

(1937) 11 BOM CK 0009
In the Bombay High Court

Braja Sundar Deb

APPELLANT

Vs

Rajendra Narayan Bhanj Deo

RESPONDENT

Date of Decision : 26-11-1937

Acts Referred:

Court of Wards Act, 1879 — Section 51
Criminal Procedure Code, 1898 (CrPC) — Section 145

Citation : (1938) 40 BOMLR 700

Hon'ble Judges : Wright, J;George Rankin, J;George Lowndes, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

George Rankin, J.—The appellant and respondent are each possessed of an estate in the district of Cuttack in Orissa. These estates are situated on opposite banks of the river Kharsua-the appellant's estate of Aul being on the southern or right bank, and the respondent's estate of Kanika on the northern or left bank. The dispute between the parties is as to the ownership of an island chur which by 1913 had formed in the bed of the river at a spot between the appellant's mauza of Ekmania and the respondent's mauza of Patarpur. The chur is about seventy acres in extent.

2. The appellant on November 19, 1928, sued the respondent in the Court of the Subordinate Judge of Cuttack, claiming title not only to the chur but also to forty-eight acres of the river. The trial Judge by his decree dated" July 9, 1930, found for the appellant as to 1951 acres of the chur and 24 acres of the river. The respondent's appeal to the High Court at Patna was limited to the 1951 acres of the chur. On January 5, 1934, the High Court allowed the respondent's appeal and dismissed the entire claim of the appellant in respect of the chur. There were certain cross-objections by the appellant which were dismissed.

3. The chur by 1915 or 1916 became fit for cultivation to some extent, and in 1917 the appellant and respondent were both claiming to be in possession of it. Proceedings u/s 145 of the Criminal Procedure Code resulted on March 6, 1917,

in an order by the Sub-Divisional Magistrate declaring the appellant to be in possession. The respondent on February 28, 1920, filed a suit [No. 67 of 1920] in the Court of the Subordinate Judge at Cuttack, claiming sole right to the chur and possession thereof. The appellant was the sole defendant to this suit as originally brought. The appellant on March 18, 1921, made an application u/s 6(e) of the Court of Wards Act, 1879 [Beng. Act IX of 1879] asking that he be declared to be disqualified to manage his own property and that the Court of Wards should take charge thereof. Possession was taken by the Court of Wards thereunder on June 16, 1921, but in the meantime the respondent on May 23, 1921, applied as plaintiff in suit No. 67 of 1920 to have the Court of Wards' manager, Babu Padma Charan Das, appointed guardian ad litem of the appellant. This application was dealt with by the Subordinate Judge on June 2, 1921. It was objected on behalf of the appellant that the Court of Wards had not yet taken possession of the appellant's estate. In view of this the Subordinate Judge directed that the manager be added as an additional defendant to the suit. The cause title was amended by inserting as a second defendant " Babu Padma Charan Das, Court of Wards" Manager " without any other amendment being made in the plaint.

4. On June 21, 1921-a few days after the Court of Wards had taken possession of his estate-the appellant brought in the same Court a suit [No. 134 of 1921] against Babu Padma Charan Das, Mr. H.D. Van Grienken (the Sub-Divisional Magistrate) and Mr. H.K. Briscoe (the Collector). In this suit-to which the respondent was not a party-the appellant sought (among other reliefs) a declaration that his letter of March 18, 1921, asking that he be declared a disqualified proprietor had been obtained from him by undue influence and that he was under no obligation to make over his estate to the Court of Wards. On July 10, 1922, the appellant filed a petition withdrawing this suit. The Court of Wards was in fact in possession of the appellant's estate from June 16, 1921, until June 16, 1926, when it was released to the appellant.

5. The appellant's explanation of his varying attitude towards the Court of Wards is that his original application in March, 1921, to be treated as a disqualified proprietor was due not to financial embarrassment but to the fact that there were pending against him a number of criminal prosecutions, and that these were withdrawn in April, 1921, as a result of his having made the application. It is in evidence that when in June, 1921, the Court of Wards took charge of the appellant's property, a quantity of arms were found thereon, and a criminal charge under the Indian Arms Act was brought against the appellant in respect thereof. The appellant now seeks to explain his withdrawal on July 10, 1922, of his suit against the manager and the district officers, by saying that he did so to obtain withdrawal of this prosecution which in fact was shortly afterwards withdrawn. These explanations, even if they be accepted, do not now enable the appellant to dispute that for five years from June 16, 1921, the Court of Wards was in fact and in law in charge of his estate, he being their ward and a disqualified proprietor.

6. On December 22, 1922, a petition was presented to the Court in the respondent's suit No. 67 of 1920. Its heading and contents were as follows :-

Raja Rajendra Narayan Bhunj Deo ...Plaintiff,

versus

Raja Brajasunder Deb, a Ward of Court by his next friend and guardian Padma Charan Das, Manager, under the Court of Wards ...Defendants.

The humble petition of the above-named plaintiff and defendant respectfully sheweth :-

That after the institution of this suit the original defendant's estate has been taken over by the Court of Wards in its charge, and the Manager under the Court of Wards has been substituted as guardian for the suit.

That all the civil suits pending between the plaintiff and the defendant having been agreed to be settled out of Court and the land in dispute in this suit which is a bit of Chur and within the river Kharsua being situated nearer to the boundary of Kanika, and the intervening water channel being fordable from the Kanika side and not from Aul, the parties agree that plaintiff should get a decree in this suit for the land claimed without cost. The plaintiff gives up his claim to mesne profits and damages and the parties pray that the suit may be disposed of accordingly.

7. It appears that there were pending between the appellant and respondent a number of suits and applications and that a general settlement of them all had been come to. The petition in suit No. 67 was only one out of a number of such petitions presented in different suits. It was signed by Mr. Das Gupta, the Government Pleader, whose duty it was to advise the Court of Wards, and by the pleader for the present respondent. It was signed on the following day by Mr. P.C. Das, the Manager. The Subordinate Judge decreed the suit in terms of the compromise and a formal decree bearing date December 22, 1922, was drawn up. In that decree the names of the appellant and of "Babu Padma Charan Das, Court of Wards' Manager" were given as defendants (1) and (2), and the decree follows the terms of the petition verbatim, including the statement that "the manager under the Court of Wards has been substituted as guardian for the suit." In execution of this decree possession was on March 30, 1923, obtained by the respondent, who was still in possession on November 19, 1923, when the present suit was brought by the appellant.

8. In reviving his claim to the chur lands in suit the appellant had necessarily to get the compromise decree of December 22, 1922, set aside as not binding upon him. By his plaint he sought to obtain this relief by charging the manager, Mr. P.C. Das, and the respondent, with fraud in the matter of the compromise. He alleged that the manager held land under the respondent and was under obligation to the respondent in other ways ; that the respondent took advantage of his influence over the manager ; that fraudulent reports in favour of the

compromise were submitted to the Board of Revenue whose sanction was obtained by misrepresentation of facts. At the trial the Subordinate Judge accepted this case, holding that the compromise decree was "tainted with fraud and misrepresentation." This conclusion the High Court on appeal thought to be "without any basis and altogether unjustifiable." Their Lordships have no difficulty in upholding the decision of the High Court upon this issue. There was no evidence of any fraudulent reports or of any misrepresentation by the manager : the compromise was negotiated at the Collector's suggestion, provisional terms being obtained from the respondent and elaborately examined by the Collector and the Commissioner with the advice and assistance of the Government Pleader. The terms were only accepted after certain alterations had been agreed to, though the alterations did not refer to the particular chur now in question. The manager's father had held land under the respondent, but there was no other basis for the suggestion that the manager was under obligation to the respondent or under his influence. Upon the merits of the compromise the burden lay heavy on the appellant to show the precise effect of the complete bargain and its unfairness when taken as a whole. The trial Judge did not properly appreciate this ; as the appellant's claim to this chur was given up, he thought the respondent had to show that there was due compensation in respect of the other cases. Their Lordships hold with the High Court that the compromise was made in good faith and was in the interest of the Aul estate.

9. In these circumstances, learned Counsel for the appellant has sought before their Lordships to maintain this appeal upon a point which was not taken at the trial but was raised for the first time in argument before the High Court. This is a technical point and depends entirely upon the form of the order made on June 2, 1921, in suit No. 67 of 1920. It is said that because the Court of Wards' manager, Mr. P.C. Das, was made an additional defendant and not made guardian ad litem of the appellant, the appellant can contend that the compromise decree in that suit is not binding upon him unless it be shown that he consented to it. It appears that letters written to him about the proposed compromise on behalf of the Court of Wards were returned as the appellant refused to receive them, but he can hardly expect credence for a suggestion that he did not soon come to know of the compromise as to the island in the Kharsua and all other matters between him and the respondent. If he were an independent party entitled as defendant No. 1 to act on his own behalf he could not stand by from 1921 till November, 1928, and then repudiate the compromise; nor could he repudiate it as regards the chur now in suit without repudiating it as a whole. In fact and in law, however, his position in December, 1922, was that he was a disqualified proprietor ; without the Court of Wards upon the record the suit as against him was defective ; strictly and formally his consent was not necessary and his dissent mattered nothing. The validity of the compromise depends entirely upon whether the Court of Wards consented on his behalf. If they did, the absence of a formal order making their manager guardian ad litem as distinct from an additional defendant does not invalidate the decree. If it be taken that the

recitals in the decree itself did not make the manager guardian for the appellant- still they recognised his authority as such. Whether a suit be brought before or after the Court of Wards has assumed charge of the property of a disqualified proprietor, the Court of Wards' manager or the Collector should be made guardian and must represent the ward in the suit. It is impossible to suppose that the ultimate constitution of the suit is to be different according to the date of institution. If an amendment is required owing to the Court of Wards' taking charge pending suit, the amendment must produce the result set forth in Section 51 of the Act. Whether to such a case the machinery of Rule 10 of Order XXII, Civil Procedure Code, applies is arguable, but the suit as against the proprietor becomes defective upon his becoming a ward of the Court of Wards, and the suit should be reconstituted to satisfy Section 51. A proper formal order to that effect should always be made; but if the proper parties are on the record and are dealt with on the correct footing, the mere want of formality will not make void the bargain of the parties and the decree of the Court.

10. Their Lordships will humbly advise His Majesty that this appeal should be dismissed with costs.