

(1927) 11 AHC CK 0010
In the Allahabad High Court

Collector of Cawnpore and Others

APPELLANT

Vs

Jugal Kishore

RESPONDENT

Date of Decision : 23-11-1927

Acts Referred:

Uttar Pradesh Court of Wards Act, 1912 — Section 37(a)

Citation : AIR 1928 All 355

Hon'ble Judges : Sulaiman, J; Ashworth, J

Bench : Full Bench

Judgement

Ashworth, J.—This first appeal arises out of a suit brought by Babu Jugal Kishore, plaintiff, against Thakur Raghuraj Singh, defendant, on the basis of a hundi for Rs. 8,000. The defendant received this money and covenanted to pay the amount after 90 days. The defence was that the contract embodied in the hundi was beyond the competence of the defendant because at the time he was a ward: see Section 37(a), U.P. Court of Wards Act, 1912. Another defence was that the suit against the ward personally was barred by Section 55 of the said Act, which provides that no ward shall be sued nor shall any proceedings be taken in the civil Court otherwise than in the name of the Collector in charge of his property or such other persons as the Court of Wards may appoint in this behalf.

2. The suit was instituted on 5th March 1921, and apparently 24th April 1924 was fixed for framing the issues. At any rate on that date the defendant was examined as a ward, and the general attorney of the plaintiff was also examined. The defendant said that he had been a ward of the Court of Wards for 13 or 14 years. The general attorney for the plaintiff said that he came to know that the defendant was a ward when the written statement was filed, but he did not know since when he had been a ward. Issues were then struck Issue I was whether the defendant was incompetent to take the loan and, whether the plaintiff was aware of his incompetency, and issue 2 was whether the Collector of Cawnpore was a necessary party to the suit. The 8th July 1924 was fixed for hearing the

evidence. On that date the pleader for the defendant stated that his client was not ready with his evidence owing to pre-occupation with his daughter's marriage and asked for a short adjournment of a few hours in order that the Head Clerk of the Court of Wards could be produced along with his record. He stated that the Head Clerk had not arrived at his office although it was 11-30 a.m. The Court refused this adjournment on the ground that the defendant had summoned no witnesses for the day and decreed the suit on the ground that there was nothing on the record to show that the defendant was a ward on the date of the execution of the hundi or that the plaintiff had notice of this fact. It also held that there was nothing on the record to show that the defendant was a ward of the Court at the date of the institution of the suit and so there was nothing to sustain the objection that the Collector of Cawnpore was a necessary party.

3. The following pleas are taken in this appeal. One was that the adjournment should have been allowed to enable the Government notification declaring the defendant, a ward, to be produced. Another was that it was immaterial whether the plaintiff had notice of the assumption of the management by the Court of Wards of the defendant's estate. The second plea we need not consider as the suit was rightly dismissed if the Judge was right in holding that the defendant was bound to prove that he was a ward and had failed to do so.

4. As to the former plea there was no application by the defendant for production of the Government notification declaring him a ward. It cannot, therefore, be said that the Court was bound to adjourn the hearing for the production of this paper.

5. It is not clear from the record that on 8th July 1921, when the defendant's vakil asked for an adjournment, the defendant was himself personally present in Court. If he had been, I should hold that the Court should have put him into the witness-box to prove that he was a ward. In the circumstance that the plaintiff's vakil admitted that he was a ward at the date of the striking of issues this evidence might have been regarded as reliable to show the approximate date from which he was a ward which was all that was necessary. In any case, however, I consider that there was sufficient material before the Subordinate Judge to justify his requiring evidence from the plaintiff that the suit as brought was not barred by Section 55, U.P. Court of Wards Act, 1912, which provides that no ward shall be sued otherwise than in the name of the Collector in charge of his property. To allow such a suit to result in a decree against the defendant's person is likely to cause much subsequent confusion and embarrassment. Authority in such a case, where there is a positive legal bar to a suit and where there are grounds for suspecting that bar may exist, and where a decree (supposing such bar were to exist) would cause subsequent confusion and embarrassment, for holding that the Court should itself require to be satisfied on the point, is to be found in *Guru Per shad Singh v. Gossain Munraj Puri* [1885] 11 Cal.733. In this case an objection was taken in appeal that the suit had been

brought illegally by a married mother of a minor on behalf of the minor contrary to the express provision of Section 457, Civil P.C. (Act 14 of 1882). The proceedings in the lower Court were in appeal declared to be null and void. In this case we are satisfied that the defendant was a ward at the time when the suit was instituted. I would accordingly, remand the case to the lower Court to rehear after substituting as defendant the name of the Collector in charge of the defendant's property. Costs of this appeal should abide the result.

Sulaiman, J.

6. I concur in the order proposed. It is impossible to hold that the Court could have taken judicial notice of the Government notification u/s 57, Evidence Act. Government. Notifications do not come under that section. But it is quite clear that the production of the Gazette printed under the authority of the Government would have been sufficient proof of the notification u/s 78 of the Act.

7. I am unable to hold that there was any material on the record which would have justified the learned Subordinate Judge in requiring evidence from the plaintiff that the defendant was not a ward of the Court, and I would, therefore, not be prepared to hold that the Court was bound to put the defendant into the witness box as a Court-witness, in case he was himself present in the Court room which is not at all clear. The case of *Guru Pershad Singh v. Gossain Munraj Puri* [1885] 11 Cal.733 is distinguishable because there no question of fact was in doubt, and the Court ought itself to have taken notice of the defect, had there been any. As regards the supposed defect, the case was subsequently overruled by a Full Bench in *Asirun Bibi v. Sharip Mondul* [1890] 17 Cal. 488 (F.B.).

8. I am, however, of opinion that the Subordinate Judge acted in a hasty manner in declining to give the defendant's counsel a short opportunity to produce evidence. The 8th July 1924 was the very first date fixed for hearing there having been no previous adjournments. The office of the Court of Wards was in the same compound. The defendant's application was not for an adjournment of the case for that date, but only for a postponement for a few hours so that the Court of Ward's clerk, who was late in coming to his office on that date, not having arrived till 11-30 a.m. might be produced as a witness. The point involved was simply whether the defendant's estate had been taken over by the Court of Wards or not. This could be conclusively established by the production of the Government notification if one could only get the reference to the Government Gazette. The fact of the notification could have been ascertained in the course of that very day. Once the copy of the Government Gazette was produced before the Court it would have to accept the fact without question. The valuation of the suit was over Rs. 12,000. If the defendant was really a ward of the Court the consequences of not impleading the Collector would be to introduce considerable complications and difficulties in the execution department. The learned Subordinate Judge remained unmindful of these considerations and declined to give even a few hours time to the defendant. I am of opinion that this course was too severe and has caused hardship to the defendant.

9. If I were sitting singly, I would have been inclined to remand the case for allowing a fresh opportunity to the defendant to produce evidence as to whether he was a ward of the Court, and for impleading the Collector, if the defendant satisfied the Court that he was a ward.

10. I have, however, no objection to the procedure adopted by my learned brother in admitting the Government notification as evidence in the appeal, and holding that the defendant is in fact a ward of the Court and, therefore, remanding the case to the Court below for substituting the name of the Collector and proceeding with the case according to law.