

Being a minor, the plaintiff came within sections 11 and 12 of Act XIV. of 1859, and was under a disability until he attained the age of 18. As pointed out by Mr. Justice E. Jackson, if the law were otherwise, this anomaly would follow, that a minor may have attained his majority on one day and become a minor on the next. A man cannot be said not to be under a disability as a minor when he is liable as a minor to have his property and person put under the charge of a guardian. If he is a proprietor of an estate paying revenue to Government and has been taken under the protection of the Court of Wards, he is still a minor up to the age of 18. (Regulation XXVI. of 1793, section 2.) It cannot be said that he is not a minor when on account of his minority his estates have been taken under the charge of the Court of Wards, under the provisions of Regulation X. of 1793, when by section 22 of that Regulation he is to have a guardian of his person; and by section 7 and 15, a manager of all his estates, real and personal; and by section 32, he cannot sue in the Civil Courts for any cause of action.

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MADHUSU-
DAN MANJI
v.
DEBIGOBIN-
DA NEWGL.

Before Sir Barnes Peacock, Kt., Chief Justice, Mr. Justice, Bayley, Mr. Justice I. S. Jackson, Mr. Justice Macpherson, and Mr. Justice Mitter.

RAGHUNANDAN THAKUR v. RAM CHARAN KAPALI.*

Gomasta's Sannud—Act X. of 1862, Schedule A, Art. 43.

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Aug. 8.

A sannud which authorises a Gomasta to collect rents, and to sue for them, requires to be stamped.

Such a Sannud requires a 4-rupee Stamp under Art. 43, Schedule A. of Act X of 1862.

THIS was one of three analogous suits for enhancement of rent, instituted by one Amjid Ali, tehsildar, under a sannud of appointment of Raghu Nandan Thakur, on behalf of his master.

The Deputy Collector dismissed the case, on the ground "that the party bringing the suit was not duly empowered to that effect in accordance with section 35 of Act XX. of 1865."

On appeal, the Judge held that, "a tehsil mohurir, who merely made entries in his employer's accounts, was not entitled

* Special Appeal, No. 2251 of 1867, from a decree of the Judge of Tipperah, affirming a decree of the Deputy Collector of that district.

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to institute suits under Act X. of 1859, without due authority; and that authority must be conveyed on stamped paper."

The plaintiff appealed to the High Court. The case was heard by BAYLEY and MACPHERSON, JJ., who referred the following question for the opinion of a Full Bench :

"Whether a gomasta employed in the collection of rents has authority to institute a suit under Act X. of 1859, in the name and on behalf of the landlord, his employer, without being authorized so to do by a stamped *sunnud* or power of attorney."

The learned Judges in referring the question, made the following remarks :

MACPHERSON, J.—I think that the lower Appellate Court is right; for I concur with the Judge in the opinion that a gomasta cannot institute a suit in the name of the landholder by whom he is employed, unless he is authorized so to do by a duly stamped power.

Amjid Ali the person who commenced these suits on behalf of his employer, calls himself a tehsil mohurir; but that he was substantially a naib or gomasta is clear from the terms of his *sunnud* of appointment, which has been read to us, and which gives him the fullest power to act for his employer. The Judge was, therefore, wrong, in my opinion, in so far as he considered that Amjid Ali was not in the position of a gomasta.

It is said that a gomasta's *sunnud* is a special document which needs no stamp, and that it is not to be deemed a power of attorney. I can only say of the *sunnud* under which Amjid Ali professes to act, that it is neither more nor less than a power of attorney, and being a power of attorney, it requires, before it can be used in Court, to be stamped as provided for in Act X. of 1862. In the case of *Meajan v. Sheikh Akali* (1), a Division Bench decided that a gomasta can sue on behalf of his employer without a power of attorney. From this decision I dissent; for I find no indication in Act X. of 1859 of any intention on the part of the Legislature that a

(1) *Mag.*, 324.

gomasta should have power to sue, unless authorized by his employer in the ordinary manner. Certainly section 69 of Act X. indicates no such intention; for though it makes certain provisions as to what may be done in a suit which has been instituted by a gomasta on behalf of his employer, it does not directly or indirectly touch the question of whether he can or cannot institute the suit if he has not got a power duly stamped, authorizing him so to do. As I am not prepared to follow the decision in *Meajan v. Sheikh Akali* (1), I think that the question proposed by Mr. Justice Bayley ought to be referred to a Full Bench.

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BAYLEY, J.—I think the appointment of a gomasta, such as this tehsil mohurir's *sunnud* shews him to have substantially been, simply one made by such an order as that under which a servant does service for his master, is not to any extent recognised by law. Such an appointment as this has been held not to require a power of attorney to enable the person appointed to sue, *Meajan v. Sheikh Akali* (1). I do not, therefore, consider a stamp required, as for a power of attorney. But as it is an important general question, we both concur in referring it to a Full Bench.

Baboo *Anukul Chandra Mookerjee* (with him Baboo *Ananda Chandra Ghosal*) for appellant.—Under section 69 of Act X. of 1859, the *sunnud* granted to a gomasta or naib confers on him the power to sue and be sued on behalf of his zemindar, without being specially empowered by warrant of Attorney. Act X. of 1862 does not provide that a *sunnud* should be endorsed on a stamped paper. By virtue of his office as collector of rents, a gomasta is competent to institute suits against the ryots for the realization of the same; and, therefore, no separate stamped authority is needed to vest him with that power which he enjoys under his *sunnud* *Rama Nath Roy Chowdry v. Puri Biswas* (2).

The respondent was not represented.

[1] Mar., 384.

(2) Act X. Eul. by Board of Revenue, 166

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The opinion of the Court was delivered by

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PEACOCK, C. J.—The question which is propounded in this case is not the one which really arises out of the facts of the case. I understand from the two learned Judges who referred the question for the consideration of a Full Bench, that the question which they require to be answered is this: "Whether a sunnud which authorizes a gomasta to collect rents and to sue for them requires to be stamped."

I am of opinion that such a sunnud does require to be stamped. If it is a general power of attorney which authorizes the gomasta to collect rents generally and to sue for them if necessary, it requires a 4-rupee Stamp under Article 43, Schedule A. of Act X. of 1862.

Article 8 of Schedule B. is "Mooktearnama, Vakalutnama, and other power filed or presented for the conduct of any case in any Court of Justice or before any Revenue Authority." The stamp required for such a document would not be sufficient for a general power to collect rents and to sue for them.

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SHEIKH RAHMATULLA v. SHEIKH SARIUTULLA KAGCHI.*

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Aug. 7.

*Refusal to Register—Registration Act (XX of 1866) ss. 49 and 82 to 84—
Evidence—Act I III of 1859, ss. 1 and 15.*

See also
9 B. L. R. 433.
11 B. L. R. 20.
1 B. L. R. (O.C.)
47.
4 Mad 425.
4 Mad 101.

A. brought a suit in the Moonsiff's Court against B. and C., alleging that they had sold outright to him by *saf kabala* certain landed property for Rs. 300, which was duly paid; that the *kabala* was executed; that possession was given to him; that B. and C set up before the Deputy Registrar fraudulent objections to the effect that a stipulation to return the property to the vendors on the repayment by them of the consideration-money, had not been embodied in the deed, and that part of the consideration-money was still unpaid; that, therefore, the Registrar refused to execute the deed; that in fact there was no such stipulation as set up by B. and C.; and that the whole of the purchase-money was paid; and it was stated in the conclusion of the plaint that the suit had been instituted to set aside the fraudulent objections, and to establish the full title of A. as purchaser.

Held (Mitter, J. dissenting), the suit would not lie. The unregistered deed could not be admitted in evidence, nor parol evidence of the contract be given under which A. alleged that he acquired his title.

A. ought to have proceeded under s. 83 of Act XX. of 1866.

* Special Appeal, No. 1707 of 1867, from a decree of the Principal Sudder Ameen of Hooghly, affirming decree of the Moonsiff of that district.