

## APPELLATE CIVIL.

*Before Mr. Justice O'Kinealy and Mr. Justice Ameer Ali.*

1891  
May 15.

BHOOPENDRO NARAIN DUTT AND OTHERS (JUDGMENT-DEBTORS)  
v. BARODA PROSAD ROY CHOWDHRY  
(DECREE-HOLDER).\*

*Court of Wards Act (Bengal Act IX of 1879), ss. 20, 51-55—"Suit."  
Application for execution by Collector on behalf of ward, when  
Manager of Ward's Estate has been appointed.*

The word "suit" as used in sections 51 to 55 of Bengal Act IX of 1879 is not limited to what is usually called a "regular suit," but covers miscellaneous proceedings in a suit, such as an application for execution of a decree in which the ward for the first time seeks to have the carriage of litigation instituted by his predecessor in title.

When it appeared that a manager of a minor's property had been appointed by the Court of Wards under the provisions of section 20 of Bengal Act IX of 1879, and during the absence of such manager on leave an application was made on behalf of the minor by the Collector of the district for execution of a decree.

*Held* that the office of manager did not become vacant because the manager obtained leave, and that if it were not vacant, section 51 of the Act did not enable the Collector to appear on behalf of the minor.

THIS was an appeal from an order passed by the Subordinate Judge of the 24-Pergunnahs, allowing the execution of a decree dated the 20th and 21st December 1883. The suit in which the decree was passed was originally instituted by one Haro Prosad Roy Chowdhry. Pending the suit Haro Prosad Roy Chowdhry died, and thereafter his mother Radhika Chowdhrani claimed to succeed to his estate under a will, and having obtained probate thereof, got her name substituted on the record of the suit as plaintiff, and obtained a decree against the defendants, who were the appellants in the present application. Subsequent to the decree the will was set aside as a forgery, and the estate thereafter passed to Baroda Prosad Roy Chowdhry, the son of Haro Prosad, who was a minor, and whose estate was taken charge

\* Appeal from order No. 42 of 1891 against the order of Baboo Radha Krishna Sen, Subordinate Judge of the 24-Pergunnahs, dated the 18th of August 1890.

of by the Court of Wards. Thereafter a manager of the estate of the minor was appointed by the Court of Wards, and an application was made by the minor through such manager in the Court of the First Subordinate Judge of the 24-Pergunnahs, to which Court the decree had been sent for execution, to have the minor's name substituted as plaintiff, and for execution of the decree. That application was allowed, and an order was passed on the 14th August 1889, directing the sale of the judgment-debtors' property. Against that order the judgment-debtors appealed to the High Court, which set it aside on the ground that the application should have been made to the Court which passed the decree, and not to the Court to which it had been sent for execution.

The application, out of which the present appeal arose, was made on the 18th June 1890 to the Court of the Second Subordinate Judge of Alipore by the minor represented by the Collector of the 24-Pergunnahs, and the petitioner asked to have the minor's name substituted on the record, and to have the decree executed. Notice of the application was given to the judgment-debtors, who appeared and opposed it on several grounds, the main grounds being that the right to execute the decree was barred by limitation, and that the application itself was informal, inasmuch as it was made by the Collector and not by the manager appointed by the Court of Wards, who was alone competent to represent the minor in such matters under the provisions of Bengal Act IX of 1879 (Court of Wards Act). These objections were overruled by the Lower Court, and an order was passed on the 18th August 1890, allowing the substitution asked for and directing execution to issue. Against that order the judgment-debtors preferred this appeal upon various grounds, and amongst them the two grounds alluded to above which had been urged in the Court below.

Mr. *Evans*, Baboo *Taruck Nath Palit*, and Baboo *Sharoda Churn Mitter* for the appellants.

The *Advocate-General* (Sir *Charles Paul*) and Baboo *Ram Churn Mitter* for the respondent.

The appeal came on to be heard on the 30th April and the 1st May. The nature of the arguments advanced at the hearing

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sufficiently appears for the purpose of this report from the judgment of the Court (O'KINEALY and AMEER ALI, JJ)., which was delivered on the 15th May, and was as follows:—

This appeal arises out of an application for the execution of a decree passed by the Subordinate Judge of the 24-Pergunnahs on the 18th August 1890.

Haro Prosad Roy Chowdhry obtained a decree against the appellant and others. He died, and his mother, claiming under a will, took out probate and got her name registered under section 232 of the Civil Procedure Code as the representative of Haro Prosad. Subsequently, the will was set aside, and the estate then passed to Baroda Prosad Roy Chowdhry, the son of Haro Prosad, and who is now a minor under the Court of Wards. The minor, through the manager under the Court of Wards, applied to have his name entered in the execution proceedings, and to have the proceedings revived in the Court of the First Subordinate Judge of Alipur. That application was allowed, but on appeal to this Court it was rejected on the ground that the application should have been made to the Court which passed the decree, and not to the Court to which the decree had been sent for execution. After that, an application was made to the Court of the Second Subordinate Judge of Alipur by the Collector of the 24-Pergunnahs on behalf of the minor on the 18th June 1890, to have his name registered and execution to issue. Notice was served on the judgment-debtor, and the judgment-debtor, who is the appellant before us, appeared and raised several objections. The chief among them were that the application was barred by lapse of time; and, not having been made by the manager of the ward's estate, but by the Collector of the district, who had no power to make any application on behalf of the minor as long as the manager existed, it should be dismissed. These answers were not considered sufficient by the Subordinate Judge, and he allowed execution to issue.

The judgment-debtor, dissatisfied with this order, has appealed to this Court, and has raised the same defence before us as was raised by him in the Court below.

We think that so far as the question of limitation is concerned, the appellant ought not to succeed. Admittedly, if the

deeree-holder is entitled to the benefit of section 14 of the Limitation Act, and allowance is made for the time during which he prosecuted the former application, the present application is not barred. We agree with the Subordinate Judge in considering that he is entitled to the deduction claimed. The application was dismissed in this Court on the ground that it was made to a Court which had no jurisdiction to receive it. We do not acquiesce in the argument of the learned Counsel for the appellant that the litigation in that case could not have been carried on in good faith. Looking at the judgment of the First Court, and the circumstances surrounding that litigation, we think it could, and we concur with the Subordinate Judge in allowing the respondent the benefit of that deduction.

But in regard to the question whether the Collector was justified in making the application, we regret that we differ from the Subordinate Judge. Under Bengal Act IX of 1879 the Board of Revenue is the Court of Wards. By section 20 it can appoint one or two managers of the property of a ward, who is quite a different officer from the guardian of the person of a ward. Sections 39 and 40 enumerate the duties and powers of managers; and so far as general management is concerned, when no manager has been appointed the Collector of the district in which the greater part of the property is situated can manage the property. By section 51, in every suit brought by or against any ward, he must be described as a ward of Court; and the manager of such ward's property, or, if there is no manager, the Collector of the district in which the greater part of such property is situated, or any other Collector whom the Court of Wards may appoint in that behalf, shall be named as next friend or guardian for the suit, and shall in such suit represent such ward. This is the general mode of describing the persons who can appear for a ward.

Under section 52 power is given to the Court of Wards by an order to nominate or substitute any other person to be next friend or guardian for any such suit; and if the order be one for substitution, the Civil Court, on the presentation to it of a copy of such order, is bound to carry out the order of the Court of Wards.

Section 55 declares that "no suit shall be brought on behalf of any ward, unless the same be authorised by some order of the Court."

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Looking at all these sections, it seems to us that the Legislature has declared that only a manager, or a Collector, or some special person appointed by the Court of Wards, can file original suits on behalf of a ward, and represent the ward throughout the whole of the litigation.

It has been argued before us by the Counsel for the respondent that the word "suit" in that Part, *i.e.*, Part VII of Bengal Act IX of 1879, must mean what is usually called a "regular suit," and cannot refer to proceedings of the nature now before us, in which the ward seeks to have his name substituted for that of his mother, and the decree obtained by his father executed. We regret that we are unable to accept this argument. The word "suit" in this Act has not the narrow significance attached to the word "action" in English Law; and as Sir Barnes Peacock pointed out in a Full Bench decision of this Court (1) it embraces all contentious proceedings of an ordinary civil kind, whether they arise in a suit or miscellaneous proceedings. That, too, was the opinion of a Division Bench of this Court in the case of *Shurut Soondurce Debia v. The Collector of Mymensingh* (2), where it was decided that the Court of Wards has full control over miscellaneous proceedings in execution of decree. Nor can we find anything in the nature of the Act itself which militates against this conclusion. It is an Act passed placing the property of wards and wards' litigation exclusively in the power of the Court of Wards (and there are reasons which make it desirable for the Court of Wards, and the Court of Wards alone, to have the initiation of litigation under its control), and applies as much to miscellaneous proceedings initiated on behalf of a ward as to regular suits. We think therefore that the word "suit" in this Act covers an application of the nature now before us in which the ward for the first time seeks to have the carriage of the litigation.

The next point argued is that the application has not been made by the manager, and that as this informality was objected to at the beginning of the suit, the application should have been dismissed. The manager under the Court of Wards is appointed

(1) *Hurro Chunder Roy Chowdhry v. Sooradhonee Debia*, B. L. R., Sup. Vol. 988 (990).

(2) 7 W. R., 221.

by the Court of Wards under powers given to it by statute. The Court, no doubt, has complete control over such matters, but its duty is set forth in the Act, and its position seems to be that of a public officer appointed under statute. In this case a manager was appointed; but it is said that previous to the application being presented he had taken leave, and that the Collector of the 24-Pergunnahs was the proper person to make the application. We think that the office of manager did not become vacant because the manager obtained leave; and if it is not vacant, section 51 of the Wards' Act does not enable the Collector to appear on behalf of a minor. The Court of the Subordinate Judge of the 24-Pergunnahs had jurisdiction over the subject-matter of the litigation, and although the application may not have been properly initiated, still it might well be that if a proper application had been made after the death of the manager, who, we are told, died before the Subordinate Judge gave judgment in this case, much of the existing difficulty in the case would not have been experienced. When the manager died, what happened when he died, we are unable to say. Indeed, in this and in many other points we have been unable to obtain any information from the papers. Moreover, it may well be, for aught we know, that the Collector was appointed by virtue of the Rules issued by the Board of Revenue to Commissioners of Sub-divisions under section 52 of the Act as a special person to carry on this litigation. But in truth, no evidence was taken in the Court below, and there is nothing before us on which we would be justified in coming to any determination.

We, therefore, direct that the records be returned to the Subordinate Judge of the 24-Pergunnahs in order that he may hear evidence and determine: *first*, when the manager took leave; *secondly*, on his taking leave, what, if any, arrangements were made for the management of the property and for the carrying on of litigation; *thirdly*, if any such arrangement was made, was it made under the order of the Court of Wards, and if not, by whom; *fourthly*, when did the manager die; and *fifthly*, after his death what arrangements were made for the management of the property and the carrying on of the litigation of the ward, and by whom.

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The Judge will submit to this Court his finding on the issues above indicated, together with the evidence recorded on those issues, within a month from the date of the receipt by him of the record, and will, at the same time, return the record.

The case will remain on the file of this Court.

*Case remanded.*

H. T. H.

*Before Mr. Justice Trevelyan and Mr. Justice Banerjee.*

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 May 19.

DIN DOYAL SINGH (ONE OF THE DEFENDANTS) v. GOPAL SARUN  
 NARAIN SINGH, MINOR, THROUGH HIS NEXT FRIEND, MR. A.  
 OGILVY, MANAGER UNDER THE COURT OF WARDS  
 (PLAINTIFF).\*

*Limitation Act, 1877, art. 116—Registered Instalment Bond, Suit on—  
 Contract in writing registered.*

Article 116 of the Limitation Act is applicable to a suit on a registered instalment bond, notwithstanding the express provisions of Article 74. That article (116) is intended to apply to all contracts in writing registered, whether there is or is not an express provision in the Limitation Act for similar contracts not registered.

THIS was a suit to recover Rs. 3,965 for principal and interest due on a registered instalment bond, dated 15th Bysack 1283, Fasli (23rd April 1876), by which it was stipulated that, on failure to pay any instalment, the whole amount was to become due. Default was made in payment of the instalment due on 1st Magh 1289 (5th January 1882), and the cause of action was stated in the plaint to have arisen on that date. The suit was instituted on the 18th May 1888 (22nd Bysack 1295).

The only defence material to this report was that the suit was barred by limitation, and an issue raised as to this was decided by both the lower courts in favour of the plaintiff. The defendant appealed to the High Court, and the only question material was whether the period of three years under section 74 of the Limitation Act, or the period of six years under article 116, applied to the suit.

\* Appeal from Appellate Decree No. 654 of 1890 against the decree of J. Crawford, Esq., Judge of Gya, dated the 5th of February 1890, modifying the decree of Baboo Abinash Chunder Mitter, Subordinate Judge of Gya, dated the 2nd of April 1889.