

APPELLATE CIVIL.

Before Macpherson and Dhaole, JJ.

MUSAMMAT LAIKUNNISSA

v.

DURGA DASS MUKHARJI*.

Court of Wards Act, 1879 (Beng. Act IX of 1879), sections 51 and 55—section 55, whether applies to suit instituted before the Court of Wards assumes charge—Manager to represent the minor as next friend or guardian.

Section 55 prohibits initiation of litigation on behalf of a ward by the Manager except with the authorisation of the Court of Wards, but the prohibition does not extend to litigation which is already in progress when the Court of Wards assumes charge of the estate of the ward. The Act sufficiently provides for such a case in section 51 under which the Manager is to be named as next friend or guardian for the suit and to represent the ward.

Appeal on behalf of defendants first party.

The facts of the case will appear from the following judgment of Varma, J. who referred the case to a Division Bench.

VARMA, J.—This is an appeal on behalf of the defendants first party who were sued by the proprietors of Maldwar estate of Dinajpur. The suit was for ejection from 146 bighas of land. The case of the plaintiffs being that the defendants first party were given a lease for five years only, that is to say, from 1331-35 Mulki years. The lease was dated the 16th January, 1923. The plaintiffs alleged that soon after the expiry of the lease they settled this land with defendants second party. Now the defendants second party got a kabuliyat executed in their favour on the 4th November, 1927, by which lands were permanently settled with the defendants second party but as the defendants first party did not relinquish possession the landlord thought fit to make settlement by means of bids. The lands were actually put to bid on the 20th of May, 1928, in the presence of defendants second party as well as defendants first and third party. The property was knocked down in favour of the defendants third party ultimately on the 20th of May, 1928. After the suit was instituted the proprietors of Maldwar estate were

*Appeal from Appellate Decree no. 864 of 1932, from a decision of M. Muhammad Abul Barkat, Subordinate Judge, Purnea, dated the 26th April, 1932, confirming a decision of Babu L. Patnaik, Munsif, Katihar, dated the 18th May, 1929.

declared disqualified under Act X of 1879 on the 31st August, 1928. The contesting defendants filed their written statement on the 11th December, 1928, in which they contested that the suit could not proceed without the consent of the Board of Revenue. Issues were framed on the 12th December, 1928, but curiously enough this point does not seem to have been included in one of the issues although I find from the record that as a result of the written statement that was filed on the 11th December, 1928, the Manager under the Court of Wards put in a petition on the 21st March, 1929, praying that he should be allowed to be brought on record to represent the estate. This prayer was allowed. The learned Munsif who tried the suit decided the issues in favour of the plaintiffs but in the judgment there is not a word about the want of sanction from the Board of Revenue. When the case came up on appeal before the lower appellate court this point was agitated along with another point which I shall mention presently.

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The argument on behalf of the appellants evidently is based on section 55 of the Court of Wards Act which runs as follows:—

“No suit shall be brought on behalf of any ward by a Manager, unless the same be authorised by some order of the Court: provided that a Manager may authorise a plaint to be filed, in order to prevent a suit from being barred by the law of limitation, but such suit shall not be afterwards proceeded with, except under the sanction of the Court: provided also that suits for arrears of rent may be brought on behalf of any ward if authorised by an order of the Manager of the landed property on which such rents are due.”

Mr. Hasan Jan urges that when the proprietors became disqualified under the Court of Wards the suit could not proceed unless the Manager had obtained the consent of the Court meaning thereby the Court of Wards. He refers to section 41 of the Act where the duties of a Manager are generally described and especially to clause (f). Now in this case I would have no difficulty in disposing of the matter myself because the question of law though important in itself does not arise unless certain conditions arise, e.g., if it is proved to the satisfaction of the Court that no sanction was obtained by the Manager; but the record is silent upon the point. Now assuming that there was no sanction the question that arises is whether the suit could not proceed without it. Looking at section 55, it is clear that the first portion of the section deals with the institution of suits and it was really upon this portion that Mr. Hasan Jan relied. In the present case the suit had already been instituted by the proprietors before they were disqualified under the Court of Wards Act. Mr. Hasan Jan has referred to certain decisions of the Calcutta High Court which seem to favour his contention. They are: *Dinesh Chunder Ray v. Fahimudunnissa Begum*(1); *Bheopendra Narain Dutt v. Baroda Prasad Roy Chowdhry*(2); *Digendra Chandra Sen v. Nriya Gopal Biswas*(3). The learned Government Pleader appearing on behalf of the Court of Wards has succeeded in showing by reference to *Joy Churn Dutta v. Sarajubala Debi*(4) that there was a complete change in the opinion of that High Court so far as this question was

- (1) (1888) I. L. R. 16 Cal. 89.
- (2) (1891) I. L. R. 18 Cal. 500.
- (3) (1917) 22 Cal. W. N. 419.
- (4) (1919) 23 Cal. W. N. 876.

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concerned. He has also referred to the case of *Khajeh Salauddin v. Musammat Afzal Begum*(1) and in that connection he submits further that the appellants after the manager was brought on the record continued to prosecute their case and, therefore, they submitted to the jurisdiction of that Court and they were not entitled to raise this objection at the appellate stage much less in second appeal.

The second point urged was that the lower appellate court was wrong in holding that the defendants were not occupaney raiyats but that question, so far as I can see, is concluded by a finding of fact.

So far as the first point is concerned, as it is a matter of some importance I think that the whole case should be placed before a Division Bench. The cost of the appeal will abide the result.

On this reference *Hasan Jan* and *Saiyid Hasan*, for the appellants.

Government Pleader and *P. Jha*, for the respondents.

MACPHERSON, J.—The proprietors of the Maldwar estate sued the appellants as defendants first party for ejection from an area of 146 bighas odd in Tetiar. The learned Munsif decreed the suit and the appellants' appeal was dismissed.

In second appeal they raise the point that the Court below had no jurisdiction to proceed with the suit by reason of section 55 of the Court of Wards Act, 1879, which ordains that "no suit shall be brought on behalf of any ward by a Manager, unless the same be authorised by some order of the Court" (of Wards), it being alleged that there was no such authorisation by any order of the Court of Wards, which under section 5 is the Board of Revenue, or of the Commissioner or the Collector to whom its powers in this regard have been delegated under section 15 of the Act (In the suit which was valued at Rs. 55 only authorisation may under such delegation come from the Collector). The point was not taken until the stage of argument in the lower appellate Court, and there is, therefore, nothing on the record to show that under "some order" (a vague expression which might include an implied authorisation) the Collector did not authorise the action taken

(1) (1924) 28 Cal. W. N. 963.

by the Manager. The position is that the suit was instituted by the plaintiffs before they become wards of Court; the written statement of the defendants was filed after the Court of Wards took charge of the plaintiffs' estate and inter alia it claimed that the suit could not proceed unless the Court of Wards became plaintiff; the Manager thereupon made an application to the Court upon whose direction the plaint was altered to show the wards as plaintiffs through (bazarie) the Manager of the Court of Wards and in this state of the record the parties proceeded to trial, no issue as to jurisdiction being raised or tried.

Several decisions of the Calcutta High Court have been cited on behalf of the appellants in which it was held that section 55 was a bar to suits (using that term in a wide sense) not covered by the provisos to that enactment which were instituted by the Manager without authorisation by some order of the Court of Wards. But in the more recent decisions such as *Joy Churn Dutta v. Sarjubala Debi*⁽¹⁾ it is at least implied that it is not a question of the jurisdiction of the Court in which the suit has been instituted but the section merely seeks to control the Manager, and that there is nothing in the section which prevents the defendants from waiving. That decision related to the first proviso to section 55 under which the Manager may authorise a plaint to be filed in order to save limitation; the suit, however, is not to be afterwards proceeded with without the sanction of the Court of Wards. But there is a distinction between the decisions cited and the present case. We are not referred to any decision relating to a case where the manager took over the carriage of litigation which was pending when the plaintiffs became wards. To my mind section 55 does not contemplate such a case. In terms it simply prohibits initiation of litigation on behalf of a ward by the Manager except with the authorisation of the Court of Wards.

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There is no indication that the prohibition is to extend to litigation of the wards which is already in progress when the Court of Wards assumes charge of the estate of the ward. And apart from the serious practical difficulties which would arise from the interpretation suggested both in the Courts and in the management of the estate, it would appear that the Act sufficiently provides for such a case in section 51 under which the Manager is to be named, as in the present instance, as next friend or guardian for the suit and to represent the ward.

Further, in the present instance the appellants accepted the intervention of the Manager as sufficient compliance with their objection to the maintainability of the suit and raised no issue on the point in their grounds of appeal to the District Judge so that the Courts would be warranted in refusing to allow the point to be raised. But apart from this consideration, it is a complete answer to the plea that section 55 does not contemplate anything but the initiation of the particular litigation and has no reference to pending litigation in respect of which the Court already possesses jurisdiction.

I would dismiss this appeal with costs.

DHAVLE, J.—I agree.

Appeal dismissed.

APPELLATE CIVIL.

Before Khaju Mohamad Noor and Varma, JJ.

KUMAR SITA RAM SINHA.

v.

KUMAR JOGENDRA NARAYAN SINHA*.

Court Fees Act, 1870 (Act VII of 1870), Schedule II, article 17, clauses (i) and (iii)—suit for declaration that

*Appeal from Original Decree no. 42 of 1933, from a decision of Khan Sahib Md. Shahabuddin Khan, Subordinate Judge of Pakur, dated the 6th August, 1933.

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