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FUTEEK PAROOEE v. MOHENDER NATH MOZOOMDAR.

We think that we ought to follow the Full Bench decision, and to hold that a special appeal will not lie against any order as to costs, which it was within the discretion of the lower Courts to make. It, therefore, remains to consider whether, when a decree had been given for nominal damages, the Court had a discretion to award costs to the defendant. We are of opinion that it had. The Court below thought that though the words complained of had been spoken, the plaintiff was not entitled to any damages, and that to bring this suit after criminal proceedings had been taken in the same matter was vexatious. In substance, therefore, the defendant succeeded in the Court below. Perhaps it would have been better under these circumstances to have dismissed the suit altogether, the Court in such a case not being bound to award nominal damages. But we are not aware of any law which prevents the Court, if it thinks that the suit is a vexatious one, and that no damage has really been sustained, from giving nominal damages to the plaintiff, and awarding costs to the defendant. The words of s. 187 leave the discretion of the Courts as to costs wholly unlimited, and it would be impossible to say that such an award of costs was illegal.

We, therefore, reverse the order of Mr. Justice Birch, and dismiss the special appeal.

Appeal allowed.

ORIGINAL CIVIL.

Before Mr. Justice Pontifex.

1876
July 7.

SUTTYA GHOSAL *v.* SUTTYANUND GHOSAL AND OTHERS.

Majority Act (IX of 1875), s. 3—Minor—Guardian ad litem.

The appointment of a guardian *ad litem* is sufficient to make the minor party subject to s. 3, Act IX of 1875 and to constitute his period of majority at 21, at any rate so far as relates to the property in suit, notwithstanding that such minor would but for such appointment have attained majority at 18.

BY the decree in this suit, which was brought in 1871 for partition of the estate of Raja Kallysunkur Ghosal, deceased,

it was, amongst other things, declared that Bosoomutty Dabee, one of the defendants in the suit, was entitled to a certain share in the estate; and that a monthly sum of Rs. 425 should be paid to her husband for her maintenance and support; and Raja Suttyanund Ghosal and Cowar Suttyakrishna Ghosal were appointed receivers in the suit. At the institution of the suit Bosoomutty Dabee was an infant, and her husband was appointed by the Court her guardian *ad litem*. The present application was made by her husband and guardian on her behalf for an order that the receiver should pay to him as her guardian the sum of Rs. 4,000 out of her share of the estate to meet extra expenses which had been incurred for Bosoomutty Dabee and her youngest son. Bosoomutty Dabee was, at the time of the application, of the age of 18 years and 2 months.

Mr. *Bonnerjee* appeared in support of the application.

Mr. *Macrae* for the receivers.

Mr. *R. Allen* for Tarrasoondery Dabee, another defendant in the suit.

The application was consented to by all the parties to the suit, but the receivers were unwilling to pay the sum required to the husband, but were desirous that it, as well as the monthly sum allowed for her maintenance, should be paid to Bosoomutty Dabee herself, she having attained her majority.

Mr. *Bonnerjee* submitted that, under the Majority Act, IX of 1875, s. 3, Bosoomutty Dabee was still a minor, and remained so until she attained the age of 21 years.

Mr. *Macrae* contended that the words of s. 3 did not apply to a person for whom merely a guardian *ad litem* had been appointed, but only to guardians appointed under Act XL of 1858 and Act XXVII of 1860. The appointment of guardians under those Acts is very different from the appointment of a guardian *ad litem* in a suit such as the present. It could not have been the intention that a minor should be liable to the

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disqualification attaching to minority being prolonged by a temporary appointment like that of guardian *ad litem*, yet that might be the result of such an appointment in respect of a minor who would otherwise have attained majority at 18, but who notwithstanding the suit was finally determined would still remain a minor until 21.

PONTIFEX, J.—Act IX of 1875 was passed for the purpose of attaining greater certainty respecting the age of majority, but itself causes the uncertainty out of which this application arises. S. 3 of the Act is as follows:—"Every minor of whose person or property a guardian has been or shall be appointed by any Court of Justice, and every minor under the jurisdiction of any Court of Wards, shall, notwithstanding anything contained in the Indian Succession Act, or in any other enactment, be deemed to have attained his majority when he shall have completed his age of 21 years, and not before."

The suit in which this application is made was instituted before 1872, and when the present applicant was a minor under the age of 18 years. She was made a defendant to the suit, which was for partition. She was at the time a married woman, and her husband, who would have been her natural guardian, was appointed by this Court her guardian *ad litem*. By the decree in the suit it was, amongst other things, ordered, that Rs. 425 out of her share of the income of the estate, which was the subject of the suit, should be paid monthly to her husband as her guardian. The lady having now attained the age of 18, applies for the payment to her in future of the said Rs. 425 and for a sum of Rs. 4,000 out of the accumulations of her share of the minor. The question arises whether she is still a minor. In my opinion she is, for the decree in the suit made her a ward of Court, and I think the appointment by the Court of her husband as guardian *ad litem* was sufficient to bring her within s. 3 of the Majority Act, 1875, at all events so far as relates to the property in suit. I shall, however, order the sum of Rs. 4,000 now applied for and the future maintenance to be paid to her personally, as her guardian consents to such payments being made. The receiver will get his costs, and

the infant's costs will be paid out of her share of the estate. Mr. Allen's client's costs will be paid out of her share.

Attorney for the applicant: Baboo *Joykissen Gangooly.*

Attorney for Tarrasoondery Dabee: Messrs. *Swinhoe, Law, & Co.*

Attorney for the Receivers: Mr. *Carruthers.*

PRIVY COUNCIL

SONET KOOER (PLAINTIFF) *v.* HIMMUT BAHADOOR AND OTHERS (DEFENDANTS).

P. C.*
1876
Feby. 11.

[On appeal from the High Court of Judicature at Fort William in Bengal.]

Istemrari Mokurrari Tenure—Death of Grantee without Heirs—Escheat—Recognition of Tenancy.

Lands belonging to a zemindari granted by the zemindar under an absolute hereditary mokurrari tenure, do not, on the death of the grantee without heirs, revert to the zemindar; nor does the zemindar, under such circumstances, take by escheat a tenure subordinate to and carved out of his zemindari.

Where there is a failure of heirs, the Crown, by the general prerogative, will take the property by escheat, subject to any trusts or charges affecting it; and there is nothing in the nature of a mokurrari tenure which should prevent the Crown from so taking it subject to the payment of the rent reserved under it.

The recognition by the owner of lands of the interest of parties in possession by the receipt of rent from them, constitutes a tenancy requiring to be determined by notice or otherwise before such parties can be treated as trespassers.

THIS was an appeal from a judgment and decree of a Division Bench of the Calcutta High Court (L. S. Jackson and Ainslie, JJ.), dated the 23rd May 1871, reversing a decree of the Subordinate Judge of Zilla Gya, dated the 30th March 1870.

* *Present:*—SIR J. W. COLVILE, SIR B. PEACOCK, SIR M. E. SMITH AND SIR R. P. COLLIER.