

that it may well be that the defendants took the precaution of engaging fresh men as watchmen or of seeking the assistance of the police. If the defendants did take any such precautions, it was easy for them to give proof; but they did not, and I think, though with some hesitation, that the evidence of wilful neglect on the part of the strikers coupled with the theft was legally sufficient in the absence of rebutting evidence, to raise the inference that the loss occurred through that wilful neglect of the servants. That, being so, the learned Subordinate Judge's finding is conclusive, and the plaintiff is entitled to succeed. He is, however, not entitled both to interest and profits and the sum of Rs. 100 under the latter head must be deducted from his claim. The decree of the Subordinate Judge will, therefore, be modified and the claim will be decreed for a sum of Rs. 1,665-3-0 with interest pendente lite and till the date of realisation at 6 per cent. per annum together with costs throughout.

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KULWANT SAHAY, J.—I agree.

Decree modified.

APPELLATE CIVIL.

Before Kulwant Sahay and Macpherson, JJ.

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Dec., 14.

Court of Wards Act, 1879 (Bengal Act IX of 1879), sections 3, 6(e) and 51—loan by ward—suit for recovery against ward under guardianship of manager—whether suit properly framed—suit decreed—appeal by ward, whether competent—rules of the Patna High Court, Chapter VI, rule 5.

* Circuit Court, Cuttack. Appeals from Original Decree nos. 9 and 10 of 1925, from a decision of Babu Brajendra Kumar Ghosh, Subordinate Judge of Cuttack, dated the 29th April, 1925.

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The Court of Wards took charge of the defendant's estate under section 6(e) of the Bengal Court of Wards Act, 1879. Subsequently the defendant borrowed certain sums of money from the plaintiff on bahi-khata account. The plaintiff sued the defendant for recovery of the said sums of money and described him in the plaint as a ward of the court represented by his guardian, the Court of Wards' manager. The suit was decreed but the decree stated that the decree-holder was not entitled to proceed against the properties of the defendant which were in charge of the Court of Wards. The defendant appealed to the High Court on the ground that the suit not having been instituted against him personally was not properly framed, with the result that he had had no opportunity of defending the suit inasmuch as he was represented in the suit by the manager of the Court of Wards.

Held, dismissing the appeal, that the suit was properly framed.

Dhanpat Singh v. Shoobhudra Kumari (1), *Collector of Benares v. Sheo Prasad* (2), *Mohammad Abdus Salam v. Rani Kamalmukhi* (3) and *Lachmi Narain Gouri Shankar v. Syed Mohamed Abraham Khan* (4), distinguished.

Gobind Saha v. Udit Narain Singh (5), followed.

Query, whether in view of the provisions of rule 5, Chapter VI of the Rules of the Patna High Court, the defendant was entitled to prefer the appeal to the High Court.

Appeal by the defendant.

These appeals arose out of two suits brought by the plaintiff-respondents against Raja Brajasunder Deb who was described in the plaint as a ward of the Court represented by the guardian Padma Charan Das, Court of Wards Manager of Killah Aul. The suits were for recovery of various sums of money alleged to have been advanced to the Raja under bahi-khata accounts. In the written statement filed by the manager under the Court of Wards, one of the pleas taken was that the defendant could not be sued as a

(1) (1882) I. L. R. 8 Cal. 621.

(3) (1918) 46 Ind. Cas. 316.

(2) (1883) I. L. R. 5 All. 487.

(4) (1925) I. L. R. 4 Pat. 172.

(5) (1913) 17 Cal. L. J. 601.

ward of the Court for the claim in suit; and the first issue framed in the suit was

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“ Is the suit maintainable in its present form.”

The Subordinate Judge found that the suit had been properly framed, and it was therefore maintainable in the form in which it had been instituted. Upon the merits he found in favour of the plaintiffs; and the decree that he made was that the plaintiffs would get a decree for the sums claimed, but that they would not be entitled to proceed against the properties of the Raja, which were under the charge of the manager of the Court of Wards, for the realisation of the decretal amounts and costs. Raja Brajasunder Deb preferred the present appeals with an application under rule 5, Chapter VI, page 60 of the High Court Rules; and a Division Bench granted him leave to appeal without the intervention of the manager.

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S. B. Ray, for the appellant.

S. C. Bose for the respondents.

KULWANT SAHAY, J., (after stating the facts set out above, proceeded as follows :)

The only point argued on behalf of the Raja in these appeals is that having regard to the frame of the suits the decree as made was illegal. It is contended that before a decree could be made against the Raja for realisation of the money, an opportunity ought to have been given to him to defend the suits, and that he had no such opportunity in the present suits inasmuch as he was represented therein by the manager under the Court of Wards. In my opinion this contention is not sound and cannot prevail.

The Court of Wards took charge of the estate of the Raja under section 6(e) of the Court of Wards Act [IX (B.C.) of 1879]. The order of the Board of Revenue under sections 7 and 35 of the Act was made on the 4th of April, 1921, and it was declared

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by the said order that Babu Brajasunder Deb of Aul was a disqualified proprietor for a period of five years within the meaning of section 6 of the Act. The debts in question in the present suits were incurred by the Raja after the Court of Wards had assumed charge of his estate. Under section 3 of the Court of Wards Act,

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“Ward” means any person who is under the charge of the Court of Wards, or whose property is under such a charge.

It is thus clear that when the property of the Raja was taken charge of by the Court of Wards, he became a “ward” of the Court of Ward. Section 51 of the Act provides that in every suit brought by or against any ward he shall be therein described as a ward of court; and the manager of such ward’s property, or if there is no manager, the Collector of the district in which the greater part of such property is situated, or any other Collector whom the Court of Wards may appoint in that behalf, shall be named as next friend or guardian for the suit, and shall in such suit represent such ward, and no other person shall be ordered to sue or be sued as next friend or be named as guardian for the suit by any Civil Court in which such suit may be pending. It would thus appear that the description of the defendant as given in the plaints in the present suits was in strict conformity with the provisions of section 51 of the Court of Wards Act.

It is contended on behalf of the appellant that it is settled law that a ward of the court is entitled to enter into contracts, and that although such contracts cannot be enforced against any property of the ward in the possession of the manager under the court as provided by section 60 of the Court of Wards Act, yet such contracts can be enforced against the ward personally; and in suits to enforce contracts made by the ward without the sanction of the court, the ward should be sued personally and not as represented by the Manager as provided by section 51 of the Act. Reliance has been placed upon *Dhunpat Singh v.*

Shoobhudra Kumari (1), *Collector of Benares v. Sheo Prasad* (2), *Muhammad Abdus Salam v. Rani Kamal-mukhi* (3) and *Lachmi Narain Gouri Shankar v. Syed Mahomed Abraham Hussain Khan* (4). Now, what these cases lay down is that a ward of the court of wards is not incapacitated from contracting, but that the power of the ward to contract is taken away so far as regards all property which, under the provisions of the law, comes under the charge and control of the Court of Wards. In the case of *Dhunpat Singh v. Shoobhudra Kumari* (1), the manager on behalf of the Court of Wards as well as the ward personally were made defendants in a suit to enforce a mortgage executed by the ward without the sanction of the court; and the District Judge held that the estate was not liable, but as the bond had been executed by the ward, he found that the ward was personally liable, and he gave the plaintiff a personal decree against the ward and awarded costs to the Court of Wards against the plaintiff. An appeal was filed by the plaintiff, and a cross-appeal was filed by the Court of Wards to the effect that the District Judge ought to have dismissed the entire claim, of the plaintiff and ought not to have passed a decree personally against the ward. The High Court dismissed the appeal as well as the cross-appeal. In dismissing the cross-appeal the learned Judges observed that the provision contained in section 51 of the Court of Wards Act [IX (B.C.) of 1879] was a provision of procedure, and that it was not intended to affect, and could not affect, any liability which may be incurred by a ward in so far as the ward is concerned. Their Lordships refused to interfere with the decree of the lower court declaring the ward to be personally liable. This case is not an authority for the proposition that a suit framed in accordance with the provisions of section 51 is not maintainable. In *Collector of Benares v. Sheo Prasad* (2) it appears that

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(1) (1882) I. L. R. 8 Cal. 621. (3) (1918) 40 Ind. Cas. 316.
(2) (1888) I. L. R. 5 All. 487. (4) (1925) I. L. R. 4 Pat. 172.

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the Collector representing the Court of Wards was impleaded as a defendant on the ground that the property of the defendant had come under the superintendence of the Court of Wards before the execution of the bond on which the suit had been brought. The Subordinate Judge decreed the claim against the ward personally, exonerating the estate from liability; and from this decree the Collector preferred an appeal to the High Court, and it was held that the Collector was entitled to raise, on account of the ward, the question as regards the legal capacity of the ward to contract simple money debts. This case has, therefore, no application to the facts of the present case. *In Mohammad Abdus Salam v. Rani Kamalmukhi* (1) a Division Bench of this Court was asked to interfere in revision against an order of the Subordinate Judge, appointing a person other than the manager under the Court of Wards, as the guardian ad litem for the ward. Their Lordships considered the provisions of Order XXXII, rule 4, of the Code of Civil Procedure and of section 51 of the Court of Wards Act, and they held that where a Court of Wards is in possession of the property of a disqualified proprietor under section 6(e) of the Bengal Court of Wards Act, a suit brought against such a proprietor based upon contract may proceed without causing the defendant to be represented by the manager under the Court of Wards. That was a case converse to the present case. Their Lordships did not lay it down that a suit brought against the ward represented by the manager under the Court of Wards was incompetent. The decision in *Lachmi Narain Gouri Shankar v. Syed Mohamed Abraham Khan* (2) followed the decision in *Mohammad Abdus Salam v. Rani Kamalmukhi* (1). These cases cannot be cited as authority for the proposition that a suit instituted against a ward represented by the manager under the Court of Wards is incompetent.

(1) (1918) 46 Ind. Cas. 316.

(2) (1915) I. L. R., 4 Pat. 172.

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In the case of *Gobind Sahae v. Udit Narain Singh* (1) Mookerjee, J., observed as follows: 'The plaintiff in the case before us is entitled to a personal decree against the tenant defendant for the arrears of rent of the tenancy, the term whereof has now expired. But as his estate has been placed in charge of the Court of Wards, he can be sued only as represented by the manager. In the suit thus constituted, the decree must be so framed as to be binding upon the manager as such, because otherwise no properties of the debtor can be reached for satisfaction of the decree'. It would follow from this decision that a ward of the court can be sued only as represented by the manager, and this appears to be in accordance with the provisions of section 51 of the Court of Wards Act.

It is contended that the defendant in the suit was really the manager and not the ward. This contention is obviously fallacious. The defendant is the ward, but for the purposes of the suit he is represented by the manager, and in a suit so framed a decree can certainly be passed against the ward.

The learned advocate for the appellant contends that the Raja had no opportunity to contest the suit on the merits, and that the manager may never have consulted him or have taken instructions from him as regards the proper defence of the suit. This contention is not supported by any affidavit, nor is there anything on the record to support it. The learned advocate is unable to say what the proper defence in the suit should have been; and we are not prepared to say that there has been any prejudice to the defendant in the present suit on account of his being represented by the manager.

It is contended on behalf of the respondents that the present appeals are incompetent, and that the Raja personally had no right to present these appeals. He argues that rule 5 of Chapter VI of the High

 (1) (1913) 17 Cal. L. J. 601.

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Court Rules has no application to the facts of the present case. I am inclined to agree with this contention. Rule 5 of Chapter VI does not seem to contemplate cases like the present: it provides for cases where a decree is made against the trustee, executor, administrator or a receiver or manager appointed by a court, who as such was a party to such decree, and where the beneficiary is affected by the decree and desires to appeal against it, he may name himself in the memorandum of appeal as an appellant. It contemplates cases where the beneficiary is not a party, but is affected by the decree. In the present case, the Raja was a party and the provisions of Rule 5 do not seem to apply. The order of this court giving him leave to appeal does not discuss the question and was passed *ex parte*, without notice to the Respondents. It is, however, not necessary to decide this question inasmuch as the appeals fail on the merits.

These appeals must be dismissed with costs.

MACPHERSON, J.—I agree.

Appeals dismissed.

APPELLATE CIVIL.

Before Das and Adami, JJ.

CHAUDHARY CHANDRIKA PRASAD SINGH

v.

MITHU RAI.*

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Jan., 25.

Code of Civil Procedure, 1908 (Act V of 1908), section 2(2), and Order XLI, rule 23—Issues decided by lower court and suit dismissed—appeal to District Court—certain issues framed and case remanded—appeal to High Court, whether maintainable.

* Appeals from Appellate Decrees nos. 590 and 638 of 1926 from a decision of J. Chatterji, Esq., Additional District Judge of Shahabad, dated the 27th March, 1926, reversing a decision of Babu Ramchandra Misra, Munsif of Arrah, dated the 12th January, 1926.