

1934.

SURAJMAL
MARWARI
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WORT, J.

that the mortgagee will be entitled to interest at the rate of 18 per cent. per annum from the 18th of September, 1926, to the date of the expiration of the days of grace fixed under the decree—such sum of interest not to exceed Rs. 6,500, and that from the expiration of the days of grace up to the date of realization the plaintiff-mortgagee will be entitled to interest at the rate of 6 per cent. per annum on the amount of the decree.

The appeal, therefore, is allowed with costs. The days of grace will expire six months after the date of this judgment.

VARMA, J.—I agree.

Appeal allowed.

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January, 4,
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APPELLATE CIVIL.

Before Wort and Varma, JJ.

RAMDEO PRASAD

v.

SHEONANDAN MAHASETH.*

Guardian and Wards Act, 1890 (Act VIII of 1890), section 31—Guardian of infant—permission by Judge to raise loan—enquiry by lender, whether excused—order subsequently cancelled—money advanced when order in existence—cancellation, effect of.

When an order of the court has been made authorizing the guardian of an infant to raise a loan on the security of the infant's estate, the lender of the money is entitled to trust that order, and he is not bound to enquire as to the expediency or necessity of the loan for the benefit of the infant's estate.

Ganga Prasad Sahu v. Maharani Bibi(¹) and *Mahanth Mahabir Das v. Jamuna Prasad Sahu*(²), followed.

*Appeal from Appellate Decree no. 167 of 1931, from a decision of F. F. Madan, Esq., I.C.S., District Judge of Muzaffarpur, dated the 2nd of August, 1929, reversing a decision of Babu Baidyanath Das, Munsif of Sitamarhi, dated the 23rd of February, 1929.

(1) (1884) I. L. R. 11 Cal. 379, P. C.

(2) (1928) I. L. R. 8 Pat. 48.

Where the order was cancelled by the court subsequently, the order of cancellation having had no connection with the validity of the debt itself, but the money was advanced by the lender while the order was in existence, *held*, that the lender was still entitled to rely implicitly on the order.

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Appeal by the plaintiff.

The facts of the case material to this report are set out in the judgment of Wort, J.

Muhammad Hasan Jan, for the appellant.

G. C. Mukharji and *K. N. Lal*, for the respondents.

WORT, J.—This is an appeal from the decision of the District Judge of Muzaffarpur reversing a decision of the Munsif of Sitamarhi in an action for redemption.

A number of questions arose. Amongst them was, whether the mortgage had been satisfied? But so far as that matter is concerned, certainly in the Court below the plaintiff has failed. The question which arises in this Court is whether in the circumstances a part of the debt, that is to say, a sum of Rs. 919-9-0, was binding on the plaintiff who at the time of the mortgage was a minor. It would appear that the father who ultimately separated from the plaintiff applied to the District Judge as guardian of the minor for the payment of certain debts which amounted to the sum in dispute out of the minor's estate, that is to say, by raising a loan for the payment of those debts. The sanction was granted and the debts were paid, for such is the finding of the learned District Judge in the Court below. Then by reason of some omission on the part of the father the District Judge, one year after the sanction had been granted, cancelled the order. It is important to notice, however, the fact, which I have already stated, that while the sanction was in existence the debts were in fact paid.

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Mr. Hasan Jan on behalf of the plaintiff-appellant contends that the cancellation order prevented the mortgagee from subsequently entering into the mortgage. Although, as I have said, the debts were paid and the money actually borrowed therefor during existence of the District Judge's order, the mortgage security for the sums borrowed was not furnished until the father had ceased to be the guardian and the mother of the plaintiff had become his guardian. Now the learned Judge in the Court below in coming to the conclusion that the lender was entitled to rely upon the order of the District Judge previously given and eventually cancelled, relied upon the decision of this Court in *Mahanth Mahabir Das v. Jamuna Prasad Sahu*⁽¹⁾. The learned Judges in that case in turn relied upon the decision of their Lordships of the Privy Council in *Ganga Prasad Sahu v. Maharani Bibi*⁽²⁾ where Sir A. Hobhouse, in delivering the judgment of their Lordships, stated as follows:

“ When an order of the court has been made authorizing the guardian of an infant to raise a loan on the security of the infant's estate, the lender of the money is entitled to trust that order, and he is not bound to enquire as to the expediency or necessity of the loan for the benefit of the infant's estate ”.

That proposition seems to me to be unconditioned, that is to say, it is not conditioned by the actual knowledge of the lender himself: in other words, he is entitled to rely implicitly on the decision of the District Judge.

Now the first question which comes to be decided in this case is whether the cancellation of the order subsequent to the advance of the money makes any difference. It might in my judgment have a bearing on the matter had the cancellation had any connection

(1) (1928) I. L. R. 8 Pat. 48.

(2) (1884) I. L. R. 11 Cal. 370, P. C.

with the validity of the debts themselves. But we know in this case, and we must assume until the contrary is proved, that the lender himself knew that the cancellation was due to certain omission on the part of the borrower, the father, and had no connection with the validity of the debts themselves. In my judgment, therefore, the subsequent cancellation after the money had been advanced can, in the circumstances, make no difference to the matter, and the lender was entitled to say—"I have the order of the Court allowing the payment of these debts out of the infant's estate, and upon which I am going to rely for the purpose of entering into this transaction." The effect of *Ganga Prasad Sahu's* case⁽¹⁾ just referred to is that the enquiry which their Lordships of the Privy Council in the leading case had said was sufficient to entitle the lender to recover, is excused where there is an order of this kind which is based upon an enquiry by the Judge as to the 'legal necessity', using the expression in the widest sense of the term, for the debts.

The other point which Mr. Hasan Jan argues on behalf of the plaintiff-appellant is that in this case the lender must have known that the application to the District Judge, based as it was on the allegation that they were the debts of the son, was false for the reason that it is recited in the bond in dispute that the debts were the debts of Mahabir, the father. But it is to be noticed in this connection that the recital in the bond goes on to say that the debt being the debt of the father is a valid expense, and repayment is binding on the person and property of the minor. Now it seems to me that this argument is really a contention that there should have been a finding that the application to the District Judge was a fraudulent one. It is obvious that in second appeal no such enquiry could be entered into. In any event the only possible point that can arise is whether the fact that there is a recital of this kind in the mortgage bond,

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the meaning of which is not entirely clear, can in any way affect the presumption that in the circumstances of this case the lender was entitled to rely upon the fact that the District Judge had allowed payment of these debts out of the minor's estate. From no point of view it seems to me that that proposition could be supported. In the circumstances, therefore, it seems to be quite clear that the learned Judge in the Court below was right in holding that the lender was excused from making any enquiry, when the order of the District Judge allowing the payment of these debts out of the minor's estate was in existence, at the time that the money was paid.

The appeal, therefore, fails and must be dismissed with costs.

VARMA, J.—I agree.

Appeal dismissed.

APPELLATE CIVIL.

Before Khaja Mohamad Noor and Agarwala, JJ.

SRIMATI GIRJA KUER

v.

SHIVA PRASAD SINGH.*

Suits Valuation Act, 1887 (Act VII of 1887), section 8—suit for declaration of title and injunction—claim for damages for the period subsequent to the institution of the suit—amount of future damages, whether can be taken into account in determining the value of the suit for purposes of court-fee and jurisdiction.

Where, in a suit for declaration of title and injunction for the removal of a certain dam, the plaintiff claimed damages for the period subsequent to the institution of the suit.

* Appeal from Original Decree no. 122 of 1931, from a decision of Babu Narendra Nath Chakravarti, Subordinate Judge of Patna, dated the 20th December, 1930.