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HIRDY NARAIN v. SYED ALLA-OOLLAH.

Khan v. *Jowahir Singh* (1), that the defendants in this case would have been at liberty to insist that the mouza which they had purchased should be burthened with no more than a proportionate amount of the original mortgage-debt, and might claim to redeem that mouza upon payment of that quota, so that if they could have shown that the amount chargeable upon their mouza was less than Rs. 759 which the plaintiffs claimed, and brought that money into Court, they might have got their mouza redeemed. That has not been done, nor has any reason been shown to lead to the supposition that if such an account had been taken the charge upon the mouza would have been less than Rs. 759. Under these circumstances, although we do not quite concur in the judgment of the Court below, we think that in substance that decision is right, and this appeal must be dismissed. We think also that each party should pay his own costs of this appeal.

Appeal dismissed.

Before Mr. Justice Jackson and Mr. Justice Tottenham.

1878
May 10.

SOONDER NARAIN (PLAINTIFF) *v.* BENNUD RAM AND OTHERS (DEFENDANTS).*

Guardian, Sale by—Act XL of 1858.

The mother and guardian of a Hindu minor, though not a guardian appointed under Act XL of 1858, when acting *bonâ fide* and under the pressure of necessity, may sell his real estate to pay ancestral debts and to provide for the maintenance of the minor.

THIS was a suit instituted by the plaintiff, Soonder Narain, to obtain from Bennud Ram, the first defendant, possession of certain lands which had been the property of one Gouri Koyal, who died in 1272, leaving Deb Narain Koyal, the second defendant, his grandson and sole heir and legal representative.

(1) 13 Moore's I. A., 404.

* Appeal from appellate decree, No. 2493 of 1877, against the decree of Baboo Krishna Mohun Mookerjee, Second Subordinate Judge of Zilla Midnapore, dated the 27th August 1877, affirming the decree of Baboo Jebun Krishna Chattopadhya, Munsif of Newal, dated the 21st March 1876.

The plaint alleged that, after the death of Gouri Koyal, Bennud Ram, the first defendant, had wrongfully dispossessed the second defendant, who was then a minor, and his mother Anna, who were then in possession of the disputed lands; and that the second defendant, after attaining his majority, not being able himself to recover possession, had sold his rights to the plaintiff.

The defendant Bennud Ram, amongst other defences, pleaded that the said Gouri Koyal had died in debt and in distressed circumstances, and that Anna, as the mother and natural guardian of the second defendant, had, under pressure of necessity, for the purpose of defraying debts incurred by Gouri Koyal in his lifetime, and the expenses of his shradh and the maintenance of the minor, on the 30th of Assar 1272 (13th July 1865), sold the lands in dispute to his father, Mithiram, and that the lands in dispute had ever since been in the possession, first, of Mithiram, and after his death, of himself, the first defendant. The lower Appellate Court found that there had been a *bonâ fide* sale under the pressure of necessity by Anna to Mithiram, which the second defendant was not competent to dispute; and therefore, confirming the decree of the Court of first instance, dismissed the plaintiff's suit.

Baboo *Rash Behary Ghose*, for the appellant in second appeal, urged that the decision of the lower Appellate Court was erroneous, inasmuch as Anna was not alleged or proved to have obtained a certificate under Act XL of 1858 before disposing of the minor's estate to Mithiram Myti, and relied upon *Court of Wards* v. *Kupulmun Sing* (1).

Baboo *Mohini Mohun Roy* (with him Baboo *Taruchnath Sen*) submitted, that Act XL of 1858 did not apply to cases where the property was of very small value, and that Anna, as mother and guardian of the defendant, was empowered under Hindu law validly to dispose of the property of her minor son, provided she did so *bonâ fide* and under the pressure of necessity as had been found by the lower Appellate Court.

(1) 10 B. L. R., 364.

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SOONDER NARAIN v. BENNUD RAM.

The judgment of the Court was delivered by

JACKSON, J. — The specific ground on which the special appellant impugns the conveyance which has been upheld by the lower Appellate Court is, that the guardian who conveyed the property on behalf of his minor son was not a guardian appointed under Act XL of 1858; and it is contended that no guardian acting as what is called in this judgment a natural guardian can exercise higher powers than a guardian appointed under the law; that is to say, the power of a natural guardian is limited to granting leases for a period not exceeding five years, and such guardian must apply to the Court for sanction even in cases of legal necessity. I am not aware of any sanction of the law for that contention (1). There is no doubt a decision by one of the learned Judges of this Court, sitting alone in the trial of a special appeal below Rs. 50, in which that opinion has been expressed; but with every respect for the opinion of the learned Judge, it appears to me that no such position is warranted by the law. The case in which Mr. Justice Phear held that the guardian of a lunatic could not exercise powers without the authority of the Court higher than he would have exercised if he had been clothed with the authority of the Court, stands on different grounds. I have had some difficulty in perceiving how any person could, as guardian of a lunatic, exercise any power otherwise than by the authority of the Court. But it seems clear to me that, not to speak of other considerations, Act XL of 1858 made clear provisions for cases of estates of small value, and distinctly provided that, in regard to such estates, or even in other circumstances where it might appear advisable, the Court might dispense with the production of certificates even in regard to the maintenance of suits. It is only in regard to the commencement or the defence of suits that the production of certificates is required by the law, and inasmuch as this property was admittedly of small extent and value, it seems very probable that

(1) See, however, *Abbassi Begum* v. *Moharanee Rajroop Koonwar*, *ante*, p. 33.

even if the guardian had to institute a suit, the Court would have dispensed with the production of a certificate, because the expenses necessary to be incurred in obtaining a certificate and the permission of the Court, might have exhausted a quite undue proportion of the minor's property. It seems to me, therefore, that there is no ground for saying that this act of the natural guardian done for a legal necessity was done without authority. The special appeal must be dismissed with costs.

Appeal dismissed.

Before Mr. Justice L. S. Jackson and Mr. Justice Tottenham.

TARU PATUR (DEFENDANT) *v.* ABINASH CHUNDER DUTT (PLAINTIFF).*

1878
May 17.

Jamabandi—Public Document—Reg. VII of 1822*—Act I of* 1872 *(Evidence Act), s.* 74.

A jamabandi prepared by a Deputy Collector while engaged in the settlement of land under Reg. VII of 1822, is a "public document" within the meaning of s. 74 of the Evidence Act.

It is not necessary to show that, at the time when such document was prepared, a ryot affected by its provisions was a consenting party to the terms therein specified.

THIS was a suit for declaration of right to receive the full rent of certain lands and to recover arrears of rent from 1280 B. S. (1873-74) to 1283 B. S. (1876-77). The lands in dispute had previously formed part of a Government khas mehal, and while so held, the whole estate was, between the years 1843 and 1845, measured and settled by a Government officer under the provisions of Reg. VII of 1822. A jamabandi embodying the terms of this settlement was, at the time, duly prepared, and

Appeals from Appellate Decree, Nos. 69 to 78, and 245, 246, and 256 of 1878, against the decree of T. Smith, Esq., Officiating Judge of Zilla Midnapore, dated the 28th September 1877, reversing the decree of Baboo Debendro Lal Shome, First Sudder Munsif of that district, dated the 5th January 1877.