

*Before Mr. Justice Prinsep and Mr. Justice Hill.*

1902  
May 7.

MUKUND KOERI

*v.*

DEPUTY COMMISSIONER OF CHOTA NAGPUR.\*

*Court of Wards—Revenue—Proprietor—Jurisdiction—Civil Court—Lunatic—Charge of the person and property of a person adjudged to be a lunatic—Court of Wards Act (Bengal Act IX of 1879) ss. 6, 7 and 10—Act XXXV of 1858, ss. 9, 10, 11.*

The jurisdiction of the Civil Court under s. 10 of the Court of Wards Act (Bengal Act IX of 1879) to apply to the Court of Wards to take charge of the person and property of a person who has been adjudged a lunatic under Act XXXV of 1858 and whose property consists of land or an interest in land is not dependent upon the nature of the property and not restricted to property paying Government revenue.

S. 6 does not profess to define the term "disqualified proprietor;" it defines the circumstances under which a certain class of persons, namely, the proprietors of land subject to Government revenue, shall be held to be disqualified from managing their own property.

The section does not imply that the proprietors of other classes of property may not be similarly disqualified. Ss. 6, 7 and 10 of the Court of Wards Act (Bengal Act IX of 1879) and ss. 9, 10, and 11 of Act XXXV of 1858 discussed and explained.

THE opposing parties, Thakurani Mukund Koeri and Thakurani Lolit Koeri, appealed to the High Court.

On the 27th of January 1900 the Deputy Commissioner of Ranchi, who is also the Collector of the district, applied on behalf of the Court of Wards under s. 3 of Act XXXV of 1858 to the Judicial Commissioner of Chota Nagpur for an enquiry for the purpose of ascertaining whether Thakur Debendro Nath Sahi Deo, proprietor of the Jherria estate, was of unsound mind and incapable of managing his affairs, and on his being adjudged a lunatic to authorize the Court of Wards to take charge of the estate and appoint a guardian of the person of the lunatic. The said Thakur Debendro Nath had been a minor, and his estate was being managed by the Court of Wards under the provisions of the Bengal Act IX of 1879, but he had attained majority at the date of

\* Appeal from Order No. 405 of 1900, against the order of F. B. Taylor, Esq., Judicial Commissioner of Chota Nagpur, dated the 27th of August 1900.

the petition. The estate was a *jagir* under the Maharaja of Chota Nagpur, and rent was payable to him. It was situated within the jurisdiction of the Collector of Ranchi. After an enquiry, on the 22nd of March, the Thakur was adjudged a lunatic and incapable of managing his estate. Thakurani Mukund Koeri and Thakurani Lolit Koeri, grandmother and mother of the Thakur, objected to the Court of Wards managing the estate, and prayed that the management might be entrusted to them, and that they might be authorized to appoint a guardian of the person of the Thakur. The Judicial Commissioner considering it would be for the interest of the estate authorized the Court of Wards to take charge of the management of the estate and of the person of the Thakur. The grandmother and the mother appealed to the High Court, contending that the properties of the lunatic not being properties paying revenue to Government, the Judicial Commissioner had no jurisdiction to appoint the Court of Wards the guardian of the person and the property of the Thakur.

*Mr. Pugh* and *Babu Jogesh Chunder Dey* for the appellant.

*Babu Ram Churn Mitter* (the Government Pleader) for the respondent.

**HILL J.** I am not disposed to interfere with the order against which this appeal has been preferred. The really important question is as to the authority of the Court of Wards to assume charge of the person and property of the lunatic, and upon that question I think the appellant is not entitled to succeed. The form of the order, although it may be open in some particulars to exception, is not, I think, under the circumstances of the present case, a matter of any moment.

Upon the main question the contention for the appellant was that the authority of the Court of Wards to take upon itself the management of the property of a lunatic being dependent on the nature of the property and being restricted to property which is subject to the payment of Government revenue, it was not competent to the Civil Court in the present case to place the lunatic's property in charge of the Court of Wards, inasmuch as it consists wholly of a *jagir* which is held under the

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Maharaja of Chota Nagpur and is not subject to the payment of revenue; and then as to the guardianship of the person of the lunatic, it was said that the authority of the Civil Court was limited in a similar way, or, in other words, that it could place a lunatic under the guardianship of the Court of Wards only when he was possessed of revenue-paying property.

In my opinion neither of these contentions is sustainable. The question turns wholly upon the meaning of s. 10 of the Court of Wards Act (Bengal Act IX of 1879), and it appears to me that that section, if read according to its plain grammatical sense, covers the present case and authorizes the order appealed against; for we have here to deal with a person who has been adjudged a lunatic under the provisions of Act XXXV of 1858, and whose property consists of land or an interest in land, so that the conditions prescribed by the section as necessary in order to give the Civil Court jurisdiction to apply to the Court of Wards to take charge of the person and property of the proposed ward are fulfilled. It was, however, argued that so to read the section would render it inconsistent with the provisions of s. 9 of Act XXXV of 1858, which is the special enactment by which the person and property of persons adjudged to be of unsound mind are governed; that the term "disqualified proprietor" has had a specific technical signification attached to it by s. 6 of the Court of Wards Act, and can refer only to a person who is the proprietor of revenue-paying property, and that it must be read accordingly in that sense in s. 10 of that Act, and that the word "land" in s. 10 must be similarly qualified, and be understood in the sense of revenue-paying land, or, in other words, that when s. 10 speaks of a person adjudged to be of unsound mind as a disqualified proprietor, the necessary implication is that he is the owner of revenue-paying property. But a slight examination of the section referred to is sufficient, I think, to dispose of this argument. Turning first to s. 9 of Act XXXV of 1858, it consists of two parts. The first relates to cases in which the estate of the lunatic is such that by the law in force (by which is meant, I think, the law for the time being in force) in any presidency it subjects him to the superintendence of the Court of Wards. What is here no doubt contemplated is the

possession by the lunatic of revenue-paying property, and in cases of that class the Court of Wards is authorized to take charge of the estate. The second part of the section provides for "all other cases," and requires the Civil Court, except as otherwise thereafter provided, to appoint a manager of the lunatic's estate. The Civil Court is, however, by s. 11 given the option when the estate (that is, the property) of the lunatic consists in whole or in part of land or any interest in land "not subject to the jurisdiction of the Court of Wards" of directing the Collector to take charge of the estate. If the Civil Court itself appoints a manager of the estate under s. 9, it is required by s. 10 to appoint also a guardian of the lunatic's person, but where under s. 11 it places the estate in charge of the Collector, the duty devolves upon the Collector of appointing both the manager of the estate and the guardian of the lunatic's person. Such is the scheme of the Act so far as is at present material, and the principal point to be observed is that the Civil Court had authority when the property was land not subject to the jurisdiction of the Court of Wards, by which I understand land not subject to the payment of Government revenue, either itself to appoint a manager and a guardian or to direct the Collector to take charge of the property, in which case it would devolve upon him to appoint the manager and guardian. The Civil Courts have, however, been deprived of the latter power in Lower Bengal by the repeal by s. 2 of the Court of Wards Act of s. 11 of the Act of 1858. But its place has been filled for those Provinces by s. 10 of the Court of Wards Act, the aim of which, is, so far as lunatics are concerned, to substitute for the Collector and his appointees, the Court of Wards. That is the only material distinction so far as I can perceive between s. 10 of the Court of Wards Act and s. 11 of the Act of 1858, for I regard the provision as to the discretion of the Court of Wards and the substitution of an application for a direction in s. 10 as of no materiality so far as the present point is concerned. Unless therefore s. 11 of Act XXXV of 1858 is inconsistent with the provisions of s. 9 of that Act, it is difficult to see how there can be an inconsistency between the latter section and s. 10 of the Court of Wards Act: such an inconsistency could only arise indeed, as it appears to me,

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if the meaning which Mr. Pugh would have us attach to the terms "disqualified proprietor" and "land" in s. 10 of the Court of Wards Act were to be adopted, for there would then be the meaningless provision that the Civil Court might apply to the Court of Wards to take charge of property over which by the earlier part of s. 9 of the Act of 1858 it is already authorized to exercise its superintendence without the intervention of a Civil Court. But there is in my opinion really no foundation for Mr. Pugh's contention with respect to the meaning to be attached to either of the terms referred to; s. 6 of the Court of Wards Act does not profess to define the term "disqualified proprietor." What it does is to define the circumstances under which a certain class of persons, namely, the proprietors of estates, by which is meant, to put it generally, the proprietors of land which is subject to the payment of Government revenue, shall be held to be disqualified to manage their own property, or, as they may very well then be termed for the sake of convenience, "disqualified proprietors." But the section by no means implies that the proprietors of other classes of property may not be disqualified to manage their property, or, in other words, be "disqualified proprietors." The argument is that because members of a certain class are declared disqualified, therefore every one else who is declared disqualified must belong to that class which is not logically sustainable. If Mr. Pugh's contention be sound, the result would follow that there is now no provision in those Provinces analogous to that contained in s. 11 of the Act of 1858 for the class of persons there dealt with, which would involve a large and inexplicable change of policy on the part of the Legislature, and it involves also an anomaly of a kind similar to that already referred to above in another connection that, namely, of providing in a particular section of an enactment for a case already provided for in a different way in the sections which immediately precede it. For if the person referred to in s. 10 as a disqualified proprietor be of the same class as the disqualified proprietor of s. 6, then the Court of Wards is given jurisdiction over his person and property by s. 7, but s. 10 authorizes the Court of Wards to assume charge only on the application of the Civil Court, and s. 10,

moreover, confers no power of compulsion on the Civil Court, but leaves it discretionary with the Court of Wards, when applied to, whether it will take charge of the person and property of the disqualified proprietor or refuse to do so.

There is another consideration which may be briefly adverted to. S. 10 places a minor, for whom a guardian of the person or property might be appointed under s. 7 of the Guardian and Wards Act of 1890, and whose property consists of land, in the same category as the disqualified proprietor, who has been adjudged to be of unsound mind under the Act of 1858. The term "minor" connotes nothing with respect to the nature of the property of which the minor is possessed, and a guardian of a minor may be appointed under s. 7 of the Guardian and Wards Act whatever the nature of the minor's property may be. The case of a minor who is the proprietor of an "estate" is, moreover, provided for by s. 7 of the Court of Wards Act, so that in the case of a minor it cannot, I think, be contended with any show of reason that where "land" is spoken of in s. 10, the meaning is confined to revenue-paying land. But the same word "land" is used in the section as descriptive of the property both of the disqualified proprietor and of the minor, and it must obviously be used with respect to each in the same sense. Indeed, I may say that the very usage of the word "land," having regard to the usual phraseology of Indian enactments, is sufficient in my opinion to afford a strong indication that the Legislature had not revenue-paying property in its contemplation when enacting s. 10.

I may add that in s. 11 of Act XXXV of 1858, for which, as I have said, s. 10 of the Court of Wards Act has been substituted, the language used is—"If the estate (that is, the property) consist in whole or in part of land or any interest in land not subject to the jurisdiction of the Court of Wards, the Civil Court, instead of appointing a manager, may, etc." Here the usage of the words "not subject to the jurisdiction of the Court of Wards" places the meaning beyond doubt, and it might be said that the omission of these words from s. 10 of the Court of Wards Act indicated a change of intention on the part of the Legislature. The omission is, however, owing doubtless to the alteration effected by the Act in the jurisdiction of the Court

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of Wards. By s. 5 it is given authority to "deal with every person and every property of which it may take or retain charge under this Act, or which may be placed under its charge by order of a competent Court in accordance with the provisions of this Act." The omission could not therefore have the suggested significance, for if one of the purposes effected by the Act was to render lands of the kind dealt with by s. 11 of the Act of 1858 subject to the jurisdiction of the Court of Wards, such lands could no longer be described with propriety as not subject to that jurisdiction.

For the foregoing reasons I think the order of the Judicial Commissioner ought to be maintained. His order may not, it is true, have been framed precisely in the manner intended by s. 10. But that is, I think, as I have already said, immaterial, more particularly as the application upon which it was made proceeded from the representative in the district of the Court of Wards. The appeal ought in my opinion to be dismissed with costs.

**PRINSEP J.** I am of the same opinion.

S. C. B.

*Appeal dismissed.*

*Before Mr. Justice Rampini and Mr. Justice Pratt.*

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Nov. 18.

TARA PADO GHOSE

v.

KAMINI DASSI.\*

*Second Appeal—Civil Procedure Code (Act XIV of 1882) ss. 244 and 588—Decree, execution of—Order absolute for foreclosure—Transfer of Property Act (IV of 1882) s. 87—Question arising as to the order absolute for foreclosure—Notice.*

When an order absolute for foreclosure of mortgaged property has been made, any question that arises afterwards as to that order absolute is not a question

\* Appeal from Order No. 145 of 1900, against the order of Babu Karuna Das Bose, Subordinate Judge of 24-Pergunnahs, dated the 22nd of March 1900, reversing the order of Babu Bhuban Mohun Ghose, Munsif of Alipore, dated the 19th of December 1899.