
(1915) 01 AHC CK 0028
In the Allahabad High Court

Jagarnath Gir

APPELLANT

Vs

Tirguna Nand and Others

RESPONDENT

Date of Decision : 21-01-1915

Acts Referred:

Specific Relief Act, 1877 — Section 42

Citation : 28 Ind. Cas. 139

Hon'ble Judges : Henry Richards, C.J.; P.C. Banerji, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This appeal arises out of a suit in which the plaintiff claimed a declaration that he was entitled to certain mutt property as the mahant thereof in succession to the last mahant. It appears that the last mahant, one Narain Gir, was a minor and that the property was taken over by the Court of Wards. After his death the plaintiff made claim as did certain other persons who are the defendants to the present suit. The Court of Wards, which is in possession of the property, declined to hand over possession until some one should establish his title to the mahantship.

2. The lower Court without going into the merits has dismissed the plaintiff's suit upon two grounds, namely, that the Court of Wards was not made party to the suit and that the plaintiff did not claim possession.

3. It seems to us that the suit ought not to have been dismissed on either of these grounds. The Court of Wards made no claim to the property, if the Court of Wards wished to be made a party to the suit, it could apply to the Court to be made a party on its peril on the question of costs. If the Court below thought that the suit could not be disposed of without the Court of Wards being a party, it could, and in our opinion ought to, have exercised its jurisdiction in making the Court of Wards a party to the suit. We, however, think that it is highly probable in the present case that the Court of Wards will be perfectly satisfied with the

decision of the Court in the present suit, and that it has no desire of any kind to be made a party to the proceedings.

4. On the second question we are of opinion that the possession of the Court of Wards is in trust for the person who shall establish his title to the mahantship. No one is entitled to get possession from the Court of Wards until such time as his title is established. Therefore the plaintiff was not untitled at the time he brought his suit to possession. We, therefore, think that Section 42 of the Specific Relief Act does not apply to the circumstances of the present case. As we have already pointed out, the Court of Wards does not deny the plaintiff's title but admits that it holds the property for the person legally entitled. The learned District Judge has referred to the case of *Goswami Ranchor Lalji v. Sri Girdhariji* 20 A. 120 : (1897) A.W.N. 214. In our opinion this case has no bearing on the present case. The Court in that case, we think, rightly held that the plaintiff's proper remedy was by way of a suit for possession against the parties who dispossessed him. The suit being a suit for possession the period within which it could be brought was 12 years. This was the only matter which was discussed in the case.

5. We accordingly allow the appeal, set aside the decree of the Court below, and remand the case to that Court with directions to re-admit the suit under its original number in the file and to proceed to hear and determine the same on its merits. Costs here and heretofore will be costs in the cause.

6. The Collector as representing the Court of Wards may be informed of our judgment.