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apprehended violence from the appellant. Moreover, there is no provision in the document which would warrant a forfeiture of her estate on that ground.

The appellant has, in their Lordships' opinion, failed to show any reason for avoiding his liability to pay the income of a moiety of the entire estate to the respondent. They will, therefore, humbly advise His Majesty that the appeal be dismissed with costs.

Solicitors for the appellant: *Douglas Grant and Dold.*

Solicitors for the respondent: *Nehra and Co.*

J. C.\*  
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July, 23

ATMA RAM (DEFENDANT) v. BENI PRASAD AND OTHERS  
(PLAINTIFFS)

[On appeal from the High Court at Allahabad]

*Civil Procedure Code, section 115—Material irregularity—Suit on behalf of widows, wards under the Court of Wards Act (U. P. Act IV of 1912)—Representative suit—Withdrawal of suit by Collector—Summary rejection by court of application by next reversioner to be added as plaintiff—Jurisdiction of High Court—Form of order.*

A suit by a Collector acting under the United Provinces Court of Wards Act (U. P. Act IV of 1912) claiming property as family property on behalf of widows, wards of the Court of Wards, is a representative suit.

On the withdrawal of the Collector, the widows would be debarred under section 55 of the Court of Wards Act from continuing the suit in their own names, but the next reversioner would be entitled to continue the suit.

The summary dismissal of an application by the next reversioner to be added as a plaintiff in such a suit on the withdrawal of the Collector, without a proper consideration of the application and on a misapprehension of its nature, and the dismissal of the suit on the Collector's application is a material irregularity within section 115 of the Code of Civil Procedure.

In reversing the decree of the lower court dismissing the suit in such circumstances the proper order to be made by the High Court is to order that the decree of the lower court be recalled, that the reversioner be added as a plaintiff and the Collector dismissed from the suit.

Decree of the High Court varied.

\*Present: Lord MACMILLAN, Sir JOHN WALLIS and Sir SHADI LAL.

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APPEAL (No. 64 of 1934) from an order of the High Court (May 2, 1933) which varied an order of the First Subordinate Judge of Saharanpur (May 11, 1932).

The Collector of Saharanpur as guardian of two widows under the U. P. Court of Wards Act, 1912, instituted a suit in the court of the Subordinate Judge of Saharanpur for the recovery of immovable properties inherited by their deceased husband. Before any written statements were filed by the defendants, he applied for leave to withdraw the suit. The widows thereupon applied to be allowed to continue the suit in their own names and the next reversioner applied to be added as plaintiff to continue the action.

The Subordinate Judge rejected the application of the widows on the ground that they were debarred from suing by section 55 of the Court of Wards Act, and the application of the reversioner on the ground that he was neither a party to the suit nor came within order XXII, rule 10 of the Code of Civil Procedure, and dismissed the suit.

The High Court, in the exercise of its powers under section 115 of the Code of Civil Procedure, held that the application of the widows was rightly rejected, but that the suit was a representative suit and that the reversioner was entitled to be added, and made an order in the following terms: "We accordingly modify the order of the court below and direct that Beni Prasad (the reversioner) be made a plaintiff in the suit and that the suit be tried as between Beni Prasad on the one hand, and the original defendants on the other."

1935. May 27, 28, 30, 31. *Dunne, K. C., Parikh and Sir Tej Bahadur Sapru*, for the appellant: Under order XXIII, rule 1 of the Code of Civil Procedure the Collector was entitled to withdraw the suit. He was the only person entitled to sue. The widows are debarred from suing by the U. P. Court of Wards Act, 1912, section 55. In a representative suit a person may apply to be added as a party under order I, rule 8. This suit

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was not brought as a representative suit. Beni Prasad can, as a reversioner, file a suit for a declaration. He is not a necessary party in this suit and cannot be added under order 1, rule 10. The decisions in *Venkatanarayana Pillai v. Subbammal* (1) and *Rajaratnam Ayyar v. Halasyasundaram Aiyar* (2) do not touch this case. The suit was not for property inherited by the widows from their husband but for property to which he had an actionable claim. The Subordinate Judge acted neither illegally nor with material irregularity and the High Court had no jurisdiction under section 115 to revise the order: *Amir Hassan Khan v. Sheo Baksh Singh* (3).

[Lord MACMILLAN: The High Court found the Subordinate Judge was in error in three ways: (1) He dealt with the matter summarily, i.e. he did not give it proper consideration; (2) He misapprehended the position of Beni Prasad; (3) He failed to do justice between the parties.]

The Subordinate Judge decided the matter after hearing arguments. An erroneous view of the law would not be a material irregularity. Beni Prasad wished to come in because of an arrangement with the Collector. It was argued in the High Court for the first time that he had a right as a contingent reversioner. There is no decision of the Privy Council as to meaning of material irregularity. Reference was made to *Balakrishna Udayar v. Vasudeva Ayyar* (4), *Buddhu Lal v. Mewa Ram* (5), and *Sundaram v. Mausamavuthar* (6). The suit was dead when the High Court refused the application of the widows and it could not go on to pass an order in favour of Beni Prasad.

*DeGruyther, K. C.*, and *Wallach* for respondents Nos. 1, 4 and 5: The High Court had jurisdiction

(1) (1915) I.L.R., 38 Mad., 406.

(2) (1922) 44 Mad. L.J., 322.

(3) (1884) I.L.R., 11 Cal., 6.

(4) (1917) I.L.R., 40 Mad., 793,  
(799, 801).

(5) (1921) I.L.R., 43 All., 564. (F.B.).

(6) (1921) I.L.R., 44 Mad., 554.

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under section 115: *Umed Mal v. Chand Mal* (1). The Subordinate Judge dismissed the application of the widows summarily on the ground that they had no standing under section 55 of the U. P. Court of Wards Act. He should have given the widows an opportunity to seek release of the estate from the Court of Wards. The allegation that Beni Prasad was the nearest reversioner was not denied. There was also an allegation before the court that the suit affected a third lady, Phulwanti, and a prayer to restrain the plaintiff or add other plaintiffs. It was the duty of the court to ascertain whether the suit was a representative suit and whether the Collector had power to withdraw. Order XXIII, rule 1 is not exhaustive. Reference was made to section 151, order I, rules 1 and 10, and order XXII, rules 3 and 10. If the nearest reversioner refuses to sue, the next can sue or continue the suit: *Rani Anand Kunwar v. Court of Wards* (2) and *Venkatanarayana Pillai v. Subbammal* (3). There is no distinction between a widow binding reversioners and any other reversioner binding subsequent reversioners. The Subordinate Judge had jurisdiction to add Beni Prasad and failed to exercise that jurisdiction. He held he was limited by order XXII, rule 10. Order I, rule 8 is a special rule for a special case. Rule 8 (2) does not exclude other powers. Order I, rule 10(1) and (2) would apply. Beni Prasad was a necessary and proper party. The High Court has power under section 115 to make such order as seems fit and has rightly added him.

The other respondents did not appear.

*Dunne, K. G.*, in reply: If the suit is a representative suit, refusal to add plaintiffs might fall within section 115, but a suit by a widow is not a representative suit in which she is a representative of reversioners who may come in. She can compromise. If she does, she exercises a right which is in her alone. The reversioners

(1) (1926) I.L.R., 54 Cal., 328.

(2) (1880) I.L.R., 6 Cal., 764.

(3) (1915) I.L.R., 38 Mad., 406

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cannot object to her doing so. *Venkatanarayana Pillai v. Subbammal* (1) was a suit by reversioners having a group or common right. In *Rani Anand Kunwar v. Court of Wards* (2) also the question of a group was considered. A suit could have been instituted against the Court of Wards to restrain it from withdrawing. It was not argued before the Subordinate Judge that the suit was a representative one so far as Beni Prasad was concerned. Phulwanti was not represented by the Collector.

July 23. The judgment of their Lordships was delivered by Sir JOHN WALLIS :

This is an appeal from the judgment of the High Court at Allahabad in the exercise of its powers of revision under section 115 of the Code of Civil Procedure, and raises questions as to the High Court's interpretation of the section, and as to the claim of a next reversioner to carry on at his own expense a suit which had been filed by the Collector under the local Court of Wards Act as representing two widows for possession of the suit properties which were alleged to form part of the estate of their deceased husband, in consequence of the Collector having applied to withdraw the suit. The suit had been instituted by the Collector of Saharanpur under section 55 of the U. P. Court of Wards Act on behalf of Jaimala Kuer and Chando Kuer, who were the surviving widows of Janeshwar Das and are hereinafter referred to as the widows, to recover certain properties in possession of three of the defendants which were alleged to be part of the estate of their deceased husband.

The case made in the plaint was that the plaint properties had belonged to Dip Chand who died in 1907 and that on the death of his widow, Dhanni Kuer, who died on January 20, 1920, Janeshwar the husband of the widows and his brother Badri Das, who were Dip

(1) (1915) I.L.R., 38 Mad., 406.

(2) (1880) I.L.R., 6 Cal., 764.

Chand's nearest reversioners, became entitled to succeed to the suit properties. Dip Chand had been adopted into their family, and it was alleged that his natural father Mukand Lal, who was his guardian, had taken advantage of his minority and the minority of his widow, to put his other sons Atma Ram and Abhai Nandan, the 1st and 2nd defendants, in possession of the suit properties. The suit was brought on behalf of the widows of Janeshwar, one of the reversioners, safeguarding the rights of Phulwanti Kuer, the widow of Badri Das the other reversioner, who was impleaded as the 3rd defendant.

The plaint was filed by the Collector on January 20, 1932, and on April 19 he applied that the case should be struck off as the Board of Revenue, which was the Court of Wards, had sanctioned the withdrawal of the suit. On the same day the widows put in an application to be substituted as plaintiffs. On May 9, in compliance with the court's order, the Collector filed through the Government Pleader his objection to the widows' application on the ground that they were debarred from suing under section 55 of the Court of Wards Act, that the Collector as plaintiff had an absolute power of withdrawal under order XXIII, rule 1, and that the widows were not proper or necessary parties under order I, rule 10. On the same day the widows joined with Beni Prasad, who claimed to be the nearest reversioner of their husband Janeshwar and his brother Badri, and entitled to succeed to their estates on the death of their widows, in filing a fresh application that they might be joined as plaintiffs and the conduct of the suit given to any one of them. This application was supported by a lengthy affidavit to which their Lordships do not propose to refer, seeing that the Collector was not served with a copy and had no opportunity of answering it, as the Subordinate Judge at once proceeded to hear arguments on

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all these applications and reserved judgment which he delivered two days later.

The Subordinate Judge held that the Collector under order XXIII, rule 1 was entitled to withdraw the suit, and as section 55 of the Court of Wards Act prevented the widows, who were wards of the Court, suing in their own names, they could not be substituted as plaintiffs. He also rejected the application of Beni Prasad, the next reversioner, as he was not a party to the suit, and it was not shown that there had been any arrangement creating a devolution of interest in his favour during the pending of the suit under order XXII, rule 10. He accordingly rejected the application of the widows and of Beni Prasad, and passed a decree dismissing the suit, which, if allowed to stand, might under the Code have finally barred the widows' claim without any adjudication on the merits, as no leave to file a fresh suit was applied for or given.

The widows then applied to the High Court to revise the judgment of the Subordinate Judge under section 115 of the Code of Civil Procedure. Beni Prasad, whom they impleaded as 6th respondent, was afterwards transposed as an applicant for revision along with the widows. It was alleged in the application that in refusing to make the applicants parties to the suit and to substitute them as plaintiffs, the Subordinate Judge had failed to exercise a jurisdiction vested in him by law [clause (b)], and had acted illegally or with material irregularity in the exercise of his jurisdiction [clause (c)].

For the reasons stated in their judgment the High Court dismissed the application of the widows. The widows have not appealed against this decision and their Lordships are accordingly not called upon to review it nor do they express any opinion as to the soundness of the grounds upon which it proceeded. As regards Beni Prasad's application the High Court held that it had not received a proper hearing or consideration in the court

below, and that the Subordinate Judge had totally misapprehended the nature of his application and dealt with it summarily. They accordingly held that they had jurisdiction to entertain his application. Their Lordships are of opinion that the High Court rightly so held inasmuch as the Subordinate Judge in disposing as he did of Beni Prasad's application acted with material irregularity.

On the merits of Beni Prasad's application, the learned Judges rightly pointed out that the suit filed on behalf of the widows by the Collector was a representative one in which Beni Prasad as nearest reversioner was interested, and that a decree properly obtained against the widows would be binding on him as next reversioner. This was expressly ruled by this Board in *Risal Singh v. Balwant Singh* (1). On the other hand if the suit succeeded, his right as the next reversioner of the plaintiffs' husband would be established. In these circumstances, in their Lordships' opinion, Beni Prasad had a right *ex debito justitiae* to be added as a plaintiff, and given an opportunity of continuing the suit if so advised. Their Lordships accordingly find themselves in agreement with the result of the judgment of the High Court on the merits of Beni Prasad's application.

It has next to be considered what was the proper order for the High Court to make in this representative suit when, owing to the incapacity for the time being of the widows to maintain it and the withdrawal of the Collector from the position of plaintiff representing them, the next reversioner was to be made a plaintiff. What the High Court did was, without reversing the decree of the lower court dismissing the suit, to order that Beni Prasad should be made a plaintiff in the suit and the suit be tried as between Beni Prasad on the one hand and the original defendants on the other. But Beni Prasad could not be made a party to a suit which, having been

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(1) (1918) I.L.R., 40 All. 593.



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dismissed, no longer existed. To make the judgment of the High Court effective it is necessary that the decree of the subordinate judge dismissing the suit should be recalled. Beni Prasad having been made a party as plaintiff, the Collector may then be dismissed from the suit, which will proceed at the instance of Beni Prasad. The widows are no longer under the supervision of the Court of Wards and as they can now act for themselves it will be for them, if they are so advised, to renew their application to have themselves added as plaintiffs to the suit, and the court will no doubt give due consideration to any such application by them. The dismissal of their application while they were under wardship will not prejudice their application to be made plaintiffs now that their wardship has come to an end.

In these circumstances their Lordships will humbly advise His Majesty that the decree of the High Court be varied so as to read as follows:—"It is ordered that the decree of the Subordinate Judge of Saharanpur dismissing the suit be recalled, that Beni Prasad be added as a plaintiff in the suit, that the Collector of Saharanpur be dismissed from the suit, that the application of Musammat Jaimala Kuer and Musammat Chando Kuer as originally presented be dismissed without prejudice to their applying anew to be made parties as plaintiffs to the suit along with Beni Prasad now that they are no longer under wardship." The order as to costs in the High Court will stand but the appellant will pay the costs of the respondents in the present appeal.

Solicitors for appellant: *Hy. S. L. Polak and Co.*

Solicitors for respondents 1, 4 and 5: *T. L. Wilson and Co.*