

1880 to the sons was made in order to indicate that the ijara was not  
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 to come to an end on the death of Hara Sunderi. Even if  
 these words were not used the lease, under its terms, would have  
 descended to the heirs of Hara Sunderi; but it was probably  
 thought necessary to make that point clear; and in order to  
 make it clear the last condition, that the ijara should continue  
 to the benefit of the son or sons of Hara Sunderi, was inserted.”  
 Their Lordships are of opinion that the ijara was to Hara  
 Sunderi and her heirs, and that is the proper construction to be  
 put upon the lease. In this case the widow had no daughters,  
 and it is stated that the only issue was the son who was named.  
 Their Lordships think that the High Court have put the proper  
 construction upon the document, and they will therefore humbly  
 advise Her Majesty that the decision of the High Court be  
 affirmed. The appellant must pay the costs of the appeal.

*Appeal dismissed.*

Solicitor for the appellant : Mr. G. Thatcher.

Solicitors for the respondent : Messrs. T. L. Wilson & Co.

C. B.

P. C.\*  
 1880  
 November  
 22.  
 BISESWAR ROY AND ANOTHER (PLAINTIFFS) AND SHOSHIL SIKAR  
 ESWAR ROY AND ANOTHER (DEFENDANTS).  
 [On appeal from the High Court at Calcutta.]

*Court of Wards Act (Bengal Act X of 1879), s. 55—Suit rejected when  
 filed on behalf of a minor under the Court of Wards without sanction  
 of that authority to proceed with it.*

Where, under section 55 of the Bengal Court of Wards Act, IX of 1879,  
 the manager of an estate authorised the plaintiff, in order to save limitation,  
 to institute a suit on behalf of the Court of Wards, which refused afterwards  
 to sanction the proceeding with the suit, held that the Judge rightly  
 ordered that the suit be rejected, as incapable, under the above section,  
 of being prosecuted.

APPEAL from a decree (26th January 1880) of the High Court,  
 affirming orders (14th August 1880 and 27th February 1884) of  
 the Subordinate Judge of Rajshahye.

\* Present : LORD HONHOUSE, LORD ASHBURNE, LORD MACNAGHTEN, SIR  
 B. PEACOCK, and SIR R. COUCH.

The question raised on this appeal was whether a plaint filed on behalf of two minors under the Court of Wards, Kumar Biseswar Roy and Kumar Kasiswar Roy, by one Biseswar Moitra had been rightly rejected by the Subordinate Judge, having been by him struck off the file of pending suits as incapable of being prosecuted for want of the sanction of the Court of Wards.

Raja Biseswar Roy left a widow, Rani Jai Sunderi Debi, the grandmother of the appellants and of the second respondent, between whom it was contested which had the right of succession to her estate. She died in 1867, leaving a son, Moheswar Roy, father of these appellants. He died in 1873, and under an order of 24th June 1874, made by the District Judge of Rajshahye under the 12th section of Act XL of 1858 (the Bengal Minors' Act), the Collector took charge of these appellants' estates.

By section 2, Bengal Act IX of 1879, "all persons and properties which at the commencement of this Act are under the charge of the Collector by virtue of an order of the Civil Court under section 12 of Act XL of 1858 shall from such commencement be deemed to be under the charge of the Court of Wards." From 1879, therefore, the minors came under the control of the Court of Wards; and upon this taking place, the Collector appointed to be manager of their estate one Hurrogobind Bose, who had also been manager under the Court of Wards of the estate of their cousin Kumar Shoshi Sikar Eswar Roy, now the first respondent. His action in regard to the estate of Rani Jai Sunderi was one of the matters of complaint in this suit, of which the enforced termination was now in question. To obtain for the minors, now appellants, two-thirds of their deceased grandmother's property, Biseswar Moitra, describing himself as their "authorised guardian and well-wisher," brought this suit on the 19th November 1879. He had written authority, dated 19th November 1879, from Hurrogobind, who purported to act under the direction of the Commissioner and to be authorised by the Collector in charge, to sue at his (Biseswar's) own risk, in order to prevent the application of limitation to the minors' claim.

Afterwards, on the 8th May 1880, the Collector authorised Biseswar Moitra to act as next friend; but whether the Collector was empowered so to do was one of the present questions.

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On the 14th August 1880 the Subordinate Judge, after several times postponing the suit to enable Biswar Moitra to obtain the permission of the Board of Revenue to prosecute the suit, ordered that the plaint should be rejected and the suit struck off the file.

On the 27th February 1884, Kumar Biswar petitioned the Judge to restore the suit to the file, he having attained majority, and having received possession from the Court of Wards. A similar petition was preferred by Kumar Kasiswar, the other appellant, who had reached eighteen years of age.

On the 30th June, the Subordinate Judge dismissed both petitions, being of opinion that the plaint had been properly rejected, and that he had no jurisdiction to restore it to the file.

An appeal from this order, and also from the order of 14th August 1880, having been admitted, a Division Bench (MACDONELL and BEVERLEY, JJ.) dismissed it and affirmed the order rejecting the plaint. They said—

“ We find from the proceedings of the Board of Revenue dated the 25th February 1880 that the question of this suit, and of the proper person to conduct it on behalf of the minors, was under the consideration of the Court of Wards, and from that resolution it is clear that the Court of Wards intended to reserve to itself the power of appointing a next friend of the minors for the purposes of this suit, if it should determine that the suit should be proceeded with; and on the 28th May 1880, only twenty days subsequent to the date of the Collector's letter, we find a letter from the Court of Wards to the effect that they do not authorise the prosecution of the suit. We are driven, therefore, to the conclusion that the Collector's letter of the 8th May 1880 was written without authority, and that it did not really convey the sanction of the Court of Wards for the institution or prosecution of this suit.

“ Then it is said that under the proviso to section 25, Act IX of 1879, the institution of this plaint was authorised by the manager, Hurrogobind Bose; and we are referred to a letter written by Hurrogobind Bose to Biswar Moitra, dated 17th November 1879, upon which this plaint was filed, authorising him at his own risk and responsibility to institute this suit in order to prevent the application of limitation.

“ It is contended before us that this authority is sufficient, and that it was not necessary that the plaint should have been filed in accordance with sections 51 and 52 of the Act, but that the manager had the power of authorising any third person to institute the suit on behalf of the minors. We are unable to adopt this view. We think that the plain meaning of section 55 is this: That suits are not to be instituted on behalf of wards

of Court without the authority of some order of the Court of Wards, provided that in special cases, in order to save suits from being barred by limitation while the order of the Court is being applied for, the manager of the estate may of his own motion cause a plaint to be filed; but the section goes on distinctly to say that no further proceedings in the suit so filed shall be taken without the sanction of the Court. We see nothing in this section to over-ride the plain provisions of sections 51 and 52, which prescribe the manner in which suits are to be instituted on behalf of minors. In such suits either the manager, or the Collector, or some other person appointed by an order of the Court of Wards, must be named as next friend. In the present case neither the Collector nor the manager, nor any person authorised by the Court of Wards, was named as next friend, and we therefore find that the suit was brought in an improper form, and for this reason alone we think that it was properly rejected.

“For these reasons, then, we think that the present appeal must fail. The appeal is dismissed with costs.”

Mr. *R. V. Doyne*, for the appellants, argued that, reference being made to the 15th section of the Act IX of 1879, the letter of 17th November 1879 conferred on Biseswar Moitra an authority to sue on behalf of the present appellants sufficient to satisfy the 55th section of the Act. Also in regard to the letter of 8th May 1880 it was to be presumed that the Collector was acting under the orders of the Court of Wards, and in accordance with the resolution of 25th February 1880. The Collector after that could not, by his letter of 28th May 1880, interfere with the hearing of the suit, which had been duly instituted. At most, the withdrawal of authority should only have the effect of staying the suit until these appellants should be released from the control of the Court of Wards.

Mr. *J. D. Mayne*, for the respondents, was not called upon by their Lordships, whose judgment was delivered by

LORD HOBHOUSE.—The matter in dispute in this case lies within a very narrow compass. The 55th section of the Bengal Court of Wards Act, Act IX of 1879, provides that “no suit shall be brought on behalf of any ward unless the same be authorised by some order of the Court”—(that is, the Court of Wards): “provided that a manager may authorise a plaint to be filed in order to prevent a suit from being barred by the Law of Limitation; but such suit shall not be afterwards proceeded with, except under the sanction of the Court.” The appellants in the year 1879 were wards of Court, and

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Hurrogobind Bose had been appointed manager of their estate. On the 17th November 1879 Hurrogobind Bose wrote a letter to the plaintiff in this suit, Biseswar Moitra, authorising him to institute a suit on behalf of the wards at his own risk and responsibility, in order to prevent the application of limitation. The letter refers to applications to the Collector and to the Commissioner, and to opinions expressed by them, but it does not mention any order of the Court of Wards, nor does it purport to come from the Court of Wards at all. It is an authority of the manager under the second clause of section 55 of the Act to Biseswar Moitra to institute a suit for the purpose of saving the time of limitation. On the same day the plaintiff instituted the suit. It seems to have been doubted in the High Court whether he had authority to institute the suit. Their Lordships consider that the manager had the right to give Biseswar Moitra the authority, and that the suit was properly instituted. Then came the question whether the suit should be prosecuted. Biseswar Moitra took immediate steps to get an authority from the Court of Wards to prosecute the suit, and he applied to the Civil Court several times to give him time to produce his authority to prosecute the suit. On the 8th May 1880 a letter was written, which, if it came from the Court of Wards, would show that they were then of opinion that the suit should go on, for it purports to be an authority from the Officiating Collector of Rajshahyo, authorising Biseswar Moitra to act as next friend of the infants. But it does not purport to come from the Court of Wards, and it is quite clear that nobody treated it as being an authority from the Court of Wards, because on the 10th May an application was made to the Civil Court to postpone the case, without any mention of the letter of the 8th May as being an authority to prosecute the suit. However that may be, on the 28th May a letter was written which does purport to convey the opinion of the Court of Wards. It was written by the Assistant Collector to the Government Pleader, and the writer requested the Government Pleader "to take steps at once to inform the Court and intimate to the Mookhtar of the junior branch, Biseswar Moitra, that the Court of Wards does not "authorise the suit." That letter was communicated to the Court. On the same day an application was made to the Court, and the letter was produced which refused sanction to the

prosecution of the case. Upon that the plaintiff applied for time to get the sanction of the Court of Wards, and time was given him and on two subsequent occasions further time was given that he might get the sanction of the Court of Wards. Ultimately the time was enlarged until the 14th of August, and on the 14th of August, there being nothing said in contradiction of the letter of the 28th of May, the Subordinate Judge ordered that the case should be struck off the file. It appears to their Lordships not only that he had jurisdiction to strike the case off the file, but that he was quite right in doing so. He had before him a suit which, however lawfully instituted, was by law incapable of being prosecuted without a sanction, which the plaintiff was unable to obtain.

Their Lordships therefore are of opinion that this appeal should be dismissed with costs; and they will humbly advise Her Majesty in accordance with that opinion.

*Appeal dismissed.*

Solicitors for appellant: Messrs. *Watkins & Lattey.*

Solicitors for respondent: Messrs. *T. L. Wilson & Co.*

C. B.

GAUR MOHUN CHAKERBATI (APPELLANT) AND TARASUNDERI DEBI (RESPONDENT).

P.C.\*  
1889

November  
23.

[On petition referring to an appeal from the High Court at Calcutta.]

*Privy Council, Practice of—Procedure—Circumstances and terms of substitution of an appellant.*

An appellant, after the transmission of his appeal to England, obtained leave in the High Court to withdraw it. The appeal involved the rights of a minor, party to the suit, whose mother and guardian obtained an order for her to be substituted for the withdrawing appellant, on the terms that she should give security to the satisfaction of the High Court for costs already ordered, and should undertake to abide by any order as to general costs.

THIS was a petition preferred by Bamasunderi Debi, widow of the late Dwarkanath Chakerbati, who died in January 1886,

\* *Present*: LORD ASHBOURNE, LORD HOBHOUSE, SIR B. PEACOCK, and SIR R. COUCH.

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