

for pre-emption only in the case of mortgage and sale. We are, therefore, of opinion that the plaintiff lost his right to pre-empt, when he did not bring the suit for pre-emption in respect of the mortgage of 1917. If he did not enforce the right of pre-emption in respect of that mortgage, he cannot obviously be allowed to pre-empt, when that right is lost to him and when the mortgage of 1917 has become free from the liability of being pre-empted.

We are, therefore, of opinion that there is no force in this appeal and we, therefore, dismiss it with costs.

*Appeal dismissed.*

## APPELLATE CIVIL.

*Before Mr. Justice Muhammad Raza.*

SARJU SINGH (PLAINTIFF-APPELLANT) *v.* DHANI  
RAM (DEFENDENT-RESPONDENT).\*

1927  
*August, 25.*

*Civil Procedure Code (Act V of 1908) order XXXII, rule 4(3)—Guardian ad litem for a suit, appointment of—Consent of a person to be appointed guardian for a suit, whether to be express—Implied consent of person to be appointed guardian ad litem.*

*Held*, that the consent of a proposed guardian *ad litem* required by sub-rule 3 of rule 4 of order XXXII of the Code of Civil Procedure need not be express, but it may be an implied one. *Vasireddi Sriramulu v. Putchu Lakshminarayana* (1), *Chhattar Singh v. Tej Singh* (2), *Thakur Tajeshwar Dutt v. Lakhan Prasad Singh* (3), and *Shiam Bahadur and others v. Brij Kishore and others* (4), relied upon.

Mr. *Hakimuddin*, for the appellant.

Mr. *D. K. Seth*, for the respondent.

\*Second Civil Appeal No. 179 of 1927, against the decree of Pandit Sheonamin Tewari, First Additional Subordinate Judge, Lucknow, dated the 8th of February, 1927, reversing the decree dated the 30th of September, 1926, of M. Munir-ud-din Kirmani, Second Munsif, Lucknow District.

(1) (1924) I.L.R., 47 Mad., 783. (2) (1921) I.L.R., 48 All., 104.

(3) (1923) I.L.R. 2 Pat., 296. (4) (1927) 4 O.W.N., 356.

1927

SARJU  
SINGH  
v.  
DHANI  
RAM.

RAZA, J. :—This is an appeal from a decree of the Additional Subordinate Judge, Lucknow, dated the 3th of February, 1927, setting aside a decree of the Second Munsif, Lucknow, dated the 30th of September, 1926.

The appeal arises out of a suit brought by the plaintiff for cancellation of an *ex parte* decree, which was passed against him as a minor under the guardianship of his mother who was his certificated guardian. The decree was passed by the Additional Judge of the Small Cause Court, Lucknow. The ground on which the plaintiff prayed for cancellation of the aforesaid decree was that he was not properly represented in the Court of Small Causes. It was further alleged that the decree was obtained by fraud, but the plea of fraud was, subsequently, withdrawn by the plaintiff.

The claim was resisted by the defendant on various grounds.

The learned Munsif decreed the plaintiff's claim; but the learned Additional Subordinate Judge rejected the claim on appeal. The plaintiff has now come to this Court in second appeal.

In my opinion there is no force in this appeal.

The only point for determination in this appeal is whether order XXXII, rule 4 of the Code of Civil Procedure, requires that the consent of a person for his appointment as guardian *ad litem*, should be express. This point was, in my opinion, rightly decided by the learned Additional Subordinate Judge against the plaintiff. It was held in the case of *Vasireddi Sriramulu v. Putcha Lakshminarayana* (1) that order XXXII, rule 4, of the Code of Civil Procedure does not require that the consent of a person for his appointment as guardian *ad litem* should be express; it may be an implied one. It

(1) (1924) I.L.R., 47 Mad., 783.

was held in *Chhattar Singh v. Tej Singh* (1) and *Thakur Tajeshwar Dutt v. Lakhan Prasad Singh* (2) that the consent may be implied. It was held in the latter case that where the certificated guardian, the mother of the minor, was served with notice that it was proposed to appoint her the guardian *ad litem* of her son and no objection was taken by the mother, the court might properly assume that the mother had no objection to the proposed appointment, and that she in fact consented thereto. It was held by a Bench of this Court in the case of *Shiam Bahadur and others v. Brij Kishore and others* (3) that the consent of a proposed guardian *ad litem* required by sub-rule (3) of rule 4 of order XXXII of the Code of Civil Procedure need not be express and it may be an implied one.

I think the learned Additional Subordinate Judge was perfectly right in allowing the defendant's appeal. I can find no ground for interference, and dismiss the appeal with costs.

*Appeal dismissed.*

1927

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 SARJU  
SINGH  
v.  
DHANI  
RAM.

Raza, J.

(1) (1921) I.L.R., 48 All., 104.      (2) (1923) I.L.R., 2 Pat., 296.

(3) (1927) 4 O.W.N., 356.