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APPELLATE CIVIL

1881
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Before Mr. Justice Tyrrell and Mr. Justice Duthoit.

PIRTHI SINGH (DEFENDANT) v. LOBHAN SINGH (PLAINTIFF).*

Suit on behalf of minor—Permission to sue.

The uncle of a minor instituted a suit on his behalf without obtaining the formal permission of the Court in which such suit was instituted to sue on his behalf. The uncle's right to sue was denied by the defendant; and the first of the issues framed was whether he had such right. The Court decided that he had such right. *Held*, in second appeal, that, although permission to sue or defend a suit on behalf of a minor should be formally granted, to be of effect, such permission might fairly be accepted as in this case a sufficient and effective permission to the uncle to sue, and he was competent to maintain such suit. *Mrinamoyi Dabia v. Jogodishuri Dabia* (1) referred to.

MAHARAJI, the mother and certificated guardian of Manbhawan Singh, a minor, borrowed certain moneys on his behalf from Pirthi Singh, one of the defendants in this suit, and gave Pirthi Singh a bond for the payment of such moneys, in which she mortgaged the minor's landed property. Pirthi Singh sued Maharaji, as Manbhawan Singh's guardian, to recover such moneys, and obtained a decree against her in that character, in execution of which such property was advertised for sale. On the 18th January, 1880, Lobhan Singh, the uncle of the minor and the plaintiff in this suit, applied to the District Court for permission to bring a suit "to protect the minor's property from sale," on the ground that it had been alienated without the Court's permission and without legal necessity.

* Second Appeal, No. 1333 of 1880, from a decree of H. A. Harrison, Esq., Judge of Farukhabad, dated the 3rd September, 1880, affirming a decree of Pandit Gopal Sahai, Munsif of Farukhabad, dated the 22nd June, 1880.

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Such application was made apparently with reference to the provisions of s. 19 of Act XL of 1858. The Court made an order on the same day granting Lobhan Singh permission to sue. Lobhan Singh accordingly brought the present suit, as the uncle of Manbhawan Singh, minor, against Pirthi Singh, Maharaji, and the purchaser of the property, which had in the meantime been sold in execution of Pirthi Singh's decree, to set aside such sale. The defendant Pirthi Singh set up as a defence to the suit, *inter alia*, that the frame of the suit was bad, it having been brought by the plaintiff in his own name. The Court of first instance framed as one of the issues for trial the issue: "Has the plaintiff a right to bring this suit?" Upon this issue the Court held, having regard to the District Court's order of the 19th January, 1880, that the plaintiff had a right to sue; and deciding the case on the merits in favour of the plaintiff gave him a decree. On appeal the same defendant again contended that the plaintiff was not competent to sue in his own name. The lower appellate Court observed as regards this contention as follows: "It is urged that, under s. 440 of Act X of 1877, the suit should have been instituted in the minor's name by an adult person, who shall be called the next friend, whereas it has been instituted by Lobhan Singh as uncle of Manbhawan Singh; the Court cannot admit the objection; the whole plaint shows that Lobhan Singh was suing for the minor; he had obtained permission to sue, and even if it would have been more regular to have entered Manbhawan Singh, minor, as plaintiff, and Lobhan Singh as the next friend of the minor, still the irregularity is not a vital one, and in no way affects the merits of the suit." On second appeal to the High Court the defendant Pirthi Singh again contended that the plaintiff was not competent to sue in his own name.

Munshi *Kashi Prasad*, for the appellant.

Munshi *Hanuman Prasad* and Babu *Ratan Chand*, for the respondent.

The judgment of the Court (TYRRELL, J., and DUTHOIT, J.) was delivered by

DUTHOIT, J.—Although not formally stated in the preamble of the plaint, or in the naming of the suit, there is no doubt that the suit was practically instituted by Manbhawan Singh, a minor,

through a next friend, his uncle Lobhan Singh. It has been found by both the Courts below, and it seems to be certain, that on the merits the plaintiff was entitled to a decree. But in the lower appellate Court, and here in second appeal, it has been pleaded that Lobhan Singh, not having been formally admitted as the minor's next friend, had no *locus standi* in Court, and that the suit, as wrongly instituted, should have been dismissed. The facts as regards Lobhan Singh's position in the suit are as follows: On the 19th January, 1880, Lobhan Singh applied to the Judge of Farukhabad for permission to sue in the terms of s. 19 of Act XL of 1858 for cancellation of an auction sale adverse to the interests of his nephew, the minor. The permission solicited was granted by the Judge on the same date; armed with it, Lobhan Singh sued in the Munsif's Court; his right to sue was denied by the defence, and the first of the issues framed by the Munsif was whether he had this right. The Munsif found that he had, with reference to the order of the Judge. There can be no doubt that the Judge's order of the 19th January was erroneous. S. 19 of Act XL of 1858 has reference to an altogether different set of facts to those which the applicant's petition disclosed, and its provisions, therefore, are in this case inoperative. It is also true [*Mrinamoyi Dabia v. Jogodishuri Dabia* (1)] that permission to sue or defend a suit on behalf of a minor, to be of effect, must be formally granted. But we think that the finding of the Munsif in the plaintiff's favour under the first of the issues set out by him may fairly be accepted as in this case a sufficient and effective permission. The appeal is dismissed with costs.

Appeal dismissed.

Before Mr. Justice Straight and Mr. Justice Tyrrell.

LACHMAN SINGH AND ANOTHER (PLAINTIFFS) v. KESRI AND OTHERS
(DEFENDANTS).*

Unregistered Bond for the payment of money hypothecating immovable property—Admissibility in evidence of the bond in support of a claim for money—Mortgage—Act III of 1877 (Registration Act), ss. 17, 49—Act XV of 1877 (Limitation Act), sch. ii, No. 66—Single Bond.

On the 3rd February, 1871, the defendants, having borrowed Rs. 1,000 from the plaintiffs, executed in favour of the latter an instrument in which they mort-

* Second Appeal, No. 1314 of 1880, from a decree of J. H. Prinsep, Esq., Judge of Cawnpore dated the 11th September, 1880, reversing a decree of Pandit Jagat Narain, Subordinate Judge of Cawnpore, dated the 15th July, 1879.

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