

1922.

MAHABIR
PRASAD
TEWARI
v.
JAMUNA
SINGH.

DAWSON
MILLER,
C. J.

leave to appeal. Under the practice in this Court it is necessary that a copy of the judgment from which it is sought to appeal should always be filed with the petition applying for leave. The Court insists upon that because in some cases it is absolutely necessary that the judgment itself should be considered, notably in cases where the question is whether a substantial question of law arises for consideration by their Lordships of the Judicial Committee. In my opinion therefore the time occupied in obtaining a copy of the judgment ought to be deducted in this case. If that is done then the application for leave to appeal was in time and I think a certificate should issue that the case complies with the provisions of section 110 of the Civil Procedure Code. As this application has been opposed by the respondents I think the petitioner is entitled to his costs of the application.

Ross, J.—I agree.

Certificate issued.

APPELLATE CIVIL.

Before Coutts and Das, J.J.

KILBY

v.

MUSSAMMAT BAHURIA SHEORATAN KUAR.*

Guardian and Wards Act, 1890 (Act VIII of 1890), section 7—minor shebait, whether guardian may be appointed to manage debuttar properties.

A guardian cannot be appointed under section 7 of the Guardian and Wards Act, 1890, to manager the *debuttar* properties of an idol on behalf of a minor *shebait*.

Obla Venkatachalapathi Aiyar v. Thirugnana Sambanda Pandara Samadhi(¹), approved.

Raghoo Pandey v. Kassy Parey(²) and *Sukh Lal v. Bishambhar*(³), distinguished.

* Appeal from Original Order No. 196 of 1921.

(¹) (1917) 42 Ind. Cas. 273.

(²) (1884) I. L. R. 10 Cal. 73.

(³) (1917) I. L. R. 39 All. 196.

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March, 21.

The facts of the case material to this report are stated in the judgment of Coutts, J.

Manohar Lal (with him *Syed Muhammad Tahir*), for the appellant.

Manuk (with him *Gangadhar Das, Saroshi Charan Mitter* and *Sivanandan Roy*), for the respondents.

COUTTS, J.—This is an appeal against an order of the District Judge of Darbhanga, rejecting an application made by the Collector for the appointment of Mr. Abbott, as guardian, for the management of the *debttar* properties of a certain idol on behalf of an infant *shebait*.

The facts are shortly that one Ganesh Prasad Narain Sahi in 1914 executed a deed of trust by which he endowed the *Thakur* with considerable properties and appointed himself a *shebait*. On his death, if any son were living the trust deed provided that the son should be the *shebait*, and there was further provision for the appointment of any other male descendant: failing male descendants he appointed one of his widows as the *shebait*. Ganesh Prasad Narain Sahi had three wives, Sheoratan, Saraswati and Parbati. Parbati, in the lifetime of her husband, gave birth to a son named Birendra Kishore Prasad Narain Sahi, who, at the time of the present proceedings, was about two years old. The father died on the 11th October, 1920, and, as Birendra Kishore would succeed to certain properties of Saraswati Kuar, whose estate was under the management of the Court of Wards, the Court of Wards took over the guardianship of the person of the minor. On the 6th of March, 1921, the present application was filed by the Collector before the District Judge under section 7 of the Guardian and Wards Act, that Mr. Abbott might be appointed guardian for the management of the *debttar* properties of the idol on behalf of the infant *shebait*. The application was opposed on the ground that the properties being *debttar* properties the minor had no proprietary interest in them and consequently no appointment could be

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made under the Guardian and Wards Act. The learned District Judge allowed the objection and disallowed the Collector's application holding that the petition of the Collector showed that the properties were *debttar* properties, that the minor had no interest except that he was the *shebait* and further he found that in the trust deed no proprietary interest had been given to the minor.

This appeal has been filed by the Collector and the question is whether the minor has a proprietary interest in the *debttar* properties. In support of the contention, that he has such an interest, the decisions in *Raghoo Pandey v. Kassy Parey*⁽¹⁾ and *Sukh Lal v. Bishambhar*⁽²⁾, are chiefly relied on. The case of *Raghoo Pandey v. Kassy Parey*⁽¹⁾ however, referred to a right to officiate as a priest at funeral ceremonies. It was held that this right was in the nature of immovable property. In *Sukh Lal v. Bishambhar*⁽²⁾ it was held that "there is nothing in law to prevent a *Maha Brahmin* mortgaging his right to offerings receivable by him in his professional capacity." These two cases are clearly distinguishable from the present case, because in each of them the priest had a beneficial interest. The present case, however, is entirely different; the minor is merely a trustee and whatever right he has is not a personal right but a right derived through the *Thakur*. On the other hand the view which has been taken by the learned District Judge is supported by the decision of the Madras High Court in the case of *Obla Venkatachalapathi Aiyar v. Thirug nana Sambanda Pandara Sannadhi*⁽³⁾. In that case the Court, purporting to act under section 7 of the Guardian and Wards Act, appointed a guardian of the person and property of the plaintiff who was a *mathadhipati*. The guardian sold some of the properties of the *mutt* with the sanction of the Court. It was held, however, that the properties having been

(1) (1884) I. L. R. 10 Cal. 73.

(2) (1917) I. L. R. 39 All. 196.

(3) (1917) 42 Ind. Cas. 273.

given to the head of the *mutt* as trustee were trust properties and, therefore, no guardian in respect thereof could be appointed under section 7 of the Guardian and Wards Act. This case is on all fours with the present case; and, in my opinion, expresses the correct view of the law. In my opinion the decision of the learned District Judge is correct and I would dismiss this appeal with costs.

DAS, J.—I agree.

Appeal dismissed.

APPELLATE CIVIL.

Before Das and Adami, J.J.

RAJ KUMAR CHHOTAY NARAIN SINGH.

v.

KEDAR NATH SINGH.*

Code of Civil Procedure, 1908 (Act V of 1908), Order XXXIV, rule 3—Foreclosure suit—final decree, limitation for application for—Limitation Act, 1908 (Act IX of 1908), Schedule 1, Article 181 and Section 15—date on which right to apply accrues—appeal from preliminary decree dismissed for non-prosecution, effect of—Appointment of Receiver, whether operates as stay.

In a suit for foreclosure, where the defendant is in possession, the plaintiff is entitled to a decree, *first*, debarring the defendant and all persons claiming through or under him from all right to redeem the mortgaged property and, *secondly*, ordering the defendant to put the plaintiff in possession:

Sutcliffe v. Wood(1), *Best v. Applegate*(2), *Wills v. Luff*(3), and *Keith v. Day*(4) referred to.

* Appeal from, Original Decree No. 5 of 1919, from a decision of Babu Jitindra Chandra Basu, Subordinate Judge, First Court of Gaya, dated the 7th December, 1918.

(1) (1884) 53 L. J. Ch. 970.

(3) (1888) 38 Ch. D. 197.

(2) (1888) 37 Ch. D. 42.

(4) (1888) 39 Ch. D. 452.

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Marsh, 22.