

The view that we adopt in this case finds support from the several cases referred to us in the course of the argument, namely, the cases of *Burjorji Cursetji Panthaki v. Muncherji Kuxerji* (1), *Ohedambaram Chetty v. Karunalyavalangapully Taver* (2), *Dinonath Mookerjee v. Debnath Mullick* (3), and *Lachmissur Singh v. Dakho* (4). In the last mentioned case it was held that a *dowl* containing only a portion of the terms upon which a new lease or settlement was to be granted was not a lease or an agreement for a lease within the meaning of the Registration Act.

Certain other points have been discussed before us by the learned vakil for the appellants; but we do not think it necessary to express any opinion upon them.

The result is, that the decree of the Court below, so far as it holds that the plaintiff is entitled to recover rent at the rate of Rs. 1,501 a year, as mentioned in the original *putni* lease of the year 1286, should be set aside. The decree will be at the reduced rate.

Under the circumstances of the case, we direct that each party do bear his own costs.

H. W.

Appeal allowed.

Before Mr. Justice Trevelyan and Mr. Justice Beverley.

DAKESHUR PERSHAD NARAIN SINGH (DEFENDANT) *v.* REWAT MEHLON AND OTHERS (PLAINTIFFS).^o

1896
July 2.

Guardian—Guardian ad litem—Guardians and Wards Act (VIII of 1890), section 53—Civil Procedure Code, section 443, as amended by section 53 of Act VIII of 1890.

Section 53 of Act VIII of 1890, amending the Code of Civil Procedure, expressly requires the appointment of a guardian *ad litem*, whether or not a guardian is appointed under Act VIII of 1890.

In a suit against a minor, the summons was attempted to be served on his guardian appointed under Act VIII of 1890, but no guardian *ad litem* was

^o Appeal from Original Decree No. 51 of 1895, against the decree of Babu Upendra Chandra Mullick, Subordinate Judge of Patna, dated the 20th of November 1894.

(1) I. L. R., 5 Bom., 143.

(2) 3 Mad. H. C., 342.

(3) 14 W. R., 429.

(4) I. L. R., 7 Cal., 708.

1896

DAKESHUR
PERSHAD
NARAIN
SINGH
v.
REWAT
MEHTON.

appointed in the suit. The suit was decreed *ex parte*, no one having appeared for the minor. *Held*, that the decree must be set aside and the case sent back in order that the minor might be represented in accordance with law and the case retried.

THE plaintiffs in this suit alleged in their plaint that during their minority a suit was brought against them by the father and uncle of the defendant Dakeshur Pershad, in which they were not legally represented; that the suit was compromised by their co-sharers in collusion with the plaintiffs in that suit, and a decree passed on the basis of such compromise; that the defendant had taken out execution of the decree and the plaintiffs' joint ancestral property was about to be sold in execution. The prayer was for a declaration that the plaintiffs' rights were not affected by the decree.

The defendant (No. 1), Dakeshur Pershad, was a minor under the guardianship of his mother Deomurat Koer, who was appointed guardian under the Guardians and Wards Act (VIII of 1890). The defendants 2 and 3 were the plaintiffs' co-sharers, who were charged with having brought about the collusive compromise mentioned above.

Summonses and notices were issued to the defendants and an order was recorded in the order sheet as follows:—

7-11-94. "House service of summons was effected on the defendant No. 1, on the 4th October last, and on the defendants 2 and 3 on the 12th October last."

"The defendants on legal service of summonses have not appeared; case is decreed *ex parte*. There is no need of framing issues. Plaintiffs sh adduce evidence to-morrow."

In his judgment the Subordinate Judge said:—

"The service of summons on the defendants is proved, but they have entered appearance, the case therefore proceeds *ex parte* against them.

"The testimony of witnesses examined on behalf of the plaintiffs cou with documentary evidence proves plaintiffs' case and claim. It has shown that Dodraj and Nirpal (defendants 2 and 3) had no power to alienate the joint family property, and that the compromise filed in the previous suit was purely personal.

"Plaintiffs' suit is accordingly decreed *ex parte* with costs and interest at 6 per cent. per annum."

The defendant No. 1 through his guardian Deomurat Koer preferred an appeal to the High Court.

M. Mahomed Yusuf, Babu Umakali Mukerjee, Babu Tarit
Mq̄hun Das and M. Mahomed Habibullah for the appellant.

Mr. C. Gregory, for the respondents.

The judgment of the High Court (TREVELYAN and BEVERLEY,
JJ.) was as follows :—

It is difficult to conceive of a case where the formalities of the
law have been more neglected than in the present instance.

The suit was brought against a minor. No guardian *ad litem*
was appointed of that minor, yet the case was allowed to proceed
to decree. No attempt was made to serve the minor with a
summons, but some attempt apparently was made to effect service
of notice upon the lady who had been appointed guardian by the
Court under Act VIII of 1890. Section 53 of that Act, amend-
ing the Civil Procedure Code, expressly requires the appointment
of a guardian *ad litem*, whether or not a guardian is appointed
under Act VIII of 1890, although that section gives precedence
to the appointment of a guardian appointed under the provisions of
that Act.

It is perfectly obvious that the decree appealed against is bad
and must be set aside, and the case must go back to the lower
Court in order that the minor may be represented in accordance
with law, and then the case must be retried. Until the minor is
represented in accordance with law no proceedings had can be
binding upon him.

s. c. c.

Appeal allowed.

Before Mr. Justice Ghose and Mr. Justice Gordon.

MAHANUND CHUCKERBUTTY AND ANOTHER (DEFENDANTS NOS. 2 & 3)
v. BANIMADHUB CHATTERJEE AND OTHERS (PLAINTIFFS)
AND OTHERS (DEFENDANTS). *

1896
July 24.

*Bengal Cess Act (Bengal Act IX of 1880), section 47—Decree for Arrears
of Cess—Sale in execution of decree, Effect of.*

Although the procedure for the realization of cesses may be the same
as the procedure laid down for the realization of rent due upon the tenure,
yet it does not necessarily follow that the effect of a sale for cesses should

* Appeal from Original Decree No. 270 of 1894 against the decree of
Babu Debendra Lal Shome, Subordinate Judge of Manbhoom, dated the
27th of July 1894.

1896
DAKESHUR
PERSHAD
NARAIN
SINGH
v.
REWAT
MEHTON.