

APPELLATE CIVIL

Before Mr. Justice Harries and Mr. Justice Rachhpal Singh

BENI PRASAD (PLAINTIFF) v. PARMANAND AND OTHERS

(DEFENDANTS)*

1936

November, 30

Court of Wards Act (Local Act IV of 1912), sections 38, 51, 53

—Release of estate—Date from which release becomes operative—Sale by Court of Wards of the ward's property—Ward a Hindu widow with limited interest—Whether the sale confers absolute title without proof of legal necessity—Whether civil court can question the sale—Jurisdiction.

Section 51 of the U. P. Court of Wards Act does not say that notification in the Gazette is a condition precedent to the release of an estate from the superintendence of the court of wards. No doubt the section does not mean that release can not take effect till it has been notified in the Gazette. It is, however, impossible to hold that an estate is released with effect from the date on which the Local Government sanctions its release; such sanction is merely the first step, which must be followed by all the other steps necessary to enable the estate to be handed over to the ward. The release can take effect only on and from the date which is fixed by the Collector and announced previously and on which date he complies with the requirements of the rules laid down in the Court of Wards Manual. Even if evidence established that everything necessary for the release had been done before that date, even so the release would not be effected in the eye of the law until the date fixed, and up to that date the estate would in law continue to be under the superintendence of the court of wards; and any sale of the property by the court of wards made before that date, though after the Local Government had sanctioned the release of the estate, would be governed by section 38 of the Act.

The power to sell given by section 38 of the U. P. Court of Wards Act is unfettered, except in the case mentioned in the proviso of property placed under the superintendence of the court of wards under section 10, and is not made dependent upon the powers of alienation possessed by the ward. The court of wards has absolute powers of alienation in respect of the property taken under its charge—except where it was done

*First Appeal No. 11 of 1934, from a decree of Nand Lal Singh, First Subordinate Judge of Saharanpur, dated the 9th of October, 1933.

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under section 10—although the person on whose behalf the management was taken up was only a limited owner of the property like a Hindu widow. A sale by the court of wards of the property of a Hindu widow confers an absolute title on the vendee, without any proof of the existence of legal necessity, and under section 53(1) of the Act it can not be questioned in a civil court on a suit by the reversioner.

Mr. *Gopi Nath Kunzru*, for the appellant.

Mr. *G. S. Pathak*, for the respondents.

HARRIES and RACHHPAL SINGH, JJ.:—This is a plaintiff's appeal against a decree passed by the learned civil Judge of Saharanpur dismissing the plaintiff's suit for a declaration that a certain sale deed was null and void.

The suit was for a declaration that a sale deed dated the 2nd of May, 1933, executed by the court of wards in favour of defendants Nos. 1 and 2 for a consideration of Rs.27,000 was null and void as against the plaintiff after the death of defendants Nos. 3 and 4. It was the case for the plaintiff that this sale deed related to the haveli or residential house of Rai Bahadur Lala Juneshwar Das. The owner died in 1926 leaving surviving him his two widows defendants Nos. 3 and 4 who succeeded to his entire estate including the haveli in dispute as Hindu widows. It was the plaintiff's case that the haveli was part of the ancestral property of the deceased Juneshwar Das and this does not appear to have been questioned by the defendants.

According to the plaintiff the superintendence of the estate of defendants Nos. 3 and 4 was assumed by the court of wards with effect from the 5th of January, 1928, and that the said estate was subsequently released with the sanction of the Local Government on the 20th of December, 1932, and that it was after the release of the estate by the court of wards that the haveli was sold by the latter on the 2nd of May, 1933, as stated previously. The plaintiff alleged that he was the next reversioner of the late Rai Bahadur Lala Juneshwar Das and he claimed in this suit that the sale deed was executed

after the estate had been released and in any event the sale was not for legal necessity and was not binding upon the reversionary body.

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The suit was contested solely by the defendants Nos. 1 and 2 who alleged that the sale deed was executed during the superintendence of the estate by the court of wards and that it was binding upon the reversionary body who had no ground whatsoever for challenging its validity. They contended that the plaintiff though the nearest reversioner had no cause of action whatsoever as it was within the power of the court of wards to sell any part of the ward's property during its superintendence and that any exercise of a discretion vested in the court of wards could not be questioned or challenged in a civil court. They further contended that the validity of this sale did not in any way depend upon whether or not the sale was for legal necessity.

The learned civil Judge came to the conclusion that the two main issues in the case raised purely questions of law and that it was convenient to decide these issues before taking any evidence in the case other than certain notifications in the U. P. Government Gazette to which we will refer later. The learned civil Judge was of opinion that the decision upon these issues might well make any further evidence in the case unnecessary. The two issues which he decided to try were issues Nos. 2 and 4 and they were in these terms:

Issue No. 2—Has the plaintiff got any cause of action for this suit and is it legally open to him to challenge the sale deed made by the court of wards in respect of the property of its wards?

Issue No. 4—Is it open to the plaintiff in this case to repudiate this sale for want of legal necessity?

The learned civil Judge heard arguments upon these two issues and he came to the conclusion that the sale took place during the superintendence of the court of wards and that it was not open to the plaintiff to question the validity of the sale. The learned Judge

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was of opinion that the courts of wards were empowered under section 38 of the Court of Wards Act (Act IV of 1912) to sell any part of the property of the ward and that a civil court could not question the validity of such sale. He therefore held that the plaintiff had no cause of action and had no right to the declaration prayed for. Consequently without hearing any evidence he dismissed the plaintiff's suit with costs. It is against that decision that the present appeal has been preferred.

It has been contended on behalf of the plaintiff that this case could not be disposed of without taking evidence. It was alleged by the plaintiff that the court of wards actually released the estate from superintendence on the 20th of December, 1932, and therefore that a sale on the 2nd of May, 1933, could not possibly bind the reversionary body. It was contended by the plaintiff that evidence should have been received and a finding recorded upon that evidence as to the precise date upon which the estate was released.

The only evidence before the court were notifications from the U. P. Government Gazette. In the Government Gazette dated the 7th of January, 1928, was a notification that the Governor in Council had been pleased to declare Musammats Jai Mala Kunwar, Chanda Kunwar and Bhagwati Kunwar, widows of Rai Bahadur Lala Juneshwar Das, late proprietor of the Juneshwar Das's estate in the Saharanpur District, to be incapable of managing their own property, in the exercise of the powers under sub-section (1)(b) of section 8 of the U. P. Court of Wards Act, 1912. On the 14th of January, 1928, notification under section 15 of the Court of Wards Act was published in the U. P. Government Gazette and the court of wards assumed the superintendence of the property of the defendants Nos. 3 and 4 with effect from the 5th of January, 1928, under section 12(1) of the Act. There was also before the court a notification in the Government Gazette of the

27th of May, 1933. This is notification No. 3290/X—153(4)-32 of 1933 and is dated Allahabad the 22nd of May, 1933, which is a notification under section 51 of the U. P. Court of Wards Act, 1912, notifying the release of the estate of the defendants Nos. 3 and 4 with effect from the 20th of May, 1933. This notification was subsequently corrected by a notification in the Government Gazette dated the 24th of June, 1933, viz., notification No. 3979/X—153(4)-32 of 1933, notifying that the estate of the defendants Nos. 3 and 4 was released by the court of wards with effect not from the 20th of May, 1933, but from the 27th of May, 1933.

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Section 51 of the U. P. Court of Wards Act, 1912, provides that when a court of wards releases any person or property from its superintendence the fact of such release shall be notified in the gazette. It does not in terms say that notification is a condition precedent to release and no provision is made as to what is to happen if no notification of the release is made. On behalf of the plaintiff it is argued that notification is unnecessary and that it is a pure question of fact as to when the release takes place. Complaint is made that the learned Judge did not go into the facts and therefore there was no material upon which any finding could be made as to whether the estate had or had not been released before the sale deed was executed on the 2nd of May, 1933.

It was at first contended that the release actually took place on the 20th of December, 1932, when it was alleged that the Local Government sanctioned the release of this estate. In our view it is quite impossible to hold that an estate is released from the date on which the Local Government sanctions its release. Much has to be done by the court of wards before the estate can be handed back to the ward and until everything has been done the estate cannot be said to be released. The Local Government's sanction to the release of the estate is merely the first step which must be followed by all the steps necessary to enable the estate to be

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handed over to the ward. It was contended by the plaintiff that he was in a position to show that everything had been done by the officials of the court of wards to release the estate at the end of December, 1932, or at the beginning of the year 1933. It was said that the plaintiff could show that possession had been handed over to the wards before the date of this sale and that nothing remained to be done to complete the release.

It was therefore contended that the date of release could only be determined after hearing all the evidence in the case. In our view, we must hold that there was no release of this estate until the 27th of May, 1933, which was the date given in the U. P. Gazette of the 24th of June, 1933, amending the earlier notification. In this amended notification it was stated that the court of wards had released the estate from its superintendence with effect from the 27th of May, 1933, and this latter date must be taken to be the date of release.

In the case of *Collector of Bulandshahr v. Gokal Chand* (1) it was held that the notification referred to in section 51 of the Court of Wards Act is of the fact of the release of an estate from the superintendence of the court of wards and the section does not mean that the release cannot take effect till it has been notified in the Gazette. The release can take effect only when some act is done by the Collector as representative of the court of wards and mere sanction of the court of wards does not automatically bring about the release of an estate. An examination of the Court of Wards Manual makes it clear that the release can only take place on the date which is fixed by the Collector and announced previously and on which date he complies with the requirements of the rules laid down in the Manual. At page 1076 SULAIMAN, C.J., observes:

“When a court of wards takes over the superintendence of an estate its management and right to possession vest in it for the

(1) [1934] A.L.J., 1069.

time being. When the estate is released the management passes on to the ex-ward. The responsibility of the court of wards has to cease on the date of the release. Up to the time of the release the court of wards continues to be liable for all claims. The question is what is the point of time at which the release of an estate can legally take place. Unfortunately the Court of Wards Act is not quite clear. But one must presume that unless release legally takes effect on the date of the original sanction by the court of wards, the release can take place only when some act is done by the Collector as representative of the court of wards. We have already given reasons in our previous order why the sanction of the court of wards would not automatically bring about the release of an estate. In this particular case we have also pointed out that the form of the sanction indicated that the Collector was to comply with the rules laid down for the release of an estate by the court of wards and was to fix 'the actual date of release' and report the same for publication in the U. P. Gazette. On an examination of the rules in the Manual which calls upon the Collector to do certain things it is quite clear that the release can only take place on the date which is fixed by the Collector and announced previously and on which date he complies with the requirements of the various rules which we shall mention presently."

This case has held that a date upon which the release is to take effect must be fixed and that everything which has to be done to effect the release must be done before that date and it is only on that date that the estate can be said to be legally released. In the case before us it is clear that there was a date fixed for the release to take effect and according to the amended notification of the U. P. Government Gazette such date was the 27th of May, 1933. In our view, having regard to the case of *Collector of Bulandshahr v. Gokal Chand* (1), we are bound to hold that this estate was not legally released until the 27th of May, 1932, and that even if evidence established that everything necessary for the release had been done before that date, such would not affect the actual date upon which the release took effect.

(1) [1934] A.L.J., 1069.

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It might well be that the plaintiff could establish that everything necessary for the release was completed before the 27th of May, 1933, but even so the release would not be effected in the eye of the law until the date fixed, viz., the 27th of May, 1933. That being so, the learned Judge was perfectly right in coming to the conclusion that the sale took place before the estate was released by the court of wards.

It was further contended that even if the sale took place before the actual date of release the court of wards had no authority to sell by reason of the fact that sanction had been given for the release before the sale and that after such sanction the powers of the court of wards were restricted to making preparations for handing over the estate to the ward. It was argued that the powers of the court of wards are subject to section 5 of the U. P. Court of Wards Act, 1912 which reads thus: "The authority vested in the court of wards shall be subject to the control of the Local Government."

It is common ground that the Local Government had sanctioned the release of this estate before the date of sale, but in our view the court of wards could perform all their functions up to the actual date of release. The court of wards were superintending this estate on the 3rd of May, 1933, and that being so they could exercise the powers given to them by the Act. The fact that they were making preparations for releasing this estate under the directions of the Local Government did not take away from them their powers under the Act. In our view it was open to the court of wards to exercise their powers at any time previous to the actual date of release.

Lastly it was contended that even if the court of wards were superintending the estate on the 3rd of May, 1933, they had no power to enter into a transaction such as this sale. It was contended that as the wards were Hindu widows with only limited powers of

sale there were the same limitations upon the court of wards which were exercising superintendence over the estate. Shortly put, the plaintiff's case is that the court of wards are mere guardians and cannot have any greater powers to sell than those vested in the ward.

A Hindu widow cannot sell the absolute interest in any part of the estate except for legal necessity and it was contended that no sale by the court of wards would bind the reversionary body unless it was supported in the same manner by legal necessity. That being so, it was argued that the court should have heard evidence as to the conditions existing at the time of sale in order to come to a conclusion whether or not this sale was for legal necessity.

On the other hand it was argued on behalf of the respondents that the power of the court of wards to sell was unfettered and did not depend upon whether the ward had unrestricted powers of alienation. The courts of wards are empowered to sell the whole or any part of the property of the ward by section 38 of the U. P. Court of Wards Act, 1912. That section provides that "The court of wards may mortgage or sell the whole or any part of any property under its superintendence, and may give leases or farms of the whole or any part of such property for such terms as it thinks fit, and may make such remissions of rent or other dues, and may generally pass such orders and do such acts not inconsistent with the provisions of this or any other Act in force for the time being as it may judge to be for the advantage of the ward or for the benefit of the property: Provided that no property placed under the superintendence of the court of wards under section 10 shall be sold in whole or in part without the consent of the proprietor, except on the ground that the debts and liabilities with which the property is charged are such as to render their liquidation within a reasonable time impracticable and that the release of the property under section 44 is inexpedient owing to contracts or

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engagements entered into or liabilities undertaken during the superintendence of the court of wards."

This property was not placed under the superintendence of the court of wards under section 10 and therefore the proviso has no application. It is to be observed that the power to sell given by the section except in the case of the property mentioned in the proviso is unfettered and is not made dependent upon the powers of alienation possessed by the ward. For example the court of wards can clearly sell part of the property of a minor or a lunatic under its superintendence though neither the minor nor the lunatic could execute a sale deed at all. Similarly the respondent argued that the court of wards can sell the property of a Hindu widow though the latter herself could not alienate the property except in special circumstances.

There is no direct authority of this Court upon this section, but the precise point has been considered by a Bench of the Madras High Court in the case of *Navaneetha Krishna Thevar v. Ramaswami Pandia Thalavar* (1). In that case the plaintiff claimed to be the nearest reversioner to the last male owner of zamindari property and sued for a declaration that certain alienations made by the court of wards during their management of the estate on behalf of the adoptive mother of the late zamindar on her succeeding to the estate as his heiress on his death were not binding on the estate beyond her life-time. The Court however held that the power of the court of wards under section 35 of the Madras Court of Wards Act was in terms absolute and not governed by the restrictions in the latter part of the section and that the court of wards had absolute powers of alienation in respect of the property taken under its charge, although the person on whose behalf the management was taken up was only a limited owner of the property like a widow. Consequently they held that the alienations in the case

(1) (1916) I.L.R., 40 Mad., 871.

were valid without proof of necessity such as would support an alienation by a Hindu widow. It is to be observed that section 35 of the Madras Court of Wards Act is in precisely similar terms to section 38 of the U. P. Court of Wards Act, 1912, and therefore this case can be regarded as a clear authority upon the construction to be given to section 38 of the Act governing these provinces. At pages 875 and 876 WALLIS, C.J., after quoting the terms of the section, observes:

“The Subordinate Judge has held that this only enables the Court to sell or mortgage the particular interest of the ward in the property under superintendence unless there are circumstances which would justify the ward himself if *sui juris* in selling outright. Under the Act, the ward is not necessarily a full owner and may be, as here, a widow, or the owner of an impartible estate with limited powers of alienation under the Madras Impartible Estates Act, 1904, which continued in substance the provisions of the temporary Act passed at the same time as the Court of Wards Act in 1902, or the property may be owned as joint family property by several minors in which case the senior if of age would only have a limited right of sale. In comparatively few cases under superintendence in this Presidency would the ward if *sui juris* be full owner with power to sell outright. The power to sell, mortgage or lease is in terms absolute, and is not governed by the restriction in the latter part of the section, as pointed out in *Mohsan Shah v. Mahbub Ilahi* (1); and to say that the Court cannot sell outright where the ward has only a life interest unless there are circumstances which would justify the ward himself in selling under the Hindu law is to import into the section words which are not there, and to hamper the Court in the exercise of powers which are conferred upon it as incidental to its right of management for the benefit of the estate, that is, of the ward and those who come after him. The word ‘property’ under its superintendence means, in my opinion, the movable and immovable property itself and not the particular interest of the ward as widow. Further, if the word ‘property’ be construed as confined to the limited interest of the ward, it will be necessary to look elsewhere for the Court’s power to sell and mortgage outright in cases where the Hindu law allows it.”

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The view expressed by the Madras High Court upon the construction of section 35 of the Madras Court of Wards Act, 1902, is equally applicable to the construction of section 38 of the U. P. Court of Wards Act, 1912. In our judgment the power to sell is absolute and this has been so held in the case of *Mohsan Shah v. Mahbub Ilahi* (1). In our view section 38 gives the court of wards power to sell, if they so wish, the whole or any part of the property of a ward and it matters not whether that particular ward could or could not in the circumstances have executed a valid sale deed or could have passed an absolute interest in the property sold. Further, if the court of wards do sell under the powers conferred by this section, the motives and reasons for the sale cannot be questioned in any civil court. Section 38 provides that the court of wards may sell, and if they decide to do so they exercise a discretion vested in them by that section and it is expressly provided by section 53(1) of the U. P. Court of Wards Act, 1912, that the exercise of any discretion conferred on the Local Government or the court of wards by this Act shall not be questioned in any civil court. In our view it is for the court of wards to decide whether they will sell any property or not and if they decide to do so and sell the property that transaction cannot be questioned in the civil court. That view has been adopted by this Court in the case of *Mohsan Shah v. Mahbub Ilahi* (1) to which we have already referred.

For the reasons which we have given we are satisfied that the learned Judge was right in holding that the court of wards had power to sell this property and that the sale could not be questioned by the plaintiff as representing the reversionary body. In our view any other construction of this section would render the duties of the court of wards difficult, if not impossible, to perform. It must be remembered that the court of wards assumes superintendence not for the benefit of

(1) (1907) I.L.R., 29 All., 589.

the ward but for the good of the estate. Frequently the court of wards assumes superintendence to protect the estate against an extravagant, thriftless or incompetent ward and the court of wards has to have always in mind not the immediate advantage to the ward but the ultimate benefit to the estate. That being so, it is not strange that the statute empowers the court to sell property in circumstances in which the ward could not sell and yet makes it impossible for any reversioner to question the sale. As the court of wards is acting for the benefit of all there is nothing strange in the fact that the statute does not permit persons entitled after the ward to question its acts.

In the result, therefore, we hold that the learned Judge was right in disposing of this case without considering any evidence beyond the notifications contained in the various copies of the Gazette and in our view he rightly held that the sale in question was valid and could not be challenged by the plaintiff as the nearest reversioner. The result therefore is that this appeal is dismissed with costs.

Before Sir Shah Muhammad Sulaiman, Chief Justice, and
Mr. Justice Bennet

JAGRUP SINGH (DEFENDANT) *v.* RAM GATI (PLAINTIFF)*
Civil Procedure Code, order XXXIV, rule 6—Application for
personal decree against mortgagor for unsatisfied balance—
Limitation—Limitation Act (IX of 1908), article 181—
Terminus à quo.

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In computing the limitation, under article 181 of the Limitation Act, for a mortgagee decree-holder's application for a personal decree under order XXXIV, rule 6 of the Civil Procedure Code, the time of three years should begin to run from the date when the appellate court finally decides that the sale, which fetched an insufficient amount, should be confirmed.

It can not be said that as soon as the first court confirms the auction sale of the mortgaged property it is definitely ascertained that the sale proceeds are insufficient to pay the

*First Appeal No. 165 of 1935, from an order of Tej Narain Mulla, District Judge of Allahabad, dated the 26th of March, 1935.

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