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by the court below and to appoint Narotam as guardian of the minor.

We accordingly affirm the decision of the court below and dismiss this appeal with costs.

Before Sir Shah Muhammad Sulaiman, Chief Justice, and Justice Sir Lal Gopal Mukerji

1934 *March*, 14

COLLECTOR OF MEERUT (DEFENDANT) *v.* CHAUDHARY RISAL SINGH (PLAINTIFF)*

Court of Wards Act (Local Act IV of 1912), sections 17, 20—"Claims, including decrees for money"—Claims for unascertained amounts—Claim by a co-sharer for settlement of accounts and share of profits—Failure to notify claim to Collector—"Good and sufficient cause" for such failure—Interpretation of statutes—Marginal note.

The words, "claims, including decrees for money", in section 17 of the Court of Wards Act, 1912, have a wide scope and would, *prima facie*, include all claims in respect of which a decree for money may be sought, whether the amount is an ascertained sum or not. Having regard to the purpose of section 17 and the policy underlying the Act, these words should be given their ordinary and unrestricted meaning, and the mere fact that the expression "claim for money" has been used in the restricted sense of claims for ascertained sums in some other enactments does not necessitate the restriction of its meaning in the Court of Wards Act also. So, a claim by a co-sharer for settlement of accounts and share of profits, under section 227 of the Agra Tenancy Act, is included within the scope of section 17 of the Court of Wards Act and is required to be notified to the Collector.

The marginal note to section 20 of the Court of Wards Act, suggesting that the competent court mentioned in the body of the section is the "civil court" alone, can not control the section itself so as to make it inapplicable to suits cognizable by the revenue court. The benefit of the proviso to section 20 can, therefore, be given to a suit brought under section 227 of the Agra Tenancy Act, if good and sufficient cause for failure to notify the claim to the Collector is shown.

In view of the fact that section 17 was not free from ambiguity, that there was no previous ruling on the point, and

*Second Appeal No. 42 of 1930, from a decree of Raghunath Prasad, District Judge of Meerut, dated the 18th of May, 1929, confirming a decree of Syed Maqbool Ahmad Sahab, Assistant Collector, First Class, of Meerut, dated the 22nd of December, 1927.

the marginal note to section 20 was misleading, good and sufficient cause had been made out within the meaning of the proviso to section 20 for failure to notify the claim.

Mr. *Muhammad Ismail* (Government Advocate), for the appellant.

Mr. *K. C. Mital*, for the respondent.

MUKERJI, J.:—This second appeal arises out of a suit instituted by the respondent, as a co-sharer, against several co-sharers, for a settlement of accounts and profits, under section 227 of the Tenancy Act of 1926. The suit was defended by the Court of Wards alone as the manager of the estate of the appellant. The Court of Wards has since released the estate from its management. The other defendants did not contest the suit, as it appears that the entire property was managed by the Court of Wards on behalf of the appellant. The court of first instance decreed the suit. The appeal, on behalf of the present appellant, was dismissed by the District Judge.

In the present appeal only two points have been urged before us. The first is that the respondent having failed to notify his claim under section 17 of the Court of Wards Act (Local Act No. IV of 1912) it is not maintainable, and the second is that the suit has been treated by the courts below as a suit against a lambardar and the decree granted on the basis of gross rental is, on that account, bad.

As regards the first point, the learned counsel for the respondent has urged that if section 17 be applicable, his client should be given the benefit of the proviso to section 20 of the Act. In my opinion, the interpretation of section 17 of the Court of Wards Act is a matter of first impression. It declares that when the assumption of an estate by the Court of Wards has been notified in the Gazette, a notice shall be published in the Gazette "calling upon all persons having claims, including decrees for money, whether secured by mortgage or not, against the ward or his property, to notify the

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same in writing to the Collector" within six months of the publication of the notice. The question, then, is whether the claim of the respondent is a "claim for money" and whether it should have been notified. The consequence of failure to notify is that, subject to certain rules, the claim shall be deemed to have been discharged (section 18).

It is urged for the respondent that his claim was one for settlement of accounts and could not be called a "claim for money". The argument for the appellant is that the claim was for money, although the amount payable by the appellant depended on a settlement of accounts.

Giving the words "claim for money" their plain meaning, I should think that they would include all claims which, if successful, would give rise to a pecuniary liability against the ward or his property. A claim for a specific movable property or for recovery of an immovable property would not come within those words. A claim for money need not be for an ascertained sum. For, even where it is for an ascertained sum, it does not follow that that sum would necessarily be decreed by the court, if a litigation should be necessary. A claim for money, based on a bond, need not succeed fully, for the interest may be reduced by the court, or the court, on contest, may find that the whole of the consideration money has not been paid by the claimant, and so on. All that the words appear to mean is that the Collector should know what a particular man (the claimant) thinks that he should be paid by the ward or from his property.

Expressions similar to the words which have to be interpreted in this case have been used in different enactments but a consideration of the sense in which they have been used elsewhere will be of no assistance. They have been used for the purposes of those enactments. For example, in the Civil Procedure Code, order VII, rule 2, where the plaintiff seeks "recovery

of money", he is required to state the precise amount claimed. But where the plaintiff sues for mesne profits or for an amount which will be found due to him on taking unsettled accounts between him and the defendant, the plaint is required to state approximately the amount sued for. It appears that here a distinction has been drawn between a claim for recovery of money and a claim for mesne profits or for accounts. But it will be sufficient to point out, first, that the words used in the Civil Procedure Code are not the same as in the Court of Wards Act, and, secondly, in either case mentioned in the Civil Procedure Code the amount claimed is to be specified, though in one case precisely and in the other approximately. For similar reasons, the language of the Court Fees Act will be of no assistance to us.

Chapter IV, in which section 17 occurs, of the Court of Wards Act is headed as "Ascertainment of debts". This may indicate that the idea underlying the rule is that the Collector should know approximately how much debt the estate has to pay and whether he should treat the whole claim as valid or should leave the claimant to seek his remedy in the competent courts. In this view, all claims which give rise to a pecuniary liability should come within the words "claim for money". It is true that where section 20 of the Court of Wards Act says that if the Collector disallows any claim, the claimant may pursue his remedy in a court of competent jurisdiction, the marginal note mentions only the *civil court*. But in my opinion, the marginal note is unduly restricted and is wrong. The ward may be a tenant paying a large amount of rent. He may be a lessee of several villages. If the landholder claims that his rent is in arrear and if his claim be disallowed by the Collector, it may not be fairly argued that section 20, by its marginal note, would prevent the claimant from suing the ward, as represented by the Court of Wards. Then in such a case, it will be useful

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to the Collector to know that a large amount of money is due to the landholder of the ward.

For the foregoing reasons, I would hold that the present claim should have been notified to the Collector.

Then comes the question whether for the failure on the part of the plaintiff, we should dismiss the suit or should allow it to be maintained, in view of the proviso to section 20 of the Act.

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It is urged for the respondent that he did not know that the claim came within the purview of section 17 of the Act. There is much to be said in support of this argument. Section 17 is not free from ambiguity, and so far as we are aware there is no decision of this or the Oudh Court directly to the point. The interpretation put by me has been the result of much deliberation and it would not be at all a matter of surprise if anybody should come to a different conclusion. In *Bakhtawar Singh* v. *Balwant Singh* (1) a Bench of this Court in a somewhat similar case allowed a suit to be maintained, though there was no notification of the claim. I think that we should not dismiss the suit for the failure to notify, and give the claimant the benefit of the proviso to section 20.

Coming to the merits, the courts below have not treated the appellant as the lambardar. Under section 227, it was the duty of the appellant, who collected all the income, to furnish an account of the collections and he failed to do so. In the circumstances it was open to the courts to "make any presumption against him". This is what the courts below have done. It can not be said that the courts were not right. I would, therefore, decide this point against the appellant.

In the result the appeal should fail and I would dismiss it with costs.

SULAIMAN, C.J.:—The words "claims, including decrees for money, whether secured by mortgage or not" in section 17 of the Court of Wards Act have a wide

(1) (1927) 25 A.L.J., 661.

scope and would, *prima facie*, include claims for which a decree for money is sought. If that section stood by itself there would obviously be no difficulty whatsoever in holding that it covered a claim for a share of profits on settlement of accounts between a co-sharer and other co-sharers or the lambardar. If one looks to the policy apparently underlying the Act there would be no justification for drawing a distinction between a claim for money due as a loan or for profits due to a co-sharer. In order to be able to deal with the various claims or to reduce interest it is just as important for the Collector to know the amount of outstanding debts against the ward as the amount of profits due from him to his co-sharers. The intention seems to be that all money claims against the ward or his property should be notified to the Collector within six months of the publication of the notice, otherwise the claim would, during the continuance of the superintendence, be deemed to be duly discharged under section 18. The heading "Ascertainment of debts" under which section 17 occurs, as well as the use of the words "debts and liabilities", seem to cover claims for share of profits.

Difficulty is, however, caused by two matters. The first is that in other enactments a clear distinction has been drawn between a claim for money, which is a claim for an ascertained sum, and a claim for an unliquidated amount to be determined on settlement of accounts. For instance, under order VII, rule 2 of the Civil Procedure Code a plaintiff is required to state the precise amount claimed when he seeks to recover money, and to state the amount approximately when he sues for mesne profits or for an amount due on taking unsettled accounts. Again, under section 7 of the Court Fees Act the fee payable is to be computed in case of suits for money according to the amount claimed and in suits for accounts according to the amount at which the relief sought is valued.

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The second difficulty arises in this way. Section 20 allows a person to institute a suit in respect of any claim which has been disallowed by the Collector under section 18, and contains the proviso that where the claimant has failed to notify his claim under section 17 no suit can be maintained unless he shows good and sufficient cause for such failure. The marginal note to the section is headed as "prosecution of claims in civil court," suggesting that the competent court mentioned in the body of the section is the civil court. If this were so, then the money claimed might not include a claim for arrears of profits which is entertained in the first instance by the revenue courts.

But these difficulties are not really very serious. The mere fact that the expression "claim for money" has been used in a more restricted sense in other enactments does not necessitate the restriction of its meaning in the Court of Wards Act also. The marginal note to section 20 merely gives a clue or hint to the substance of the provision and cannot control the section itself.

I, therefore, agree that we must give to the expression "claim for money" its ordinary meaning, which must include a claim for share of profits due to a co-sharer from a lambardar or another co-sharer, whether the accounts between them have or have not been settled.

In view of the fact that there has been no previous ruling on this point and the marginal note to section 20 is misleading, I would hold that good and sufficient cause for failure to give notice has been shown within the meaning of the proviso to section 20.

I concur in the order dismissing the appeal.