

result if such statements were held to be sufficiently proved by signature only under the Act, and yet that the same statements should be required to be proved by affidavit for the purposes of the rule. I think the effect of the Act is to do away with the requirements of the rule so far as proof of the statement as to assets is concerned.

Attorney for the petitioner: *Mr. Carruthers.*

J. V. W.

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## APPELLATE CIVIL.

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*Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Ghose.*

GANODA KANTA ROY AND OTHERS (PETITIONERS) *v.* PROBhabATI  
 DASi AND OTHERS (OPPOSITE PARTIES).\*

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 June 12.

*Bengal Tenancy Act (VIII of 1885), ss. 93, 95, 99—Common Manager—  
 Minor co-sharers—Court of Wards.*

On the 8th January 1891 one of three co-sharers in an estate applied for the appointment of a common manager; but on objection taken by the other co-sharers this application was withdrawn. On the 4th March 1892 the same co-sharer applied to the Court to the effect that "proceedings might be taken under section 93 of the Bengal Tenancy Act and that the management of the estate might be taken over by the Court of Wards." The other co-sharers and the representative of certain minor co-sharers objected to the appointment of a common manager, but consented to the estate being made over to the Court of Wards. On the 30th March 1892 the District Judge, without satisfying himself as to the necessity of the appointment of a common manager, ordered that the estate should be made over to the Court of Wards. The Court of Wards took over the estate, but subsequently refused to act, and the Board of Revenue directed that the estate should be released. On the 13th August 1892 the District Judge issued notices on the co-sharers under section 93, calling on them to show cause why a common manager should not be appointed. All the co-sharers appeared and objected to the appointment of a common manager, but

\* Civil Rule No. 508 of 1893 against the orders of J. Knox Wight, Esq., District Judge of Jessore, dated the 31st August 1892 and 24th March 1893.

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one of them and the representative of the minor co-sharers stated that they had agreed to appoint a private person manager of their shares. The District Judge therefore appointed such person temporarily as a common manager of the entire estate until the co-owners should take steps under section 99 to satisfy the Court that they were in a position to manage the estate, and on the 24th March 1893 passed two orders on separate applications made by two of the co-sharers for the release of the estate, refusing to release it, as he was not satisfied that the management of the estate could be conducted without injury to the rights of the minor. *Held*, that those orders of the 24th March 1893 were *ultra vires*.

THIS was a rule calling upon the administrators of the estate of the late Kumar Manoda Kanta Roy to show cause why an order of the District Judge of Jessore dated 31st August 1892, appointing, under s. 95 (b) of the Bengal Tenancy Act, a common manager of the Chanchra estate, and two orders, both dated the 24th March 1893, dismissing the respective applications of Hemoda Kanta Roy and Rajah Ganoda Kanta Roy to have the said estate released from common management, should not be set aside. The rule was also forwarded to the District Judge for information and guidance.

It appeared that one Rajah Borada Kanta Roy died on the 4th February 1880, leaving him surviving three sons, Manoda Kanta Roy, Ganoda Kanta Roy, and Hemoda Kanta Roy, who succeeded to his estate in equal shares, and that from the year 1883 to the year 1891 these three co-sharers apparently collected the rents of their respective shares in their father's estate; the co-sharers being separately recorded in the Collector's books, and paying Government revenue separately. On the 8th January 1891, Ganoda, considering it to be for the common benefit of himself and his co-sharers, applied to the Court for the appointment of a common manager, but on objection being taken by his co-sharers the application was withdrawn.

In October 1891 Manoda died leaving four minor sons and a widow Prohbhati, who took out administration to her husband's estate, and managed such estate separately from her late husband's co-sharers as previously.

On the 4th March 1892 Ganoda again applied to the District Judge of Jessore, asking that proceedings might be taken under

s. 93 of the Bengal Tenancy Act, and that the management of the estate might be taken over by the Court of Wards. On the 25th March Hemoda objected to the application for a common manager, and whilst not admitting the facts set out in Ganoda's application, agreed that it might be desirable to place the whole estate in the hands of the Court of Wards. Probbabati on the same day put in a petition merely consenting to the estate being made over to the Court of Wards.

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On the 31st March 1892 the District Judge, without making any enquiry to satisfy himself as to the necessity of the appointment of a common manager, ordered that the estate should pass into the hands of the Court of Wards, if such Court should be willing to undertake the management. The Court of Wards at first accepted the management, but subsequently declined to act, and the Board of Revenue directed that the estate should be released from the 31st of August 1892.

On the 13th August 1892 the District Judge, being of opinion that the estate had reverted into his hands, issued notices under s. 93 of the Bengal Tenancy Act, calling on the co-sharers to show cause why a common manager should not be appointed for the estate, inasmuch as the Court of Wards had declined to take the management.

On the 28th August 1892 Ganoda appeared and objected to the appointment, and asked that his previous application of the 4th March 1891 might be withdrawn, and stating that he and Probbabati had agreed to appoint one Peary Mohun Guha as a private manager of their shares in the Chanchra estate without the intervention of the Court. Hemoda also objected to the appointment of a common manager.

On the 31st August 1892 the District Judge, without holding any enquiry or taking any evidence, passed an order, purporting to be under s. 95 of the Bengal Tenancy Act, appointing Peary Mohun Guha common manager, temporarily, until the co-owners should take steps under s. 99 to satisfy the Court that they were in a position to manage the estate properly; the Judge adding "that as the youngest brother (Hemoda) is a spendthrift and has involved his share hopelessly, and as there is no visible chance of

1893 saving his share, and his share will in all human probability be sold in two or three months, it is hardly necessary to consider his case seriously now.”

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On the 8th December 1892 Hemoda applied, under s. 99 of the Bengal Tenancy Act, to have the estate released from the common management. No order, however, being passed on this application, Hemoda again applied for a similar order on the 24th February 1893; and on the 22nd March 1893 Ganoda made an application for the same purpose.

On the 24th March 1893 the District Judge, without notice to the co-sharers, passed orders on these applications, declining to release the estate, on the ground that he was not satisfied that the management would be conducted by the co-owners without injury to the rights of the minor co-sharers. Ganoda and Hemoda then applied to the High Court and obtained the rule firstly above mentioned on the ground that there was no dispute existing between the co-owners such as would cause injury to private rights within the meaning of section 93 of the Bengal Tenancy Act; that the District Judge had passed the order appointing the common manager without any judicial enquiry or evidence, and without taking security from the common manager, and that the orders of the 24th March 1893 were passed without notice to the parties interested; and lastly, that the reasons given by the Judge for not releasing the estate were bad in law.

The *Advocate-General* (Sir Charles Paul) with him Sir *Griffiths Evans* and Baboo *Srinath Das*, Baboo *Saroda Charan Mitter*, Baboo *Surut Chunder Roy Chowdhry*, and Baboo *Hara Prasad Chatterjee* in support of the rule.

Mr. *Jackson*, Mr. *Sinha*, and Baboo *Surendro Chunder Sen* to show cause.

Mr. *Sinha* :—As a preliminary objection I say that the matter being not a judicial but a ministerial proceeding, the Court had no jurisdiction. *Hossain Bux v. Mutookdharee Lall* (1) and *Fazel Ali Chowdhry v. Abdul Mosid Chowdhry* (2). [This objection was overruled.]

(1) I. L. R., 14 Calc., 312.

(2) I. L. R., 14 Calc., 659.

The minor's estate is, according to the Judge, in great jeopardy by the manner in which it is being mismanaged, and I contend that it is desirable that the common manager should be left in charge of the estate.

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The *Advocate-General*:—If the orders of the Judge are bad for want of jurisdiction, as I shall show that they are, no consent given to such orders by the parties can give jurisdiction. *Minaskshi Naiqu v. Sabramanya Sastri* (1), *Ledgard v. Bull* (2). There was no ground for the order appointing a common manager, as no dispute existed between the co-owners in consequence of which injury ensued to their private rights; see section 93, Bengal Tenancy Act. There is no allegation of a dispute on the petitions. The order of the 31st August 1892 is *ultra vires* and is a fraud on the Tenancy Act. The jurisdiction given by the Act must be strictly exercised; section 95 only allows the Judge to appoint a common manager when the parties have refused to do so; here there was no refusal, they had agreed to appoint the Court of Wards. Therefore the appointment was not one under the Bengal Tenancy Act, and section 99 of that Act has no application. An appointment by consent is not one made under the Act; for the parties might at any time dismiss a manager so appointed. There is no provision in the Act for the appointment of a temporary manager.

The order of the Court (PETHERAM, C.J., and GHOSE, J.) was delivered by—

PETHERAM, C.J.—This was a rule which was obtained by the Advocate-General for the purpose of revising an order of the District Judge appointing a person as the common manager of an estate which was owned by various persons, and the appointment was made, on the face of it, under the sections of the Bengal Tenancy Act which begin with section 93 and end with section 99.

The rule was sent to the District Judge, and the District Judge has sent a letter explaining the order, and he has shown, no doubt, circumstances which render it very desirable, if it could be done

(1) I. L. R., 11 Mad., 26; L. R., 14. I. A., 160.

(2) I. L. R., 9 All., 191; L. R., 13 I. A., 134.

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legally, that this estate should be under the charge of a common manager. But, notwithstanding that, upon a consideration of the facts of the case, we have come to the conclusion that this appointment was not legally made, and consequently we are compelled to interfere and set aside the appointment.

This estate belongs to four persons in three shares, one of which belongs to a person whom we may describe as the Rajah, another to his younger brother, whom we may describe as the Kumar, and the third to the two minor children of a deceased brother of the Rajah and the Kumar, who are now represented by their mother and guardian, the widow of the deceased. The estate is one of considerable value, and on the 4th March 1892 the Rajah, the older brother, made an application to the District Judge, that application on the face of it being an application under section 93 of the Bengal Tenancy Act to appoint the Court of Wards as the common manager of the estate under that section. Notice of that application was given by the District Judge to the other persons, that is, to the Kumar and to the mother of the minor children, and they each of them filed a petition consenting that the Court of Wards should take charge of the management of the estate. Upon that state of things the District Judge made an order directing that the Court of Wards do take the management, and the Court took possession under it.

It is apparent that that was an order by consent of parties; in other words, it was an appointment by consent of parties, its validity, as it seems to us, resting entirely upon the consent of the parties, and upon nothing else, and not upon the statutory powers given to the District Judge by the Act, because the Act only gives the District Judge power where the formalities prescribed by the Act have been gone through, notices have been given, and the periods fixed have elapsed, and the parties have not appointed a common manager. These formalities were not observed in this case, and the District Judge was not in a position to make the appointment. The appointment could only be made by consent of the parties; and their consent was to put the estate in the hands of the Court of Wards. This consent, which they gave, might be regarded as having the effect of their appointing a common manager themselves and reporting the

appointment for the information of the Judge, as contemplated in section 95 of the Act. But however that may be, as I said just now, the Court of Wards under the appointment made by the Judge took possession of the estate and continued to manage it down to the month of August of that year, and they then, finding that the estate was one that they could not properly manage, gave it up. Upon that state of things, the matter coming before the District Judge after the Court of Wards had given up the estate, the Rajah filed another petition before the District Judge, withdrawing his consent that this estate should be placed in the hands of a common manager. But notwithstanding that, the District Judge, acting upon his own motion, and not upon the petition of any one, and no doubt acting, as he considered, in the interests of the minors, without following the procedure prescribed by sections 93 to 95 of the Act, appointed another person, against whom apparently there is no objection, as the common manager of this property. From that order the Rajah and the Kumar now come up to this Court by way of revision under section 622 of the Code of Civil Procedure, and the order itself is supported by Counsel on behalf of the minors, and as I said just now, we think that that order was not legally made and cannot be supported. The first order, as I have explained, was, we think, an order made by consent, and for its validity rested upon that consent only. We think that the Judge was not in a position to make any appointment except by the consent of the parties, the preliminaries not having been gone through, and consequently, when the Court of Wards gave up, they being the managers appointed by agreement of parties, the Judge had no authority to appoint a common manager unless a fresh petition had been filed by any of the parties, and he had taken the various steps provided by the sections. If he had done that, he might have placed himself in a position to make the appointment, but that not having been done, the rule will be made absolute. But we think we ought to say that if there is any real danger of the minor's estate being imperilled, there is no reason why an application should not be made now under section 91 to obtain the appointment of a common manager, and upon the proceedings which follow upon that application the whole interest of the parties could be considered

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1893 and steps taken to protect their interests. We make no order as  
 to costs.  
 The order of the 24th March 1893, refusing the application of  
 the Rajah and the Kumar under section 99 of the Tenancy Act,  
 will also be set aside.

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*Rule absolute.*

T. A. P.

*Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr.  
 Justice Ghose.*

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 June 28.

ARUNMOYI DASI (PLAINTIFF) v. MOHENDRA NATH WADADAR  
 AND OTHERS (DEFENDANTS).\*

*Res judicata—Judgment in rem—Decision of Court as to construction of  
 Will and ordering grant of Letters of Administration—Probate and  
 Administration Act (V of 1881), ss. 19-59—Evidence Act (I of 1872),  
 s. 41.*

The High Court of the North-Western Provinces on the 2nd February 1890, in determining under section 19 of Act V of 1881 the question whether certain persons were entitled to letters of administration with the will annexed, construed the testator's will; and finding that the applicants were residuary legatees under the will, held that they were entitled to such letters of administration. The widow of the testator, who had unsuccessfully opposed the grant in the Court of the North-Western Provinces, then filed a suit in the Court of the Subordinate Judge of the 24-Parganas for, amongst other things, the construction of her late husband's will. Held on appeal in such suit, that the application for letters of administration was not a suit properly so called, and that the finding on the construction of the will by the Court of the North-Western Provinces, being incidental and for the purpose of determining the question of the representative title of the applicants, could not be regarded as concluding the plaintiff by *res judicata* from obtaining a construction of the will in the suit brought by her.

THIS was a suit brought by one Arunmoyi Dasi, the widow of one Narendra Nath Wadadar, to recover a share in certain joint properties belonging to her late husband and his brothers, and asking for the construction of a will executed by her late husband. The plaintiff's late husband, the defendants 1 and 2, and one

\* Appeal from Original Decree No. 6 of 1892, against the decree of Baboo Radha Krishna Sen, Subordinate Judge of 24-Pergunnahs, dated the 29th of September 1891.