

(1925) 11 AHC CK 0035
In the Allahabad High Court

Mohammad Ayub

APPELLANT

Vs

Surajpal Singh

RESPONDENT

Date of Decision : 12-11-1925

Acts Referred:

Citation : AIR 1926 All 254

Final Decision : Allowed

Judgement

1. This is a defendant's appeal arising out of a suit for recovery of an amount of money and for rendition of account. It is necessary to mention that the claim related to two periods, the period up to 26th October 1917, when the plaintiff's estate was under the superintendence of the Court of Wards and a period subsequent to that date. The defendant was a zilladar appointed by the Court of Wards for the purpose of collecting rents. Even after the release by the Court of Wards the defendant was employed by the plaintiff as his own zilladar. With regard to the first period the plaintiff's claim is that the defendant, through bad faith, negligence and carelessness, allowed a sum of Rs. 1,417-11-9, the amount of arrears of rent, irrigation, taqawi advances and interest due by the cultivators of his circle to be time-barred. He is accordingly said to be liable to pay damages for this amount. As regards the subsequent period he is held liable because he has not accounted for sums of money received by him. The defendant denied his liability to pay any damage for the first period and did not even admit his liability for any amount during the subsequent period. The learned Subordinate Judge who framed the issues first disposed of the preliminary question of law whether the defendant could be made liable for damages during the period of the superintendence by the Court of Wards. This issue was decided against the plaintiff. Another Subordinate Judge who succeeded him then disposed of the case and passed a preliminary decree directing the defendant to render accounts in respect of the subsequent period. The defendant submitted to this decree but the plaintiff appealed to the District Judge and urged that the defendant was liable even for the period during which the Court of Wards was managing the estate. The learned Judge has come to a contrary conclusion: and having allowed

the appeal he has ordered that the plaintiff is entitled to a decree for rendition of accounts by the defendant of the whole amount sued for, viz. Rs. 2,213.

2. Under the Court of Wards Act it is the Board of Revenue which is the Court and which assumes charge of the estate and manages it. The Board, however, may appoint any staff it chooses, and it very often happens that in one district there are several estates which are under the same management and are looked after by the same staff. If any of the servants of the Court of Wards failed in his duty to realize rents in time and there was negligence the Court of Wards itself should be liable to make good the loss to the plaintiff. But when the time for release came and the plaintiff granted a deed of release according to Form No 49 given in the Court of Wards Manual, under which he released the Court of Wards from all accounts, claims or demands whatsoever for, and in respect of, the cash balance, documents and files aforesaid or in respect of any act done or suffered by the Court of Wards itself or under its orders or with its consent in respect of the said estate or the management thereof, he abandoned all claim and demand in respect of any loss suffered by him owing to bad management. The bad management might be due to the lack of supervision on the part of the Court of Wards or might be due to the negligence of the servants employed by it. But the release would prevent the plaintiff from making any further demands in respect of the bad management. It may further be said in favour of the defendant that the Court of Wards was not acting as a mere agent of the plaintiff so that all the servants employed by it were really the servants of the plaintiff. The Board was acting under the powers conferred upon it by Act 4 of 1912 and the servants were working under its own orders and were responsible to the Court of Wards. After the release the plaintiff cannot now sue the manager of the Court of Wards or other servants for damages on account of loss suffered by him in the course of the management by the Court of Wards. If the plaintiff's contention were to be allowed, the result would be that even if the Board of Revenue is exonerated from all liability by virtue of the deed of release the Collector or other the Manager of the Court of Wards would be still held responsible on account of the alleged loss suffered by the plaintiff. This obviously could not have been in the contemplation of the legislature. In our opinion therefore there being no privity of contract between the plaintiff and the defendant the plaintiff cannot sue him for any damage said to have been caused during the period when the Court of Wards was managing his estate and for which period he has granted it a release.

3. The appeal is accordingly allowed and the decree of the lower appellate Court is set aside and that of the Court of first instance restored with costs in the lower appellate Court and this Court including fees on the higher scale.