

## APPELLATE CIVIL.

*Before Addison and Din Mohammad JJ.*

1935

Jan. 10.

GIRDHARI LAL AND BROTHERS (PLAINTIFF)

Appellant

*versus*

BALDEO SINGH (DEFENDANT) Respondent.

Civil Appeal No. 1994 of 1933.

*Punjab Court of Wards Act, II of 1903, section 16 : scope of — Contracts for necessaries supplied — whether excluded from the pale of the section — Indian Contract Act, IX of 1872, section 68.*

*Held*, that the prohibition contained in section 16 of the Punjab Court of Wards Act, 1903, is quite general, and extends to all suits brought on promises made, after the promisor has ceased to be a ward, to pay any debt contracted by him during the period when he was a ward, and includes also all subsequent ratifications of earlier contracts even on receipt of fresh consideration; contracts for necessaries dealt with in section 68 of the Indian Contract Act, are therefore not outside the pale of the section.

*Umrao Singh v. Banarsi Das-Dip Chand* (1), disapproved.

*Second Appeal from the decree of R. S. Lala Ghanshyam Das, District Judge, Ambala, dated 16th October, 1933, modifying that of Lala Gulwant Rai, Senior Subordinate Judge, Ambala, dated 19th December, 1932, by granting the plaintiff a decree for Rs.556-14-6 with interest.*

JAGAN NATH AGGARWAL, for Appellant.

N. C. PANDIT, for Respondent.

The judgment of the Court was delivered by—

DIN MOHAMMAD J.—The facts of this case are these :—

The Firm Girdhari Lal and Brothers, cloth merchants of Sadar Bazar, Ambala, instituted a suit

against Rao Baldeo Singh, Rais of Rani-ka-Raipur, situated in the district of Ambala, for recovery of Rs.2,582-6-0 on the foot of a promissory note for Rs.2,400 executed by the defendant in its favour on the 17th August, 1931, for price of cloth supplied. The suit was resisted on the ground *inter alia* that the cloth, for the price of which the promissory note was executed, was purchased by the defendant at the time when he was under the superintendence of the Court of Wards and the contract, therefore, was unenforceable. The Subordinate Judge came to the conclusion that cloth worth Rs.492-13-6 was purchased after the defendant was released from the superintendence of the Court of Wards and consequently he was liable to pay this amount to the plaintiff with interest at 12 *per cent. per annum* from the date of the promissory note. So far as the rest of the claim was concerned the Subordinate Judge relied on *Umrao Singh v. Benarsi Das-Dip Chand* (1), and found cloth worth Rs.906 covered by section 68 of the Contract Act and, holding that the Punjab Court of Wards Act, II of 1903, did not override the provisions of section 68 of the Contract Act, decreed this sum also in favour of the plaintiff with interest at 12 *per cent. per annum* from the date of the promissory note. Disallowing the remaining items of purchase, he granted the plaintiff a decree for Rs.1,500 in round figures with proportionate costs.

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The defendant preferred an appeal against this order to the District Judge to the extent of Rs.906 only with interest and the plaintiff filed cross-objections. The District Judge accepted the appeal and disallowed the item of Rs.906 and further ordered that interest at the rate of 12 *per cent.* on the sum decreed

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shall be allowed only up to the date of the suit and from the date of the suit till the date of realization interest shall be charged at the rate of 6 *per cent.* only. He accepted the cross-objections also to this extent that instead of allowing the plaintiff interest at the rate of 12 *per cent.* from the 17th August, 1931, *i.e.* the date of execution of the promissory note, he allowed it from the 1st March, 1931, *i.e.* the date of the expiry of the plaintiff's notice to the defendant. The plaintiff has preferred this second appeal and asks for a decree for Rs.970 more.

It may be said at once, that this appeal must fail by virtue of section 16, sub-section (2) of the Punjab Court of Wards Act, 1903. Both the Courts below have erred in ignoring the express provisions of law contained in this section. It is, no doubt, true that in *Umrao Singh v. Banarsi Das - Dip Chand* (1), Dalip Singh J. has observed that "section 68 is not excluded by the terms of the Court of Wards Act and though the suit was based on a contract, yet it could be maintained in the alternative as a suit for necessities supplied within the terms of section 68;" but with all respect we are constrained to remark that this is not a correct exposition of the law.

Section 16 (2) of the Punjab Court of Wards Act reads as follows:—

"No suit shall be brought whereby to charge any person upon any promise made after he has ceased to be a ward to pay any debt contracted during the period when he was a ward, or upon any ratification made after he has ceased to be a ward of any promise or contract made during the above period, whether there shall or shall not be any new consideration for such promise or ratification."

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It will thus be observed that the prohibition contained in this section is quite general and expressed in the clearest possible terms. It extends to all suits brought on promises made after the promisor has ceased to be a ward to pay any debt contracted by him during the period when he was a ward and includes also all subsequent ratifications of earlier contracts even on receipt of fresh consideration. This Act was passed in 1903, at the time when the Contract Act was in force and with full knowledge of the provisions of law contained therein. If it was intended to save such contracts as are contemplated by section 68, the Legislature could either have enacted a saving clause or added a proviso to this sub-section exempting such contracts from the operation of this section. Having done neither, the Legislature cannot be assumed to have exempted such contracts as are mentioned in section 68. The prohibition being so wide and absolute, the onus lies heavily on the person who maintains this position to prove that the existing provisions of the general law are not affected by this special piece of legislation and that contracts for necessaries are outside the pale of this prohibition. In our view, it is impossible to read into this sub-section any such words as would indicate that such contracts have been left in tact or are excluded from the operation of this sub-section. On this interpretation of section 16 (2) we are forced to the conclusion that *Umrao Singh v. Banarsi Das-Dip Chand* (1), does not lay down good law. To hold otherwise would be to subvert the whole policy underlying the Court of Wards Act and to open a wide door for the evasions of its provisions. So long as a ward is under the superintendence of the Court

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of Wards, it is the Court of Wards that is responsible for his maintenance, and it will defeat the very object with which the superintendence is assumed if he is permitted to utilize other sources also for his subsistence. This is why section 15 (a) expressly debar a ward from entering into any contract which may involve him in a pecuniary liability and as a natural consequence no suit should be competent against him if he incurred any liability in contravention of the Act. All persons dealing with a ward have been warned by the Legislature against the risk they run and if despite this prohibition, they persist in dealing with him, unmindful of the express provisions of law contained in sections 15 (a) and 16 (2), they are themselves to blame if their money is lost.

We hold, therefore, that this suit was not competent and dismiss this appeal with costs.

*P. S.*

*Appeal dismissed.*

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