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inflicted by a Presidency or a first class Magistrate. This case was followed by a single Judge of the Lahore High Court in *Crown v. Jagat Singh and others* (1). These cases support the view taken by us as regards our powers in the matter of enhancing the sentence.

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There can be no doubt that the injuries inflicted by Raja Ram were the cause of the death of Bhagwati Din which ensued within a few hours of his receiving the injuries. It is also clear that the injuries were not accidental. We think that a sentence of five years' rigorous imprisonment was altogether inadequate. We would, therefore, enhance the sentence to a period of ten years' rigorous imprisonment.

The result, therefore, is that we dismiss the appeal of Raja Ram, and allow the application for revision, and upholding the conviction under section 304 of the Indian Penal Code, enhance the sentence to one of ten years' rigorous imprisonment.

*Appeal dismissed.*

## ORIGINAL CIVIL

*Before Mr. Justice Bisheshwar Nath Srivastava*

1935  
 January, 2

DEPUTY COMMISSIONER, KHERI, AS MANAGER,  
 COURT OF WARDS MAHEWA ESTATE (PLAINTIFF) v.  
 PANDIT DAYA CHAND CHAUBEY AND OTHERS (DEFEN-  
 DANTS)\*

*United Provinces Court of Wards Act (IV of 1912), sections 8, 11 and 55—Declaration under section 8—Formalities of section 8 not complied with—Declaration, whether can be questioned by Civil Court—Claim for damages—Suit for personal claim, whether can be maintained by a ward—Sections 11 and 55, Court of Wards Act, scope of.*

If a declaration made by the Local Government under section 8 is wholly without jurisdiction and outside the scope of the section, it might be treated as a nullity, but if the Local Government has committed any irregularity or even illegality in the

\*Original Suit No. 1 of 1934.

(1) (1919) I.L.R., 1 Lah., 453.

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exercise of the jurisdiction possessed by it, section 11 precludes the civil court from questioning the validity of the declaration on the ground of such irregularity or illegality. The making of the declaration without complying with the formalities laid down in section 8 may in one sense be unlawful, but such an illegality would be *intra vires*, and as such, not open to question by reason of the bar contained in section 11 of the Court of Wards Act. *Secretary of State for India in Council v. Srimati Fahamid-un-nissa Begum* (1), *Secretary of State for India in Council v. Moment* (2), and *Bhagwati Prasad Singh v. Hari Har Prasad Singh* (3), distinguished. *Haji Rehemtulla Haji Tarmahomed v. The Secretary of State for India* (4), soundness doubted. *Forbes v. Secretary of State for India* (5), and *Narindra Bahadur Singh v. The Oudh Commercial Bank, Limited* (6), referred to.

The terms of section 55 of the Court of Wards Act are perfectly general and make no distinction between claims relating to property and claims of a personal nature. A ward, therefore, cannot maintain a suit even for a personal claim, such as a claim for damages. *District Board, Kheri v. Abdul Majid Khan* (7), distinguished.

The Government Advocate (Mr. H. S. Gupta), and the Assistant Government Advocate (Mr. H. K. Ghose), for the plaintiff.

Messrs. *Hyder Husain and M. H. Qidwai*, for the defendants.

SRIVASTAVA, J.:—These are three miscellaneous applications made in suit No. 1 of 1934 pending on the original side of this Court. The circumstances which have led to the making of these applications are briefly these:

On the 22nd of February, 1934, Thakur Jai Indar Bahadur Singh, taluqdar of Mahewa, district Kheri, and his senior wife, Srimati Rani Raj Rajeshwari Devi instituted the suit registered as No. 1 of 1934 on the original side of this Court against 527 persons alleging that the debts payable to the defendants amounting to Rs. 13,94,582-7-0 shown in the list of creditors compiled

(1) (1880) L.R., 17 I.A., 40.

(3) (1928) 26 A.L.J.R., 673.

(5) (1914) I.L.R., 42 Cal., 151.

(2) (1912) L.R., 40 I.A., 48.

(4) 27 B.L.R., 1507.

(6) (1921) L.R., 48 I.A., 494.

(7) (1930) I.L.R., 6 Luck., 216.

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by the Deputy Commissioner of Kheri in the course of proceedings under section 9 of the United Provinces Court of Wards Act (IV of 1912), were wrong and contained many fictitious items and that they were entitled to damages against the defendants for their having conspired to injure the plaintiffs. They accordingly claimed a declaration that the amount of Rs.13,94,582-7-0 was wrong and many of the items included in the said amount were fictitious and not binding on the plaintiffs, and also a decree for damages for Rs.20,000 jointly and severally against all the defendants. On the 11th of May, 1934, the Local Government published a notification in the Government Gazette declaring Thakur Jai Indar Bahadur Singh, plaintiff No. 1, as a disqualified proprietor under section 8, sub-section (1), clause (d), sub-clauses (iii) and (iv) and Rani Raj Rajeshwari Devi, plaintiff No. 2, a disqualified proprietor under section 8, sub-section 1, clause (b) of the United Provinces Court of Wards Act. This was followed by a notification, dated the 24th of May, 1934, of assumption of superintendence of the estate by the Court of Wards under section 15 of the Court of Wards Act. On the 24th of July, 1934, the Deputy Commissioner of Kheri as Manager of the Court of Wards made an application praying that his name may be brought on the record in place of the plaintiffs. As the application was based on the ground of a statutory devolution of which the Court could take judicial notice, I did not think it necessary to send notice of the application to the plaintiffs and ordered the substitution to be made as prayed. On the 20th of August, 1934, the original plaintiffs made the application, (No. 497 of 1934), alleging that the notification of the assumption of the superintendence of the estate by the Court of Wards was *ultra vires* and praying that their names should be allowed to remain on the record as plaintiffs, the Court of Wards being added as co-plaintiff. Before this appli-

cation could be heard, the Deputy Commissioner of Kheri on the 12th of September, 1934, made the application, (No. 573 of 1934), to withdraw the suit. I ordered this application to be put up with Civil Miscellaneous Application No. 497 of 1934. When both these applications came up for hearing before me on the 14th of September, 1934, it was represented on behalf of Thakur Jai Indar Bahadur Singh that he had appealed to the Local Government disputing the right of the Court of Wards to assume the superintendence of the estate but no orders had been passed till then on his appeal. I therefore adjourned the hearing for a month. On the 29th of October, 1934, the next date fixed for hearing, the parties informed me that the appeal was still pending and I directed the hearing of the applications to be fixed after the appeal had been disposed of by the Local Government. Now I am informed by both the parties that the Local Government has rejected the representation made by Thakur Jai Indar Bahadur Singh and upheld the assumption of the superintendence of the estate by the Court of Wards. In the meantime Thakur Jai Indar Bahadur Singh and Rani Raj Rajeshwari Devi on the 13th of December, 1934, have filed another application, (No. 872 of 1934) stating the grounds on which they question the validity of the assumption of the superintendence of the estate by the Court of Wards and praying that this question be decided before the two above mentioned applications are disposed of.

The grounds urged on behalf of Thakur Jai Indar Bahadur Singh and his wife in support of their contention that the assumption of management by the Court of Wards was without jurisdiction and *ultra vires*, may be summarised as below:

- (1) That the requirements of clauses (a) and (b) of the proviso to section 8, sub-section 1, clause (d) were not satisfied in the case;

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(2) That the mandatory provisions of section 8, sub-section 2, regarding the proprietor being furnished with a detailed statement of the grounds on which it is proposed to disqualify him and being given an opportunity of showing cause why the declaration should not be made were not complied with; and

(3) That the inquiry under section 9 was not according to law.

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The learned Government Advocate denies all these allegations and says that the very same grounds had been raised by Thakur Jai Indar Bahadur Singh in his petition to the Local Government and have all been disallowed. He also contends that the said objections are barred by the provisions of sections 11 and 13 of the Court of Wards Act.

The learned counsel for Thakur Jai Indar Bahadur Singh and Rani Raj Rajeshwari Devi, (who will hereafter be referred to as applicants), has repeatedly pressed me to allow him an opportunity to adduce evidence in order to substantiate the objections raised by him. In view of the opinion formed by me that I am precluded by the provisions of section 11 of the Court of Wards Act from going behind the declaration made by the Local Government under section 8, I have disallowed this request.

Section 11 of the Court of Wards Act provides that no declaration made by the Local Government under section 8 shall be questioned in any Civil Court. The learned counsel for the applicants sought to evade this provision on the ground that the declaration in question, though it purports to be one under section 8, is not so in fact because the necessary formalities prescribed therein have not been complied with. He argued that the Court must satisfy itself whether the declaration complies with the essential formalities laid down in the section which constitute a condition precedent for the making of the declaration. The argument proceeded that

section 11 cannot debar the civil court from questioning a declaration made in the assumed exercise of the powers conferred by section 8, but really in excess of those powers. I regret I find myself unable to accede to these arguments. The entire fabric of the argument is based on non-compliance with the three formalities already stated. The first and third of them appear to me to be merely directory. The second might well be regarded as an imperative one. Where the legislature imposes a formality in mandatory language as constituting a condition to the exercise of the power, the Courts generally require strict adherence thereto. In the absence of such adherence the exercise of the power would be *ultra vires*. In such a case, in the absence of the provision contained in section 11, it would have been open to the civil court in the exercise of the general jurisdiction possessed by it under section 9 of the Code of Civil Procedure to hold that the declaration made under section 8 of the Court of Wards Act was *ultra vires* because of the imperative provisions of sub-section (2) not having been complied with. But section 9 of the Code of Civil Procedure itself makes an exception in the case of suits the cognizance of which is either expressly or impliedly barred. Section 11 of the Court of Wards Act in my opinion provides such an express bar. If the civil courts are to sit in judgment over declarations made by the Local Government under section 8 on the ground that the necessary formalities were not complied with, section 11 would become practically nugatory. It is conceivable that a declaration purporting to be made under section 8 of the Court of Wards Act may be an absolute nullity in which case it can have no legal effect. But it seems to me that in all other cases such declarations are final and cannot be questioned in any civil court on the ground of non-compliance with any formalities, whether directory or imperative. In other words, if a declaration made by

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the Local Government under section 8 is wholly without jurisdiction and outside the scope of the section, it might be treated as a nullity, but if the Local Government has committed any irregularity or even illegality in the exercise of the jurisdiction possessed by it, section 11 precludes the civil court from questioning the validity of the declaration on the ground of such irregularity or illegality. The effect of the "stringent provisions" of this section in my opinion is to protect all declarations which fall within the scope of section 8, and they must therefore be treated as *intra vires*. In view of the provisions of this section the application of the doctrine of *ultra vires*, on which great stress has been laid on behalf of the applicants, must be confined to declarations which are altogether outside the scope of section 8, and therefore void *ab initio*. The making of the declaration without complying with the formalities laid down in section 8 may in one sense be unlawful, but such an illegality would be *intra vires*, and as such, not open to question by reason of the bar contained in section 11 of the Court of Wards Act. It has not been suggested that the declaration in question is a nullity in the sense of its being altogether outside the scope of the powers conferred on the Local Government by section 8. I am therefore of opinion that the objections raised by the applicants are clearly barred by section 11 of the Court of Wards Act.

Reference has also been made by the learned counsel for the applicants to certain decided cases, but none of them seem to help his contention. In *Secretary of State for India in Council v. Srimati Fahamidunnissa Begum* (1), it was held by their Lordships of the Judicial Committee that the civil court has jurisdiction to review a decision of the Board of Revenue subjecting certain lands included in the permanent settlement to an additional assessment under Act IX of 1847 and to

(1) (1889) L.R., 17 I.A., 40.

declare the act of the Board *ultra vires*. In that case it was held that the provisions of Act IX of 1847 were inapplicable to the land in suit and the action of the Board of Revenue was altogether beyond the scope of their powers under the Act. Furthermore, section 9 of that Act which was relied upon as a bar to the jurisdiction of the civil court merely provided that no action shall lie against the Government or any of its officers on account of anything done in good faith in the exercise of the powers conferred by the Act. This provision was analogous to the provision contained in section 53, sub-section (2) of the Court of Wards Act, and was not at all parallel to the provisions of section 11 of this Act. This provision was intended only for the protection of the Government and its officers and did not oust the jurisdiction of the Civil Court regarding assessments made by the Board of Revenue in contravention of the provisions of the Act.

The decision in *Secretary of State for India in Council v. Moment* (1) is quite distinguishable inasmuch as it was held in that case that the provision of the Burma Act which excluded the jurisdiction of the Civil Court was *ultra vires* as being in contravention of the provisions of the Government of India Act. It is not suggested that section 11 of the Court of Wards Act is *ultra vires* of the local legislature.

In *Haji Rehemtulla Haji Tarmahomed v. The Secretary of State for India* (2), the question was whether the plaintiff's suit was barred by the provisions of section 39 of the Indian Income Tax Act (II of 886) which laid down that no suit shall lie in any civil court to set aside or modify any assessment under the Act. It was held that the assessment in question was in contravention of the provisions of the Act and therefore *ultra vires*, and that the provisions of section 39 had therefore no application. With all respect to the learned Judges who

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decided the case I am doubtful as to the soundness of the decision. But if the assessment in question could be regarded as altogether outside the scope of the Act then the decision would be quite correct. It may be pointed out that in another case under the Income-tax Act a Bench of the Calcutta High Court, in *Forbes v. Secretary of State for India* (1), being of opinion that in making the assessment the Collector had acted without jurisdiction, held that the suit was barred by section 39 of the Income-tax Act.

In *Bhagwati Prasad Singh v. Hari Har Prasad Singh* (2) a plea was raised about the suit being barred by section 22 of the Bundelkhand Land Alienation Act (II of 1903) which provides that a civil court shall have no jurisdiction in any matter which a Revenue Officer is empowered by this Act to dispose of. It was pointed out that the powers of the Collector under the Act extend to the granting or refusing to grant the alienation but the Collector had no jurisdiction under the Act to cancel the sale deed as he had done. Thus it was held that the act of the Collector was not within the scope of the Act and therefore section 22 did not bar the suit. This decision does not in any way conflict with the view adopted by me.

Lastly reference was made to the decision of their Lordships of the Judicial Committee in *Narindra Bahadur Singh v. The Oudh Commercial Bank, Limited* (3) which affirmed the decision of the late Court of the Judicial Commissioner of Oudh reported in *Narindra Bahadur Singh v. The Oudh Commercial Bank, Ltd.* (4). It was held by the Judicial Commissioner's Court that by reason of section 11 of the Court of Wards Act the civil court was debarred from entering into the question whether or not the action of the Court of Wards in assuming the superintendence of the estate

(1) (1914) I.L.R., 42 Cal., 151.

(3) (1921) L.R., 48 I.A., 494.

(2) (1928) 26 A.L.J.R., 673.

(4) (1918) 6 O.L.J., 126.

was proper. The learned counsel for the applicants has frankly admitted that this decision is directly against him. He has, however, laid stress on the following remarks of their Lordships of the Judicial Committee made in their judgment on appeal:

“In the Court below reference was made to the terms of the United Provinces Court of Wards Act of 1912, and particularly to sections 8, 11 and 12, and to Chapter VII, which contains sections 53 to 60, all of which point to what is a stringent provision that no one is to investigate the motives or review the discretion of the governing body which is being dealt with, or to question what it has done in the Courts.”

“Without proof that the proceedings of the Court of Wards were a nullity, their Lordships are not in a position to look into the matters which have been sought to be discussed before them. It is enough to say that their Lordships agree with the judgment of the Court below.”

It has been contended that in the passage quoted above their Lordships recognize the possibility of the proceedings of the Court of Wards being a nullity. The reporter's note of the arguments addressed to their Lordships by the learned counsel for the appellant shows that it was urged that the Court of Wards had no jurisdiction to assume the superintendence of the estate. In that case, as I have said before, the proceedings can be a nullity. But this remark of their Lordships does not lend any support to the contention of the learned counsel for the applicants that the declaration is nullified by reason of non-compliance with the formalities prescribed by section 8.

My conclusion therefore is that it is not open to the applicants to impeach the declaration made by the Local Government under section 8 on the grounds set up by them.

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As regards section 13 of the Court of Wards Act, it seems to me that it has nothing to do with the validity or otherwise of the declaration made under section 8. Section 12 of the Court of Wards Act deals with the assumption by the Court of Wards of superintendence of the property or person of a proprietor disqualified under section 8 or in regard to whose property a declaration has been made under section 10. In cases referred to in sub-section (1) of that section it makes it obligatory on the Court of Wards to assume superintendence. In the cases referred to in sub-section (2) the Court of Wards is allowed discretion whether to assume the superintendence or to refrain from assuming it. Sub-section (3) also gives the Court of Wards a discretion in certain cases. Section 13 which follows this section deals with cases where the right of the Court of Wards to assume superintendence under section 12 is disputed by the proprietor. In the present case the applicants question the declaration made under section 8. It is no part of their case that even if the declaration under section 8 is valid the Court of Wards had no right to assume superintendence of the estate. I am therefore of opinion that the case more appropriately falls under section 11 and not under section 13.

Lastly it was urged that the claim for damages made in the plaint is a personal claim, and the Court of Wards has nothing to do with it. It was argued that in such circumstances the Court of Wards can represent the plaintiffs only in respect of the claim for declaration as regards the debts but not as regards the personal claim for damages. So it was contended that the applicants must be retained as co-plaintiffs with the Court of Wards. It was also argued that as the suit cannot be withdrawn in part therefore the whole suit must be tried and the application for withdrawal made by the Court of Wards must be dismissed.

Section 55 of the Court of Wards Act is as follows:

"No ward shall sue or be sued nor shall any proceedings be taken in the civil court otherwise than

by and in the name of the Collector in charge of his property or such other person as the Court of Wards may appoint in this behalf."

The terms of this section are perfectly general and make no distinction between claims relating to the property and claims of a personal nature. The learned counsel for the applicants has based his argument on the following sentence in the judgment of a Bench of this Court in *The District Board, Kheri v. Abdul Majid Khan* (1):

"This shows that claims of a personal nature of a disqualified proprietor are free to be brought and defended by the disqualified proprietor himself."

The argument ignores the remarks of the Bench which precede the sentence quoted above. These preceding remarks show that reliance was placed on section 55 of the Act but the Bench was of opinion that that section did not apply to the case. On the contrary it was held that the Court of Wards in that case had retained superintendence as provided for by section 45 of the Act and therefore the case was governed by section 49, and under sub-section (2) of that section only suits relating to the property under the superintendence of the Court of Wards are to be brought and defended in the name of the Collector. This view is perfectly correct. The remark quoted above must be confined to suits governed by section 49, sub-section (2), and has no application to a suit like the present which is admittedly governed by section 55 of the Act. I must therefore overrule this contention.

The result therefore is that I dismiss applications Nos. 497 and 872 of 1934 with costs. Application No. 573 of 1934 is allowed with costs, and Suit No. 1 of 1934 is dismissed as withdrawn. No order as to costs of the suit.

(1) (1930) I.L.R., 6 Luck., 216.

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