

section 109, it is clear that the case does not raise any question of wide public importance nor any question of great private importance to which it is impossible to give a money value. The contest between the parties seems ultimately to have reduced to the question whether the applicant is to get the better of the other side by reason of the tactical move he adopted in dropping the mortgagee and the objector from his suit.

Leave refused.

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DHAVLE, J.

REVISIONAL CIVIL.

Before Khaja Mohamad Noor and Saunders, JJ.

CHHOTI RANI SAHEBA

v.

KUMAR BRIJDEO NARAYAN SINGH.*

Court of Wards Act, 1879 (Act IX of 1879), sections 51 and 52—power of Court of Wards to appoint a guardian for a suit—power of appointment if includes a power of dismissal—civil court, if can appoint a guardian ad litem of a minor whose estate is under the Court of Wards—Civil Procedure Code (Act V of 1908), Order XXXII.

Where the Court of Wards appointed a Board of Guardians to represent the minor in place of the manager under section 52 of the Act and subsequently dismissed the Board of Guardians and appointed one G, and an application was made for substitution of G as guardian ad litem and the Subordinate Judge appointed G as guardian ad litem.

Held (i) that Order XXXII has no application to the case of a minor whose estate is under the Court of Wards and therefore the order of the Subordinate Judge was without jurisdiction.

(ii) that section 52 of the Court of Wards Act authorised the Court of Wards to appoint a guardian to defend a minor

* Civil Revision no. 23 of 1936, from an order of Babu Bansi Prasad, Deputy Magistrate-Subordinate Judge, Daltonganj, dated the 11th November, 1935.

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in a suit in place of the manager and this carried with it the right to dismiss the man so appointed and to appoint another person.

Where such appointment has been made the same shall be communicated to the civil court who shall substitute the person so appointed.

Application in revision by the Board of Guardians.

The facts material to this report are stated in the judgment of Khaja Mohamad Noor, J.

Mahabir Prasad and *A. D. Sinha*, for the petitioners.

S. M. Mullick and *G. N. Mukherji*, for the Court of Wards.

Sir Sultan Ahmad, *Government Advocate*, for the Secretary of State.

KHAJA MOHAMAD NOOR, J.—The facts leading up to this application are these. The proprietor of the Chainpore Estate in the district of Palamau is a minor under the Court of Wards. The Secretary of State for India in Council has instituted a suit against him for a declaration of the rights of Government in the minerals of the Chainpore Estate. We are informed that the Bengal Coal Company is also a defendant in the suit. As the Court of Wards is a department of the Government, a question arose as to the advisability of the defence by it of a suit instituted by another department of the Government. We are told that under some instructions of the Government of India the Court of Wards under section 52 of Court of Wards Act appointed a Board of Guardians which became the guardian ad litem of the minor defendant under the provision of that section and the names of the members of the Board of Guardians were substituted for the name of the manager who under section 51 of the Court of Wards Act was made the guardian ad litem of the defendant. It is said that the Court of Wards became dissatisfied with the manner in

which the members of the Board were conducting the defence of the suit. It, therefore, in pursuance of some further instruction from the Government of India passed on the 17th August, 1935, a resolution sanctioning the appointment of Mr. Girindra Nath Mukherji, an Advocate of this Court, as guardian ad litem of the minor in place of the Board of Guardians. On the 14th August, 1935, three days before the resolution of the Court of Wards, an application was made by the manager of the estate of the ward asking the learned Subordinate Judge before whom the suit is pending to remove the Board from the guardianship of the minor defendant and substitute in its place the name of Mr. G. N. Mukherji as his guardian ad litem. Objection against the adoption of this course was raised by the members of the Board who were till then acting as guardians ad litem. The order on the application of the manager was passed on the 11th of November, 1935, and it purports to remove the Board of Guardians and substitute in their place the name of Mr. G. N. Mukherji. The members of the Board have moved this Court against this order.

There is no doubt that the procedure adopted in the court below was entirely irregular and misconceived. When a defendant in a suit is a ward of Court, the civil court has absolutely no power of appointing a guardian ad litem for him or removing a guardian who has been acting for him. Section 51 of the Court of Wards Act runs thus:—

“ 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 is obvious that the power of the civil court to appoint a guardian ad litem to defend the suit of a

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minor provided in Order XXXII has no application when the minor happens to be a ward of Court and in that Order of the Code it has been clearly laid down that it has no application in the case of a minor whose estate is under the Court of Wards. Now, in this case the Secretary of State for India in Council sued the defendant through the guardianship of the manager of the Court of Wards as required by section 51 of the Court of Wards Act. Section 52 authorises the Court of Wards, if it so likes, to direct that instead of the manager of the estate acting as the guardian ad litem of the minor the guardian shall be such person whom Court of Wards may appoint in that behalf and when this appointment is made and communicated to the civil court, it is the duty of that court to substitute the name of the man so appointed in place of the name of the manager. In this case the Board of Guardians appointed by the Court of Wards was substituted for the manager on the latter's application. Now, by the resolution of the Court of Wards above referred to the members of the Board have been removed and in their place Mr. G. N. Mukherji has been appointed guardian ad litem. The proper procedure in such a case was to communicate the new appointment to the civil court which under the provisions of section 52 was bound to substitute the name of Mr. G. N. Mukherji in place of the names of the members of the Board of Guardians. This was not done and the learned Subordinate Judge has removed the Board of Guardians on the application of the manager who was no party to the suit and who applied for the removal of the members of the Board before the resolution of the Court of Wards. In the case of minors under the Court of Wards the civil courts have no responsibility of appointing or removing a guardian. The matter is entirely in the hands of the Court of Wards and the civil courts have simply to recognise the guardian appointed by it.

It has however been contended by Mr. Mahabir Prasad on behalf of the petitioners that once the Court of Wards has appointed a guardian in place of the manager, its power is exhausted and no further appointment can be made. He has laid stress upon section 52 itself and has contended that the civil court has to substitute the name of the guardian appointed by the Court of Wards in place of the name of the manager, but there is no power in the civil court to substitute the name of one guardian appointed by the Court of Wards in place of another guardian appointed by it and then removed. The Court of Wards has no power to remove the guardian whom it has once appointed. I am unable to accept this contention. Apart from the question that under the General Clauses Act and under ordinary law the authority which has got the power of appointment has got the power of dismissal, if the Court of Wards has been given power by section 52 of the Act to appoint a person to act as a guardian in place of the manager, it has certainly got the power to appoint another guardian in place of a guardian previously appointed if that procedure becomes essential. I cannot conceive that the legislature could have intended that a guardian once appointed by the Court of Wards however incompetent or untrustworthy he subsequently proves himself to be, cannot be removed by it and in all circumstances should be allowed to continue to act for the ward. The power of appointing a guardian in place of the manager is a power which, in my opinion, from a plain reading of the section can be exercised successively from time to time as occasion arises and the Court of Wards has, in my opinion, full power to appoint one guardian in place of another whenever a vacancy occurs from whatever cause and once such an appointment has been made and communicated to the civil court, it is the duty of that court to substitute the name of the newly appointed guardian in place of one who has been acting as such under a previous appointment by the

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Court of Wards. Therefore, so far as the power of the Court of Wards to remove the Board of Guardians and to appoint Mr. G. N. Mukherji is concerned, I am clearly of opinion that it had such power and on the communication of such appointment the civil court is bound to recognize it and to make necessary substitution.

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The proceeding, however, before the learned Subordinate Judge, as I have already said, has been irregular. The application was made by the manager for the removal of the Board of Guardians and for the appointment of Mr. G. N. Mukherji in his place. This the manager of the Court of Wards had no power to ask nor had the court any power to entertain the application. It is true that since the application was made by the manager on the 14th of August, 1935, a copy of the resolution of the Court of Wards was received by the court and is on the record of the case; but the order passed shows that the learned Subordinate Judge was removing the Board of Guardians on his own authority on the grounds urged by the manager though he has referred to the resolution of the Court of Wards. He has, in my opinion, unnecessarily given reasons justifying the removal of members of the Board and making a fresh appointment. The order of the learned Subordinate Judge as it appears to be based upon his own powers of removal which he had not is therefore set aside as being without jurisdiction. He is directed to act under section 52 of the Court of Wards Act on the resolution of the Court of Wards and under the mandatory provision of that section and not under his own power order the substitution of the name of Mr. G. N. Mukherji in place of the members of the Board. There will be no order for costs.

SAUNDERS, J.—I agree.

Rule made absolute.