

(1927) 04 AHC CK 0028
In the Allahabad High Court

Bakhtawar Singh and Others

APPELLANT

Vs

Balwant Singh

RESPONDENT

Date of Decision : 27-04-1927

Acts Referred:

Court of Wards Act — Section 17

Citation : AIR 1927 All 599

Final Decision : Dismissed

Judgement

1. This is a plaintiffs' appeal and arises out of a suit for recovery of Rs. 2,749-6-0 from Chaudhri Balwant Singh on account of part of sale consideration paid by the plaintiffs and damages.

2. There is no controversy about the facts. On the 4th of September 1918, the plaintiffs purchased certain property from the defendant for a sum of Rs. 2,600. Prior to the sale the defendant had entered into a contract with Ranjit and Bhudat to sell the same property to them. After the purchase by the plaintiffs, Ranjit and Bhudat brought a suit for specific performance of the contract of sale entered into by the defendant. That suit was contested by the present plaintiffs, but was decreed with the result that in execution of the decree obtained by them, Ranjit and Bhudat got possession of the property sold to the plaintiffs, on the 4th December 1920. In the sale-deed executed by the defendant in the plaintiffs' favour there was a stipulation to the effect that if for any reason the property sold passes out of the plaintiffs' possession, the plaintiffs will be entitled to realize the sale consideration paid by them with interest at Re. 1 per cent, per mensem.

3. The plaintiffs, admittedly, out of the sum of Rs. 2,600, have already received a sum of Rs. 1,900. The plaintiffs claimed the balance of Rs. 700 and Rs. 930-2-0 on account of costs alleged to have been incurred by them in defending the suits filed by Ranjit and Bhudat, and a further sum of Rs. 1,119-2-0. on account of damages,

4. After the institution of the suit the Court of Wards assumed superintendence

of the property of Chaudhri Balwant Singh, and a notice u/s 17 of the Court of Wards Act (Act 4 of 1912) was issued calling upon all persons having claim against Chaudhri Balwant Singh to prefer their claim before the Collector with full particulars supported by documents, on which their claim was based, on or before the 15th of June 1924.

5. After the property of the defendant had been taken charge of by the Court of Wards the Collector was made a party to the suit, and service of notice of the suit was effected on him on the 11th of January 1924. On the 27th of March 1924, the Collector, by means of a letter, requested the civil Court to allow six months time with a view to enable the Collector to defend the suit. This letter was followed by an application to the same effect by the Collector, dated the 7th of April 1924. The Court granted time to the Collector up to the 3rd of July 1924, and a written statement was filed by the Collector on that date, viz., the 3rd of July 1924. By the time that the written statement was filed, the period fixed by the notice issued u/s 17 of the Court of Wards Act had expired, and it is common ground that the plaintiffs had not, as required by that section, preferred their claim with particulars thereof to the Collector.

6. One of the pleas urged in defence was that the failure of the plaintiffs to prefer their claim as required by Section 17 entailed the dismissal of their suit, inasmuch as by the provisions of S: 18 of the Court of Wards Act the claim of the plaintiffs must be deemed to have been discharged. This contention has found favour with both the Courts below with the result that the plaintiffs' suit has been dismissed by those Courts. We are unable to agree with the decision of the Courts below. It is true that ordinarily if a claimant against a ward of the Court does not submit his claim to the Collector in pursuance of the provisions of Section 17 of the Court of Wards Act, his claim is to be deemed discharged because of the provisions of Section 18 of the same Act. But it is provided by the proviso to Section 20 of the Act, that a claimant, who has failed to notify his claim u/s 17 of the Act, can maintain a suit in respect of his claim provided he shows good and sufficient cause for his failure to notify his claim to the Collector, Under" the circumstances of the present case we have come to the conclusion that the benefit of the proviso to Section 20 of the Act must be extended to the plaintiffs. The plaintiffs before the Court of Wards had assumed superintendence of the property of Chaudhri Balwant Singh, defendant, had put their claim into suit. After the property of the defendant was taken charge of by the Court of Wards the Collector was informed of the fact of the institution of the suit. He must have known the basis of the plaintiffs' claim. Being cognizant of this fact he asked the trial Court to adjourn the case with a view to enable him to defend the suit. The time prayed for by him was granted, These being the facts there is no escape from the conclusion that the Collector knew the particulars of the claim of the present plaintiffs and that the plaintiffs, having already sued in a Court of law, may have bona fide believed that it was not at all necessary for them to notify their claim to the Collector.

7. The facts noted above appear to us to furnish good and sufficient cause for the failure of the plaintiffs to notify their claim to the Collector. It is to be noted that provisions of law which impose a penalty on a person who fails to comply with those provisions must be strictly construed. To dismiss the plaintiffs suit on the technical ground on which their suit has been dismissed by the Courts below would be to exact an extreme penalty for a piece of neglect due to mere ignorance, and as pointed out in the case of Collector of Ghazipur v. Balbhaddar Singh [1912] 10 A.L.J. 234, an extreme penalty of the nature referred to above should not be exacted from the plaintiffs in the present case.

8. For the reasons given above we hold that the plaintiffs were entitled to a decree for a sum of Rs. 700 with interest at Re. 1 par cent, per mensem from the 4th of December 1920, the date on which the plaintiffs were dispossessed from the property purchased by them up to the date of the institution of the suit. Thereafter the plaintiffs will be entitled to get interest at the rate of 6 per cent, par annum up to the date of realization.

9. The plaintiffs' claim as regards costs incurred by them in the trial Court and as regards damages claimed by them was untenable and has not been pressed in appeal before us. The result is that we allow this appeal and, modifying the decrees of the Courts below, decree the plaintiffs' suit for a sum of Rs. 700 with interest at Rs. 1 per cent, per mensem from the 4th of December 1920, up to the date of the institution of the suit. The plaintiffs will be entitled to interest at 6 per cent, per annum on the decretal amount from the date of suit up to the date of realization of the amount for which a decree has been passed in their favour. The parties will be entitled to pay and receive costs in proportion to their success and failure in all the Courts.