1928.

KING-EMPEROR v. VIDYASAGAR PANDE.

the body. I do not pretend to know if there be any survival after this life is finished, but if so and if God be just and merciful in the sense that we very imperfectly understand justice and mercy, then such of these men as survive their earthly punishment may well go on humble pilgrimage to Sampati's flower-decked shrine and with ashes on their heads cast themselves down and invoke her gentle spirit to intercede with the Almighty to save their guilty souls from everlasting damnation.

APPELLATE CIVIL.

1928.

June, 13.

Before Das and Allanson, JJ.

BADRI NATH UPADHYAYA

v.

NARESH MOHAN THAKUR.*

Court of Wards—power to adjust accounts and admit liability on behalf of ward's estate.

When there are mutual accounts between a ward's estate and certain other estates, it is within the power of the Court of Wards to adjust the accounts and admit liability on the part of the ward's estate.

Subramania Ayyar v. *Arumuga Chetty* (1) and *Jiwandas* v. *Musammat Janki* (2) followed.

Waghela Rajsanji v. Shekh Masludin (3), distinguished.

Appeal by the defendants.

The plaintiffs sued to recover Rs. 7,139-2-9 together with further interest as against the defendants first party. The Subordinate Judge, by his

*First Appeal no. 108 of 1925, from a decision of Maulavi Najabat Hussain, Subordinate Judge of Bhagalpur, dated the 6th April, 1925.

(1) (1903) I. L. R. 26 Mad. 330. (2) (1922) 65 Ind. Cas. 53.
(3) (1886-87) 14 I. A. 89 P. C.: I. L. R. 11 Bom. 551.

1926.

BADRI NATH UPADHYAYA v. NARESH MOHAN THAKUR.

judgment dated the 11th April, 1925, found in favour of the plaintiffs and the defendants first party appealed to the High Court.

The original plaintiffs in this suit were the trustees of the estate of Pran Mohan Thakur, referred to as the Kanchangarh estate. Prior to this appeal the trustees had retired and the proprietors of the estate were substituted in the record of the suit as plaintiffs on the 8th February, 1924. The defendants first party were the proprietors of Sribhaban estate and the defendant second party was the executor of Woogra Mohan Thakur and represented the estate known as the Anandgarh estate. The parties were related to each other and they owned as tenants-in-common a considerable zamindari; and in regard to purchases of tenancy rights by each of the estates and its consequent liability for rent as such purchasers to the other estates there came into existence mutual claims which each estate was entitled to enforce as against the other. At all material dates the Sribhaban estate was under the management of the Court of Wards. An adjustment of accounts took place on the 5th October, 1920, at a conference held at the house of the Collector of Bhagalpur. It appeared that on the account books of the Court of Wards, Rs. 49,478-0-4½ was due to it from Kanchangarh estate and that it owed Rs. 61,067-15-1½ to Kanchangarh estate. The result was that on the books of account of the Court of Wards Sribhaban estate represented by the Court of Wards owed approximately Rs. 11,590 to Kanchangarh estate; but it appeared that in 1323, the Anandgarh estate, belonging to the defendant second party, was leased out to Kanchangarh estate. It was ascertained that the defendants first party, as represented by the Court of Wards, had to get a sum of Rs. 596 from the Anandagarh estate which for all practical purposes was the same as the Kanchangarh estate from 1323 up to the date of the adjustment of the accounts. The Court of Wards thought it right that in fixing

1928.

BADRI NATH UPADHYAYA v. NARESH MOHAN THAKUR.

the liability of the Sribhaban estate to the Kanchangarh estate the money due to the former from the Anandgarh estate should be taken into account. Deducting, therefore, Rs. 596 due by the Anandgarh estate to the Sribhaban estate from Rs. 11,590 due by the latter to Kachangarh, the Court of Wards came to the conclusion that approximately Rs. 11,000 was due by the ward's estate to the Kanchangarh estate; but it offered a sum of Rs. 9,000 to Kanchangarh estate in full settlement of all its liabilities and it appeared that on the 5th October, 1920, Mr. S. C. Ghosh, manager of the Kanchangarh estate, agreed to the settlement suggested by the Collector "subject to the approval of the trustees". It appeared that Mr. Clair Smith, who was the manager of the Sribhaban estate, pointed out certain errors in the accounts in a letter dated the 8th October, 1920. According to him, after deducting the sum of money due to the Sribhaban estate from the Anandgarh estate, a sum of Rs. 4,614 was actually due by the Sribhaban estate to the Kanchangarh estate. Another conference took place at the residence of the Collector on the 30th October, 1920, and on that date the liability of the Sribhaban estate to the Kanchangarh estate was fixed at Rs. 9,000 with the consent of the Collector and the Manager representing the Kanchangarh estate. A third conference took place on the 31st March, 1921, and the accounts were again scrutinised with a view to discover the liability of the Sribhaban estate to the Kanchangarh estate. It was decided that the liability should be fixed at Rs. 8,500. The plaintiffs relied upon the proceedings of the conference of the 31st March, 1921, and the present suit was based on what was decided at that conference. It appeared that subsequently Rs. 2,000 was paid to the plaintiffs' estate. The plaintiffs sued to recover in this action the sum of Rs. 7,139-2-9 which was made up of Rs. 6,500 as principal and the balance as interest.

1928.

BADRI NATH UPADHYAYA v. NARESH MOHAN THAKUR.

Pugh (with him *S. S. Bose*, *N. C. Sinha* and *S. C. Mazumdar*), for the appellants.

P. K. Sen (with him *S. N. Palit* and *J. Ghose*), for the respondents.

DAS, J.

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

Mr. Pugh contends before us that we should not give a decree to the plaintiffs on the footing of the conference held at the residence of the Collector; but that we should ask the learned Subordinate Judge to take the accounts as between the three estates and fix the liability of one to the other. His argument is based upon the account which was before the Collector and which showed that there was a very large sum of money due by the Anandgarh estate to the Sribhaban estate. It appears from that account, Ex. H-H(3), that whereas Rs. 56,588-12-0 was due to the Anandgarh estate from the Sribhaban estate, a sum of Rs. 88,404-1-10½ was due to the Sribhaban estate from the Anandgarh estate. In other words, there was approximately a sum of Rs. 32,000 due by the Anandgarh estate to the ward's estate as a result of the mutual accounts existing between them. Mr. Pugh's argument is as follows: the Anandgarh estate is in point of fact the Kanchangarh estate and, therefore, it is inequitable that, in fixing the liability of the ward's estate to the Kanchangarh estate, the liability of the Anandgarh estate to the ward's estate should not be taken into account. Now it is quite true that the proprietor of the Anandgarh estate is one of the proprietors of the Kanchangarh estate, but it is not correct to say that the Anandgarh estate is in fact the Kanchangarh estate. Then it was contended that the proprietor of the Anandgarh estate has leased out the estate to the Kanchandgarh estate. That is so; but that lease was in 1323 and, in fixing the liability of the ward's estate to Kanchangarh estate, the Court of Wards properly took into account what was due and owing by the Anandgarh estate to

1928.

BADRI NATH UPADHYAYA v. NARESH MOHAN THAKUR.

DAS, J.

the ward's estate from 1823. There is, therefore, in my opinion, no ground for taking the view that there was something inherently unjust in what the Court of Wards did in this matter.

It was then contended that this suit is not maintainable based as it is on a covenant entered into by the Court of Wards on behalf of the Sribhaban estate, and reliance was placed on a decision of the Judicial Committee in *Waghela Rajsanji* v. *Shekh Masludin*.(1) In that case it was held by the Judicial Committee that a guardian cannot contract in the name of a ward so as to impose on him a personal liability. But the facts of that case clearly show that there was no pre-existing liability resting on the minor. The widow, acting as the guardian of her infant son, entered into a contract with the plaintiff in that action by which she created a personal liability upon the minor, and the Judicial Committee had no difficulty in holding that a guardian cannot enter into a covenant in the name of the minor so as to bind the minor by such covenant. This case has been considered in two cases which have been brought to our notice. In *Subramania Ayyar* v. *Arumuga Chetty* (2). Sir Arnold White, C. J. of the Madras High Court, distinguished the decision of the Judicial Committee upon which Mr. Pugh relies. In the case in Madras the mother of a minor executed, as his guardian, a promissory note in respect of a debt for which the son's share in the ancestral estate was liable at the time. The suit was brought against the minor on the promissory note. The suit was contested on the ground on which the present suit is being contested and reliance was placed upon the decision of the Judicial Committee to which I have already referred. In dealing with the point the learned Chief Justice said as follows: "In our judgment the defendant is liable on the note executed by his guardian to the extent of his share * * * in

(1) (1886-87) 14 I. A. 89 P. C.; I. L. R. 11 Bom. 551.
(2) (1908) I. L. R. 26 Mad. 330.

the ancestral estate * * * *

* At the time of the execution of the note the defendant's share of the ancestral estate was liable in respect of the original debt. His guardian had authority to acknowledge the liability provided it was not barred by limitation. [See the case of *Sadhanadri Appa Rau* v. *Sriramuli* (1)]. The Privy Council cases relied on by the appellant *Bachubai* v. *Shamji Jadowji* (2) and *Indur Chunder Singh* v. *Radhakishore Ghose* (3), are not in point. In these cases a guardian purported to contract on behalf of a ward so as to impose a personal liability on the latter, there being no pre-existing liability on the part of the ward at the time the guardian entered into the contract".

Their Lordships being of opinion that there was a pre-existing liability on the part of the ward thought that the decision of the Judicial Committee upon which reliance was placed before them had no application. In *Jiwandas* v. *Musst. Janki* (4) substantially the same view was taken. Their Lordships referred to the decision of the Madras High Court and did not express any dissent from that decision. In my opinion the decision of the Madras High Court is directly in point and I entirely agree with the conclusion in that case. I hold, therefore, that there being mutual accounts as between the ward's estate and certain other estates, it was within the power of the Court of Wards to adjust the accounts and to admit a liability on the part of the ward's estate. I should like to make it clear, however, that the present suit is not a suit to enforce a covenant

(1) (1894) I. L. R. 17 Mad. 221.

(2) (1885) I. L. R. 11 Bom. 551, P. C.

(3) (1892) I. L. R. 19 Cal. 507.

(4) (1922) 65 Ind. Cas. 53.

1928.

BADRI NATH UPADHYAYA v. NARESH MOHAN THAKUR.

DAS, J.

entered into by the Court of Wards on behalf of the minor. It is a suit to realise a sum of money due to the plaintiffs from the defendants first party on the footing of adjusted accounts. The question resolves itself into this: Had the Court of Wards power to adjust the accounts as between the ward's estate and another estate? I have no doubt whatever that it is intra vires the Court of Wards to adjust all accounts as between the ward's estate and other estates. In truth the question which has been argued before us by Mr. Pugh does not arise because the suit is neither in form nor in substance a suit to enforce a covenant entered into by the Court of Wards on behalf of the minor's estate. It is a suit on the basis of adjusted accounts; and, as I have said, the only question is whether the Court of Wards had power to adjust the accounts on behalf of the minor's estate.

It was then contended that the Collector had no poower to adjust the accounts on behalf of the ward's estate. I accept the view which has been put forward before us by Mr. Pugh that in regard to acts done in pursuance of statutory powers we must hold that whatever power is not given expressly or by necessary implication must be deemed to be prohibited; but in this case the point does not arise for the proceedings of the final conference show clearly that Mr. Clair Smith, the manager of the ward's estate, accepted the position that Rs. 8,500 was due by the ward's estate to the Kanchangarh estate. I mention this point because Mr. Pugh's argument was that it was only the manager who has the right under the Court of Wards Act to do all acts in regard to the management of the ward's estate. I do not accept his argument wholly for, if necessary, it may be pointed out by reference to the various sections of the Court of Wards Act that the Board of Revenue is primarily liable for the management of the ward's estate and that the Board acts in the management of the estate sometimes

1928.

RADHI NATH UPADHYAYA v. NARESH MOHAN THAKUR.

DAS, J.

through the Commissioner and the Collector and sometimes through the manager of the ward's estate.

In this case it is established beyond doubt that the Board of Revenue expressly sanctioned the payment of Rs. 8,500 by the ward's estate to the Kanchangarh estate so that we have in this case the approval of the Board of Revenue to that which was done by the Collector. The point which has been argued by Mr. Pugh before us is completely met by what was placed before us by Mr. Sen this morning, namely, the approval of the manager to what took place at the third conference held on the 31st March, 1921.

It was lastly contended that the plaintiffs' manager on his own showing had no power to enter into a settlement. As I have pointed out the Kanchangarh estate was at that time in the hands of the trustees and Mr. Ghosh was the manager appointed by the trustees to manage the Kanchangarh estate. Now Mr. Pugh relies upon a letter dated the 20th December, 1920, from the manager to the Collector of Bhagalpur. In that letter the manager does say as follows:

> "They" that is to say the trustees, "have now authorised me to accept the amount of Rs. 9,000 provided the manager, Court of Wards, issues a cheque for Rs. 9,000 at once."

Mr. Pugh who can be very technical at times, contends before us that here is a clear admission by the manager as to the limit of his authority and he argues that the manager admits that he had no power to enter into the settlement unless "the manager, Court of Wards, issues a cheque for Rs. 9,000 at once". Mr. Ghosh, the manager, is not a lawyer; but we know exactly from another letter which he wrote on the 21st April as to what he actually meant. That letter has been marked as Ex. 11 and is printed at page 55, Part III of the paper book. In that letter he says:

> "Sir. In continuation of this office letter no. 14, dated 15th January 1921 and subsequent reminder I beg respectfully to draw your

1928.

BADRI NATH UPADHYAYA v. NARESH MOHAN THAKUR.

DAS, J.

special attention and ask the favour of your issuing the cheque without any further delay. The Trustees agreed to accept this amount though the account showed a very large sum due to them only on the belief that the amount sanctioned by the Collector would be forthwith paid. They would not have pressed me to trouble you had it not been for the fact that Barari Court of Wards Estate is going shortly to be released and, if the amount be not paid before the release of the estate, the trustees are afraid there may be troubles and litigation over the matter afterwards, to avoid which they agreed to accept this smaller sum on your intervention. Prompt orders are solicited."

It is obvious that the trustees authorised the manager to enter into the settlement not on condition that the manager, Court of Wards, issued a cheque for Rs. 9,000 at once but in the full belief that that cheque would be issued at once. In my opinion there is no merit in the last point taken by Mr. Pugh.

In my judgment the decision of the learned Subordinate Judge is right and must be affirmed. This appeal fails and must be dismissed.

In our opinion the parties should have adjusted their accounts in this suit. The sole proprietor of the Anandgarh estate is one of the proprietors of the Kanchangarh estate and there is no reason at all why the parties should not have sat round a table and adjusted all their accounts. The result is that it will now be necessary for the appellants to institute a suit as against the Anandgarh estate on the accounts as exist between them. In these circumstances we do not think that we should make any order as to costs either in this Court or in the Court below. The plaintiffs will, however, be entitled to recover the court-fee paid by them on their plaint in the Court below.

ALLANSON J.—I agree.

Appeal dismissed.

S. A. K.