil Revision No. 269 of 1927.