

(1912) 05 AHC CK 0042
In the Allahabad High Court

Collector of Ghazipur

APPELLANT

Vs

Balbhaddar Singh and Others

RESPONDENT

Date of Decision : 23-05-1912

Acts Referred:

Uttar Pradesh Court of Wards Act, 1912 — Section 16, 18, 20

Citation : 17 Ind. Cas. 25

Hon'ble Judges : Piggott, J;Chamier, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal arises out of a suit by respondents Nos. 1 and 2 upon three mortgage-deeds executed in their favour, or in favour of their father, in March 1888, and August 1892, by Ram Saran Singh, Lutawan Singh, Bisheshar Singh and Meghu Singh. The following pedigree shows the relationship between the mortgagors and other persons who will be referred to in this judgment:

Ram Jiawan, _____ | _____ | | Nanku Singh=Rahisa Kuar, Durjan _____ | _____ | | | |
Ram Phal=Babisa Kuar, Lutawan Singh, Bisheshar Singh, Agam Singh, | | | |
Ram Saran Singh, | Jadunandan Singh Meghu Singh, | | =Musammat Badami, defendant Thakur Prasad= | | No. 8, Jeonti Kuar, | Ram Lakhan Singh. |
defendant | Ram Sagar Singh, No. 9, | defendant No. 7. | |
_____ | _____ | | | | Jugal Kishore Singh, Balram Singh. | defendant No. 10. | _____
_____ | _____ | | | |
Kalka Singh, Ambika Singh, Bhola Singh, Matru Singh defendant No. 1, defendant No. 2, defendant No. 3. defendant No. 4. | | Manbodh Singh, Shoo Sagar Singh, defendant No. 5. defendant No. 6.

2. The defendants, described as defendant first party in the Court below, are the living descendants of Nanku Singh and Ram Saran Singh. The defendants,

second party, are lessees whose exact position need not be explained. The defendant, third party, is the Collector of Ghazipur, representing the estate of Dulhin Ram Kuar, who purchased the mortgaged property in December 1902, from Ram Saran Singh and his descendants and from the descendants of Nanku Singh. The defence of the Collector of Ghazipur was that the property belonged to Nanku Singh and Ram Phal Singh; that Nanku's widow, as guardian of her children, sold their share in the property in December 1850, to Ram Phal Singh; that Ram Phal Singh died without issue, leaving his widow, Babisa Kuar, who died in September 1901; that the Ram Saran Singh shown in the pedigree was not the son of Ram Phal, nephew of Nanku, but was the son of a Ram Phal whose father's name was Ghore Patare Rai; that during the life-time of Babisa Kuar, the descendants of Nanku, who were her husband's reversionary heirs, had no lights in the property, therefore, the mortgages in suit were invalid; and lastly that Dulhin Ram Kuar purchased the property from the persons who became entitled to the property on the death of Babisa Kuar, whether under a Will said to have been executed by her or as the reversionary heirs of her husband.

3. It appears that Babisa Kuar obtained mutation of names in her favour upon the death of her husband. But in 1884, Ram Saran and the sons of Nanku got their names entered in the record. Babisa Kuar, in May 1894, obtained a decree against them declaring that they had no title. The plaintiffs alleged that the proceedings of 1894 were collusive. The Subordinate Judge has found that those proceedings were collusive; that Ram Saran was the son of Ram Phal, nephew of Nanku, and that the mortgages in suit are binding on the property in the hands of the Collector.

4. At a late stage of the suit, under circumstances which will be detailed below, it was contended on behalf of the Collector that the suit was not maintainable inasmuch as the plaintiffs had failed to notify their claim to the Collector when the Court of Wards took charge of the estate of Dulhin Ram Kuar in 1903, and had failed at that time to produce before the Collector the deeds on which this suit is based. The Subordinate Judge rejected this plea.

5. In appeal, it is contended that the decision of the Court below is erroneous on both points.

6. We think that the decision of the Court below on the question of fact is clearly right. It may be that there was in the village a Ram Phal, who was the son of Ghore Patare Rai. But there can be no doubt that Ram Saran, father of defendant No. 9 and grandfather of defendant No. 10, was the son of Ram Phal, nephew of Nanku Singh. Mutation of names was, no doubt, made in favour of Babisa Kuar upon the death of Ram Phal. But that would not unnaturally have been done if Ram Saran was then a minor. Ram Saran and the descendants of Nanku managed to get their names on the records in 1884. Ram Saran joined with the descendants of Nanku in mortgaging the property in 1878 to Raja Shambhu Narain Singh, and Babisa Kuar made a Will in November 1894, whereby she purported to leave half the property to Balram Singh, grandson of Ram Saran. If

Ram Saran, who was admittedly the father of defendant No. 9 and grandfather of defendant No. 10 and of Balram Singh, was, as the defendants suggest, merely a dishonest servant of Babisa Kuar, it is inconceivable that she would have left half her property to Ram Saran's grandson very soon after she had litigation with Ram Saran. The association of Ram Saran with the descendants of Nanku on several occasions when the property was being dealt with, is inexplicable except on the ground that he was related to them. It came out in the cross-examination of some of the defendants' witnesses that Ram Saran's house was actually next door to that of Lutawan Singh, the eldest son of Nanku; whereas the house of Ghore Patare Rai was some distance away. It seems probable that Ram Saran's house is part of the old family house. After a full consideration of the documentary evidence, we have no doubt that the evidence of the plaintiff's witnesses is true. These witnesses say that Ram Saran, father of defendant No. 9, was the son of Ram Phal by his wife Babisa Kuar. Much stress was laid by the defendants upon a suit brought by Babisa Kuar in 1898 against a Receiver, who had been appointed in execution of a decree, obtained by Raja Shambhu Narain Singh upon a mortgage made in his favour in August 1878, by Ram Saran and the descendants of Nanku. In that suit, Babisa Kuar obtained a declaration that the mortgage of August 24th, 1878, was not binding upon her. The defendants have also relied strongly upon a statement made by Babisa Kuar in a Will made by her in November, 1894, to the effect that she had no son. We regard that statement as being of a piece with the allegations made by Babisa Kuar in her suit against Ram Saran and others earlier in the year in which she obtained a declaration of her title. The suit was brought and the Will was made long after the mortgages now in suit and are parts of a scheme which was designed to enable the family to get rid of the mortgages in suit. The failure of the Receiver to successfully resist the suit brought against him by Babisa Kuar may be explained on the ground that he was an outsider, who had no knowledge of the facts, and was, therefore, severely handicapped in defending the suit. We have no doubt that the suit brought by Babisa Kuar against Ram Saran and others in 1894 was a collusive proceeding taken for the purpose of evading the mortgages, which are now in suit. We agree with the Court below that Ram Saran, grandfather of defendant No. 5, was the son of Ram Phal and Babisa Kuar. It follows that the mortgages in suit are binding upon the property purchased by Dulhin Ram Kuar and now in charge of the Court of Wards.

7. The question of law was raised in the Court below in a somewhat peculiar manner. The suit was instituted on May 7th, 1909, the written statement of the Collector of Ghazipur, as Manager of the estate of Dulhin Ram Kuar under the Court of Wards, was filed on September 1st, 1909. In this written statement, no plea is taken as to the suit being open to any sort of objection by reason of the failure on the part of the plaintiffs to comply with the provisions of Section 16 of the Court of Wards Act, nor was any issue struck on this point before the parties went to trial. The taking of evidence in the case commenced on January 11th, 1910, and was practically concluded on March 4th, 1910. On April 13th, 1910,

one stray witness for the defendants, who had somehow been left over, was examined. That same day a petition was put in on behalf of the Collector of Ghazipur which has been printed on page 156 A. This petition tendered in evidence a notification which appeared on page 768 of the United Provinces Gazette (Part II) of the 25th of April 1903, and a similar notification from the Vernacular Gazette of May 23rd, 1903. It was merely stated that these papers had an important bearing on the case, and "should be placed on the record and read along, with the evidence." This having been permitted by the Court, these papers were made the basis of an entirely fresh set of pleadings, the contentions raised being of such a nature that, if accepted in their entirety, they would involve the dismissal of the entire suit. The Notifications in question are those required to be issued by Section 16(1) of the United Provinces Court of Wards Act (Local Act III of 1899), calling upon all persons having claims against the ward (in this case, against Dulhin Ram Kuar) or her property, to notify the same in writing to the Collector of Ghazipur within six months of the date of the publication of the said notices. It is admitted that the claim upon which the present suit is based was never notified to the Collector as thus required; and it is quite clear that it ought to have been so notified. Dulhin Ram Kuar is the substantial defendant in the case; she was impleaded as "a subsequent transferee of all the properties mortgaged in the documents sued on." She is in fact the present owner of the said properties; for the validity of her document of title in no way depends on the respective rights of Babisa Kuar, of Ram Saran Singh or of the heirs of Nanku Singh. In the sale-deed of December 7th, 1902, upon which her title rests, she took the precaution of getting included amongst her vendors every single person who had any possible claim to the ownership of the property transferred, and she thus obtained a clear title unaffected by any question which might afterwards be raised as to the respective rights of her vendors, so long as any one of them had a good and valid title. The possible penalties provided by law for failure to notify a claim to the Collector, as required by Section 16 of the Court of Wards Act, are two:

(i) By reason of Section 18 of the said Act, a claim not notified u/s 16, "shall, notwithstanding any law, contract, decree or award to the contrary, cease to carry interest from the date of the expiry of the period prescribed in that section.

(ii) By reason of Section 20 of the same Act, if any document in the possession or under the control of any person is not produced by him, "as required by Section 16," such document shall not be admissible in evidence against the ward in any suit brought thereafter to enforce any liability under the same, "unless good cause be shown to the satisfaction of the Court for the non-production thereof before the Collector.

8. The appellant claims the benefit of both these provisions. The plaintiffs-respondents have put forward substantially three arguments in reply.

First.--It is contended on their behalf that there has been, on the part of the Collector of Ghazipur, no sufficient publication of the notice required by Section

16 of the Court of Wards Act, so as to entail any penalty whatsoever on the plaintiffs by reason of their failure to notify their claim to that officer. The required notices in the United Provinces Gazette are shown to have been duly published both in English and in the Vernacular; but it is not shown that there was any other publication than this. The second Clause of Section 16 of the Court of Wards Act provides as follows:

The notice shall also be published at such places and in such other manner as the Court of Wards may, by general or special order, direct.

9. There is no suggestion that any special orders were issued in the present case directing further publication of the notice to be effected in any particular manner. So far as we can ascertain, no general orders have been issued by the Board of Revenue, which is the Court of Wards for the United Provinces of Agra and Oudh (vide Section 4 of the Court of Wards Act III of 1899) directing publication of notices u/s 16 of the said Act otherwise than in the Provincial Gazette. On any reasonable construction of the provisions of the Act above quoted, it would appear that the Collector of Ghazipur having received no general or special orders from the Board of Revenue directing him to publish this notice at any other place or in any other manner, lay under no obligation to do anything more than get the notice published in English and in the Vernacular in the Provincial Gazette. Nor can it be said that the Board of Revenue lay under any positive obligation to issue general or special orders, for the words of the section, as quoted, leave the Court of Wards a discretion in the matter. We were referred to a ruling of this Court in *W. Barrow v. Gaya Prasad* 9 A.L.J. 558 : 15 Ind. Cas. 729 but this was based on the wording of Sections 10A and 10B of the Bengal Court of Wards Act (Act IX of 1879) as amended by Act I of 1906. The provisions of these sections differ from those of Section 16 of our Local Act in one matter of detail which happens to be of decisive importance as regards the point under discussion. By the United Provinces Act, as soon as the required notice has been duly published by the Collector, a double obligation is laid upon creditors; they must not only notify their claims against the ward or his property, giving full particulars of the same, but they must produce before the Collector with the statement of claim every document on which they rely in support thereof. Under the Bengal Act, after the creditor has put in a written statement of claim and furnished full particulars, he is only bound to "produce all documents which are in his possession, power or control" within such time as the Court of Wards may appoint. That is to say, the officer acting for the Court of Wards in the matter has laid upon him, after a claim has been filed, the duty of appointing a time within which documents must be filed. It was held by this Court that if such officer failed to fulfil this duty, and did not give the creditor concerned the requisite notice that his documents must be filed within a certain time, no penalty could be enforced against a creditor merely on the ground that he had failed to produce his documents before the Court of Wards. There is no similar provision in the United Provinces Act, nor was any obligation laid upon the Collector of Ghazipur in this case to give the present plaintiffs notice that any mortgage-deed

in their possession which they desired to make the basis of any claim against the property of Dulhin Ram Kuar must be presented before him by some fixed date subsequent to the presentation of their claim. On the contrary, both by the wording of the Court of Wards Act itself, and by that of the notice published in the Gazette, all creditors were required to present their claims and the documents on which the same were founded to the Collector within six months of the publication of the notice. Provisions of law, which operate so as to impose a penalty or disability upon a person who fails to comply with them, require, no doubt, to be strictly interpreted; and, for this reason, in the reported case, it was held that the serious penalty of excluding his document of title from admission in evidence should not be imposed upon a creditor until it was shown that every notice required by law had been duly given to him, and every obligation imposed by law upon the Court of Wards strictly performed. In the present case, the law as it stands required nothing more from the Collector of Ghazipur, once he had got the notice published in the Gazette in English and in Vernacular than to sit still and await the presentation of claims, the law itself laid upon creditors the obligation to produce detailed statements of claim, accompanied by all necessary documents, within the period limited by the notice itself. The first contention on behalf of the plaintiff-respondents, therefore, fails.

Secondly: It was suggested that the obligation to produce documents is laid upon creditors who notify their claims. The argument is that a creditor who does not notify his claim at all may make himself liable to the provisions of Section 18 already quoted, but cannot be held liable to the further disability laid down by Section 20. There is nothing in the wording of the Act to support this contention; indeed, it appears contrary to the clear intention of the provisions under consideration. Something was said about the proviso embodied in the second Clause of Section 17; but it would be contrary to all sound principles of interpretation to apply this proviso to the subsequent Sections 18 and 20. We must overrule this contention also.

10. There remains, however, a third argument for the plaintiffs, which must, in our opinion, prevail, so far as the penalty imposed by Section 20 is concerned. The provisions of this section left the Court below a discretion to admit the plaintiffs' documents of title in evidence, despite their non-production before the Collector. That discretion has been exercised in favour of the plaintiffs, and we are not prepared to hold that it was exercised wrongly. On behalf of the appellant, it was contended that there had been no real exercise of discretion, because the plaintiffs had never been called upon to explain the non-production of these documents before the Collector. It has already been pointed out that the admission of these documents in evidence was not challenged at the proper time, and, strictly speaking, was not challenged at all. At a late stage of the case, long after the documents had been put in evidence and after the suit had gone to trial on the basis of the said documents, a petition, was put in which, on the face of it, asked for nothing beyond the admission of two documents in evidence on behalf of the Court of Wards. After the Gazette notifications had thus been got on

to the record, they were used in argument to attack the very foundation of the plaintiff's case. The Court had no real opportunity at this stage to turn round on the plaintiffs and call upon them to explain the non-production of their mortgage-deeds before the Collector. We can conceive of no reason for their non-production if the plaintiff in fact saw the notices in the Provincial Gazette and understood the obligation thereby cast upon them. We cannot relieve the plaintiffs of all the consequence of their failure to comply with the provisions of Section 16 of Act III of 1899; but to exclude their documents of title altogether from the record would be to exact an extreme penalty for a piece of neglect due to mere ignorance. The Court of Wards Act of 1899 had not long been in force; the Board of Revenue had neglected to avail itself of its powers to direct publication of the Collector's notice in some more effective form. The Civil Court having a discretion as regards the admission of these documents, it seems clear to us, under all the circumstances, that this discretion has been rightly exercised in favour of the present plaintiffs.

11. We cannot relieve them from the consequences of the provisions of Section 18 of the Act as regards interest; here the law has left us no discretion. We so far accept this appeal that we direct the decree of the Court below to be modified by disallowing all interest after the 23rd of November 1903, six months from the date on which the Collector of Ghazipur completed the fulfillment of the duty laid upon him. As regards the costs of the suit, we feel bound to take notice that the appeal has failed on the issues of fact to which the bulk of the evidence was directed. We order that the parties pay and receive costs in both Courts in proportion to success, but that the charges of printing and translating the record in this Court be borne entirely by the appellant.