## FULL BENCH.

*Before Sir Shah Muhammad Sulaiman, Chief Justice, Mr. Justice Mukerji and Mr. Justice Banerji.*

1932 *May*, 31.

KAULPATI KUNWAR AND ANOTHER (PLAINTIFFS) *v.* RAM BARAN SINGH AND OTHERS (DEFENDANTS).*

*Court of Wards Act (Local Act IV of* 1912), *sections* 3 (3), 10, 12, 15, 37 *and* 55—"*Ward*"—*Joint family consisting of father and sons—Application by father to have the joint property placed under the superintendence of the Court of Wards—Notification of assumption of superintendence not naming the sons—Entire property taken under superintendence—Whether the sons were "wards" and subject to the disabilities under sections* 37 *and* 55.

A joint Hindu family, consisting of a father and his sons, some of whom were minors, owned a certain property. The father applied under section 10 of the U. P. Court of Wards Act, 1912, to have the property placed under the superintendence of the Court of Wards. The Court of Wards declared their willingness and the order of assumption of superintendence was notified in the Gazette under section 15, but the names of the sons did not appear in the notification. The entire joint family property was, as a matter of fact, taken under the management of the Court of Wards. Some time afterwards, the sons entered into a contract involving pecuniary liability, and upon this contract a suit was brought against them. The defence was raised that the contract was void under section 37 of the Court of Wards Act, and that the defendants could not be sued otherwise than in the name of the Collector, according to section 55 of the Act. *Held* that the defendants had not become "wards" as defined in the Court of Wards Act and sections 37 and 55 of the Act did not apply to them.

A ward, according to the definition in section 3 (3) of the Court of Wards Act, 1912, is either a disqualified proprietor whose property or person is under the superintendence of the Court of Wards, in accordance with the provisions of sections 8 and 12 of the Act, or is a proprietor in regard to

*Second Appeal No. 1810 of 1928, from a decree of Harish Chandra, District Judge of Benares, dated the 12th of July, 1928, confirming a decree of V. Mehta, Additional Subordinate Judge of Benares, dated the 13th of March, 1928.

whose property a declaration has been made under section 10 of the Act. No action was taken against the defendants in the present case under sections 8 and 12; nor was there any application under section 10 in respect of them, or any declaration under that section mentioning their names, or any notification, mentioning their names, under section 15. The defendants, therefore, were not wards within the meaning of the Act.

An application under section 10 of the Court of Wards Act can be made only by a person who is an adult. The section does not say that a proprietor may apply on behalf of himself and of another, even if that other be his minor son. The ordinary scheme of the Act is that every adult person who has a beneficial interest in any property can apply under section 10, and in the case of minors having such beneficial interest action can be taken under sections 8 and 12.

Assuming that it is open to a father in a joint Hindu family to hand over the entire family property to the Court of Wards without the consent of his sons, it would not follow from the handing over of the property that the sons themselves would become wards of the court. A ward, for the purposes of the Court of Wards Act and the disabilities imposed on them by it, is a creation of law and can have no existence outside the law. The mere fact that the property of the defendants was physically under the superintendence of the Court of Wards would not make them wards within the meaning of the definition.

A declaration under section 10 or a notification under section 15 is not valid if it does not mention the name of the proprietor and only contains a reference to the property.

Dr. *K. N. Katju*, for the appellants.

Messrs. *Mukhtar Ahmad* and *Mansur Alam*, for the respondents.

SULAIMAN, C. J., MUKERJI and BANERJI, JJ.:—This second appeal has been referred to a Full Bench because the learned Judges of the Division Bench before whom the appeal came in due course were doubtful of the correctness of a decision of this Court, namely *Chhotey Lal* v. *Brijraj Singh* (1).

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It appears that the defendants in the suit out of which this appeal has arisen undertook to pay a certain sum of money to the plaintiffs under an agreement, dated the 20th of August, 1921, which was registered under the law of registration. The plaintiffs sued to recover the money due under the agreement, principal and interest. They were met with the plea on behalf of the defendants 4 to 6 that they were wards of the court and no suit could be maintained against them in their names under section 55 of the Court of Wards Act, 1912, and that the contract made by them was void in law under section 37 of the said Act.

The defence found favour with the court of first instance and the suit was decreed only against the defendants 1 to 3, and as against the defendants 4 to 6 it was dismissed. On appeal the learned District Judge upheld the decision of the first court and thereupon the plaintiffs filed this second appeal.

Section 55 of the Court of Wards Act, 1912, lays down that "No ward shall sue or be sued . . in the civil court otherwise than by and in the name of the Collector in charge of his property . ." If, therefore, the defendants 4 to 6 be wards of the court, the suit is not maintainable. Again, under section 37 of the said Act, "A ward shall not be competent . . . to enter into any contract which may involve him in pecuniary liability . ." Again if the defendants 4 to 6 be wards of the court, the agreement of 1921 is void as against them and cannot be enforced in a court of law. We have to see whether in the circumstances of the case the defendants 4 to 6 are wards of the court within the meaning of section 3, sub-section (3), of the United Provinces Court of Wards Act (Act No. IV of 1912).

As to the facts, the following seems to be common ground. The father of the defendants 4 to 6, Binda Prasad, owned a certain share in an estate in the

district of Benares known as the Sakaldiha estate. The defendants 4 to 6 (whom we shall describe hereafter as the defendants, for the sake of brevity) and their father formed a joint Hindu family. Binda Prasad and his co-owners of the estate of Sakaldiha made an application under section 10 of the Court of Wards Act, 1912, for their property being placed under the superintendence of the Court of Wards. The Court of Wards, on being satisfied that it was expedient to undertake the management of the property, made a declaration to that effect and under section 15 of the Act issued a notification in the local Gazette, being Notification No. 732-N/X—117-12, dated the 30th of May, 1914, to be found printed in the *United Provinces Gazette*, dated the 6th of June, 1914, part II, page 1334. On the same page and under the same date and under No. 731-N/X—1171-72 there appears another notification by which it was declared that the Court of Wards had assumed the superintendence of the estate of the two minors mentioned therein who were part proprietors of the Sakaldiha estate. The names of the defendants do not appear in either of the notifications. Possibly one of the defendants was at the date of the notifications a major and probably the other two were minors. On these facts the question is whether the defendants are to be treated as wards of the court within the definition of section 3, sub-section (3), of the Act.

On behalf of the respondents strong reliance has been placed on a decision of their Lordships of the Privy Council in *Gulab Singh* v. *Gokuldas* (1). It is urged that their Lordships have held that it is open to a father of a joint Hindu family to hand over the entire estate to the Court of Wards where such act would be beneficial to the interest of the family. Reliance is placed on the observation of their Lordships to be found at page 799, top, namely that "in their Lordships' opinion

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Maharaj Singh and Dulli Chand in making that application acted within their powers and authority as the managing members of the joint family". We have carefully considered this case, but we are of opinion that this case has no application to the facts of the case before us and to the question we have to decide.

What we have to decide is whether the sons of the person or persons who hand over the joint family property are to be treated or not as "wards" within the meaning of the word to be found in section 3, subsection (3), of Act IV of 1912, and whether the said sons are to suffer or not the disabilities enumerated for a ward in section 37 and section 55 of the Act. Their Lordships of the Privy Council never had this question to answer in the case of *Gulab Singh* v. *Gokuldas* (1), and for this reason alone the decision has no bearing on the case before us. Secondly, the decision was given under Act XVII of 1885, which is in many respects very different from the Act which we have to construe. A third point also differentiates the decision from the case before us and it is this; while the reason for the handing over of the management of the estate in *Gulab Singh's* case is clearly set forth in the judgment, we are entirely in the dark in this case as to the circumstances which led to the application by Binda Prasad and his co-owners for handing over the management of the estate to the Court of Wards.

The first and third grounds for differentiation of the Privy Council case from the case before us do not call for any further remarks, but we shall say a few words as to the second ground. Act XVII of 1885 gives an entirely different meaning to the word "ward" from the definition to be found in section 3 of Act IV of 1912. Then again, we could not discover any provision in the Act of 1885 corresponding to the provision contained in section 10 of the Act of 1912. In the

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Calcutta case, the property of Dulli Chand and Maharaj Singh had been handed over by them to the Court of Wards under section 7, clause (*c*), of Act XVII of 1885, which provided for the property of those persons being taken over for management as were declared by the Chief Commissioner to be incapable of managing their own property on their own application. Again, we do not find that all the drastic disabilities which are contained for a ward in section 37 of the Act of 1912 are to be found in the Act of 1885, beyond what are stated in sections 22 and 23 of that Act.

The question before their Lordships of the Privy Council was whether it was open to the Court of Wards to validly assume superintendence of the shares of the sons also of the applicants; and the case before us is whether, assuming that the sons' shares can be lawfully managed by the Court of Wards, the sons become, by the fact of that management alone, subject to the liabilities imposed on a ward under the Act of 1912. We are of opinion that the present case is not governed by the decision of their Lordships of the Privy Council in *Gulab Singh* v. *Gokuldas* (1).

Now let us consider the provisions of Act IV of 1912. Section 3 of the Act defines a proprietor as "a person entitled as proprietor or under-proprietor to any beneficial interest in a mahal". This would mean that a person who has a share in a property in a mahal is a "proprietor", although his name may not be recorded in the khewat. It will also be noticed that where a joint Hindu family owns property, every member of that family is a proprietor, because every such member has a beneficial interest in a mahal. The definition does not give any encouragement to the argument that the father of the family alone is the proprietor and not the sons, or that the father is entitled to assume the role of the sons or to act for them with reference to the provisions of the Court of Wards Act.

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Then we come to the definition of the word "ward". A ward may be of two kinds. One is a disqualified proprietor whose property or person is under the superintendence of the Court of Wards and the other is "a proprietor in regard to whose property a declaration has been made under section 10". This takes us to a consideration of the provisions of section 10 which runs as follows: "A proprietor may apply to the Collector to have his property placed under the superintendence of the Court of Wards, and the Court of Wards may, on being satisfied that it is expedient to undertake the management of such property, make a declaration to that effect."

An application under section 10 can be made only by a person who is an adult; for by definition a proprietor may be a minor and in that case he is incapacitated by the law of the land from acting on his own behalf. Section 10 does not say that a proprietor may apply on behalf of himself and on behalf of another proprietor, even if that another proprietor be the applicant's son.

The provisions of section 8 read with section 12 show that the presence of minors interested in an estate, as in the case of minors in a joint Hindu family, need not in any way stand in the way of the Court of Wards exercising its beneficial functions over the property of the minors, even though the father or the guardian be not entitled to make an application on their behalf. By section 8 minors, by the very fact of their minority, are to be deemed disqualified to manage their own property. In that case it is open to the Court of Wards, in the exercise of its discretion conferred on it by section 12, to assume the superintendence of the minors' property. Thus, if a father in a joint Hindu family consisting of himself and some sons, of whom, let us assume, some are majors and the others are minors, wants to hand over the management of the

property to the Court of Wards, all that he has to do is to persuade his adult sons to make an application under section 10 and to apply under that section to the Collector and to induce the Collector to ask the Court of Wards to take under its superintendence the property of the minors. Thus, without any difficulty whatsoever and without giving the father an authority to hand over the entire estate on behalf of the family, it is possible for a joint Hindu family to obtain the benefits of management by the Court of Wards. If in a joint Hindu family the father wants to hand over the estate belonging to the entire family to the Court of Wards but the adult sons decline to do so, we take it, it would not be possible for the Court of Wards to take over the management of the property under section 10 of the Court of Wards Act in the teeth of the adult sons' opposition, unless the adult sons can be declared disqualified proprietors unable to manage their own property under section 8 of the Act.

From what we have said above it follows that the ordinary scheme of the Act is that every adult person who has a beneficial interest in any property must apply under section 10 and in the case of the minors action should be taken under section 8. This is exactly what was done in this case, for we find from the notification in the *United Provinces Gazette* (Part II, at page 1334), dated the 6th of June, 1914, that in the case of adult co-owners applications were made under section 10 and in the case of minor proprietors action was taken under sections 8 and 12 of the Court of Wards Act. Both the notifications are under section 15 of the Court of Wards Act, 1912, which requires that the order of an assumption of management ought to be notified in the local Gazette. Apparently the names of the sons of Binda Prasad, namely the defendants, were not entered in the khewat and their existence was simply overlooked. Our guess may not be correct, but whether correct or not, the

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reason why the names of the defendants were omitted from the notifications does not affect our decision.

It is common ground that the entire property belonging to the joint family, namely Binda Prasad and the defendants, is actually being managed by the Court of Wards through the Collector of Benares, the property being situated in the district of Benares.

Now the question is whether the defendants are to be treated as wards of the court for the purposes of disabilities which are suffered by a ward.

We take it that in respect of the defendants there was no application under section 10, and, therefore, there is no declaration under that section. The defendants do not come within the first portion of the definition of the word "ward"; for they have not been found to be disqualified proprietors whose property has been taken over by the Court of Wards under section 12 of the Act. Even if some of the defendants were minors in 1914, from the fact that they were never treated as minors whose property the Court of Wards decided to place under its own management the defendants cannot come under the first head of the definition of a ward. In the definition the words "whose property is under the superintendence of the Court of Wards" mean and must mean "whose property is under the superintendence of the Court of Wards under the provisions of Act IV of 1912". In the case of persons whose property, as such, the Court of Wards never undertook to administer, the mere accident that their property is physically under the superintendence of the Court of Wards will not make them "wards" within the meaning of the definition.

Then let us consider the second portion of the definition of ward. We have already said that we have got no material before us to show that in the case of the defendants there has been made any declaration under section 10. The declaration under section 10 must mention two things, first the name of the proprietor and

the fact that it has been deemed expedient that his property is to be taken under the management of the Court of Wards. A mere description of the property of a person without mention of the name of that person will hardly be a good declaration under section 10. Suppose a declaration said that the Court of Wards was satisfied that "Property A" should be taken under the management of itself, we take it this would not make the owner of the property, whoever he may be, a ward; and the reason is plain. The law requires by section 17 that, on the publication of a notification under section 15, the Collector shall publish notices calling upon persons having claims against the ward or his estate to notify the same. It could hardly have been contemplated that creditors, some of whom may be entirely unsecured creditors, should find out from the notification who the proprietor was and then find out whether the proprietor was their debtor or not. For a valid notification, therefore, the name of the proprietor must appear in the Gazette and in the orders. We note that in the two notifications actually issued the names of the proprietors appear and the mention of their property is in the vaguest possible manner.

In this view, although the defendants' property may be under the physical possession of the Court of Wards, who undertook to manage their father's property, it cannot be said within the meaning of section 3, subsection (3) that the defendants are proprietors in regard to whose property a declaration has been made under section 10. We need hardly repeat that a declaration under section 10 could be made only in respect of a proprietor who has made the application and the defendants are not proprietors who have made any such application.

Where the language of the law is clear, it is not necessary to see whether the interpretation put on the law is likely to lead or not to hardships and to absurdities. But this test may be applied to see whether the

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interpretation is a sound one or not; for if a contrary interpretation is likely to lead to hardship, we may take it that the interpretation put, which does not create any hardship, is the correct one.

Take this case itself for consideration. The defendants, as grandsons of one Bhim Singh, have inherited a large estate. The defendants' ancestral property, let us assume, is in debt and has been taken over for management by the Court of Wards. If the defendants are wards of the court, then their property which has been inherited by them and which has nothing to do with the payment of the debts of the father of the family will also be taken over for management by the Court of Wards and the defendants will be incapable of entering into any contract in respect of those properties, although the defendants themselves had never agreed as to their ancestral property being handed over to the management of the Court of Wards.

Assuming that it is open to a father to hand over the entire family property to the Court of Wards without the consent of his sons, it would not follow from the handing over of the property that the sons themselves would become wards of the court. A ward with certain disabilities is a creation of law and can have no existence outside the law. A Division Bench of this Court in *Mahabir Prasad* v. *Mahesh Prasad* (1) held under the Bundelkhand Land Alienation Act that although the father of a joint Hindu family might be an "agriculturist" within the meaning of Local Act II of 1903, it did not follow that his sons were also agriculturists. The case would be somewhat similar to the case of a father's insolvency. When a father becomes an insolvent, it is open to the receiver of the father's estate to sell the entire family property including the shares of the sons to pay the father's debts not tainted with

(1) [1931] A.L.J., 45.

immorality. But it does not follow that the sons' shares vest in the receiver and the sons are incapacitated from exercising their privileges which accrue to them, by the fact of their having a share in the joint family estate; e.g. a right to seek pre-emption. This was held by their Lordships of the Privy Council in the case of *Sat Narain* v. *Behari Lal* (1). See also in this connection the Full Bench decision of this Court in *Anand Prakash* v. *Narain Das Dori Lal* (2).

The result is that in our opinion the defendants, that is to say, the defendants Nos. 4 to 6, in the suit out of which this appeal has arisen are not wards of the court, and there is no bar to the maintenance of the suit against them and the agreement, if any, that may have been entered into by these defendants with the plaintiffs is not void under section 37 of the Court of Wards Act. In this view the case of *Chhotey Lal* v. *Brijraj Singh* (3) is not good law.

In the result we allow the appeal, modify the decrees of the courts below and remand the suit so far as the defendants 4 to 6 are concerned through the lower appellate court to the court of first instance for decision according to law. Costs here and hitherto, so far as the defendants 4 to 6 and the plaintiffs are concerned, shall abide the result.

(1) (1924) I.L.R., 6 Lah., 1. (2) (1930) I.L.R., 53 All., 239.
(3) (1927) 26 A.L.J., 90.