

1934  
 DIWAN CHAND  
 v.  
 MANAK CHAND.  
 DALIP SINGH J.

of this case. I should prefer to express no opinion on the question whether it might not apply in another case.

P. S.

*Appeal accepted.*

### APPELLATE CIVIL.

*Before Addison and Beckett JJ.*

PRABH DIYAL (PLAINTIFF) Appellant

*versus*

MUHAMMAD NAWAZ SHAH (DEFENDANT)

Respondent.

Civil Appeal No. 586 of 1932.

*Punjab Court of Wards Act, II of 1903, sections 3, 8 and 46 : Release of property of one ward from the Court of Wards—except that held jointly with another ward—whether this exception continues his status as a ward—Debts incurred during minority—whether can be ratified by ward after his release.*

The respondent and another person B were under the superintendence of the Court of Wards. A part of their property was held jointly by them. The person and property of the respondent were released from the Court of Wards, with the exception of the land jointly held with B, and the question was whether this exception was sufficient to continue his status as a Ward.

*Held*, that the Court of Wards may retain superintendence over joint property when any of the proprietors ceases to be under any legal incapacity and in such cases, the proprietor who has ceased to be disqualified, shall not be deemed to be a ward for the purpose of the Court of Wards Act, *vide* section 46 of the Punjab Court of Wards Act.

*Held further*, that although a ward is capable of entering into a fresh contract after release from the Court of Wards, he cannot ratify any debt incurred during his minority.

1934

*Item 14.*

*First appeal from the decree of Mian Ghulam Ali Khan, Senior Subordinate Judge, Multan, dated 17th March, 1932, dismissing the plaintiff's suit.*

1932

PRABH DIYAL  
v.  
MUHAMMAD  
NAWAZ SHAH.

BADRI DAS, for Appellant.

SHUJA-UD-DIN and MUHAMMAD AMIN MALIK, for Respondent.

The judgment of the Court was delivered by—

BECKETT J.—Prabh Diyal sues Mohammad Nawaz Shah on the strength of an acknowledgment executed by the latter on the 10th of June, 1927. According to this acknowledgment, Mohammad Nawaz Shah had taken a loan of Rs.3,710 in cash, and had made himself responsible for the payment of Rs.200 due on a decree outstanding against his maternal uncle and agent, Ghulam Ali. Adding interest at the rate of six pies per rupee per mensem the plaintiff seeks to recover a sum of Rs.6,290-10-0.

There is a two-fold defence. In the first place, it is contended that the defendant was still a ward within the meaning of section 3 (d) of the Punjab Court of Wards Act, 1903, when the acknowledgment was written and that he was accordingly not competent to enter into any contract involving pecuniary liability. In the second place, it is alleged that no money was paid and that the entry was merely made to cover an earlier liability incurred when he was admittedly under the Court of Wards. It is not disputed that such an acknowledgment would be invalid. The trial Court has accepted the defence on both these points, and has dismissed the suit with costs. The plaintiff has appealed.

The defendant's estate had already been placed under the Court of Wards in the lifetime of his father. His father died when he was still a minor and he was

1934

BRABH DIYAL  
v.  
MUHAMMAD  
NAWAZ SHAH.

then placed under the Court of Wards on account of his minority. Part of the land was held jointly with a cousin named Bakar Shah, who was also under the Court of Wards. On the 15th of January, 1925, the person and property of Muhammad Nawaz Shah were released from the superintendence of the Court of Wards with the exception of the land which he owned jointly with Bakar Shah. The question is whether this exception was sufficient to continue his status as a ward. According to section 3 (d) of the Court of Wards Act, a ward means any person in respect of the whole or any part of whose property the Court of Wards has assumed superintendence, but does not include a joint proprietor the superintendence of whose property has been assumed under section 8. Section 8 provides that the Court of Wards may assume superintendence of the property of a joint proprietor when the other joint proprietor is placed under superintendence. In the present instance, the Court of Wards had not assumed superintendence over the joint property of Muhammad Nawaz Shah under this section, although it would appear from the connected correspondence that it was intended that the effect should be the same. From this the lower Court has concluded that Muhammad Nawaz Shah continued to be a ward after his person and separate property had been released. In arriving at this decision, however, the learned Subordinate Judge appears to have overlooked the provision of section 46, which seems to be intended to meet such a situation. This provides that the Court of Wards may retain superintendence over joint property when any of the proprietors cease to be under any legal incapacity and that in such cases the proprietor who has ceased to be disqualified shall not be deemed to be a ward for the purposes of the Act. The effect of the notification of 1925 was to

1934

PRADH DIAL  
v.  
MUHAMMAD  
NAWAZ SHAH.

remove the legal incapacity of Muhammad Nawaz Shah except in respect of any property which he owned jointly with Bakar Shah, who continued to be under superintendence; and section 46 makes it clear that this fact alone would not be sufficient to make Muhammad Nawaz Shah a ward.

The defendant was thus capable of entering into a fresh contract in 1925, but it is admitted that he was not in a position to ratify any debt incurred during his minority. On this question we have the evidence of Muhammad Nawaz Shah himself and we agree with the lower Court that it represents what actually occurred. According to the defendant, he borrowed a small sum of money and took some grain at a time when he was still under the influence of his mother and considered that the allowance made to him by the manager of his estate was inadequate. On attaining majority he executed the acknowledgment in question under fear of involving his mother, who had signed the earlier entry along with him.

It is admitted that the plaintiff was in partnership with Ram Chand at the time when the earlier debt is said to have been incurred and the matter could easily have been cleared up if the account books of that period had been produced. Ram Chand has appeared as a witness and has given an entirely unconvincing story to explain why the books have not been produced. The defendant has thus been deprived of the only documentary evidence which could be forthcoming in order to test his story. Moreover, there are suspicious circumstances with regard to the later transaction. The sum mentioned in the later entry is a very large sum to have been taken in cash to a place where neither of the parties belong. The defendant was a young man just emerging from

1934  
 PRABHU DIVAL  
 v.  
 MUHAMMAD  
 NAWAZ SHAH.

minority and his statement is one which we believe to be correct. In these circumstances the only sum which the plaintiff is entitled to recover is the sum of Rs.200 for which he made himself responsible in respect of the decree against his uncle. We set aside the decree of the lower Court and grant the plaintiff a decree for the recovery of Rs.200 from the defendant, with interest at 6 per cent. per annum from the 10th June, 1927, up to the date of realisation. To this extent only the appeal is accepted. The defendant will receive half his costs from the plaintiff in both the Courts.

P. S.

*Appeal accepted in part.*

#### APPELLATE CIVIL.

*Before Addison and Beckett JJ.*

BHAGWANA (DECEASED) AND OTHERS (DEFENDANTS)

Appellants

*versus*

SHADI (DECEASED) AND OTHERS (PLAINTIFFS)

Respondents.

Civil Appeal No. 2429 of 1928.

*Indian Limitation Act, IX of 1908, section 18 : Fraud—Sale—disguised in form of mortgage—burden of proof—Pre-emption—Land sold to persons, some of whom had equal rights with plaintiff, and others no rights of pre-emption—Nature of contract—Pre-emptor—whether entitled to pre-empt.*

*Held*, that where a suit is on the face of it barred, it is for the plaintiff to prove in the first instance the circumstances which would prevent the statute from having its ordinary effect. A plaintiff, who, in such circumstances, desires to invoke the aid of section 18, Indian Limitation Act, must establish that there has been fraud, and that, by means of such fraud, he has been kept from knowledge of his right to sue, or of the title whereon it is founded. Once this is

1934  
 June 15.