
(1917) 01 CAL CK 0051

In the Calcutta High Court

Case No : Appeal from Original Decree No. 58 of 1914

Nakimo Dewani

APPELLANT

Vs

Pemba Ditchen

RESPONDENT

Date of Decision : 19-01-1917

Acts Referred:

Citation : (1917) 01 CAL CK 0051

Final Decision : Dismissed

Judgement

Fletcher, J.—This is an appeal preferred by the Plaintiffs against the decision of the learned District Judge of Darjeeling and Dinajpur, dated the 1st December 1913, dismissing their suit. The suit was brought for the purpose of setting aside a compromise that had been entered into in a former suit which is said to have been in contravention of Section 462 of the CPC which was then in force. The facts out of which the case arises are as follows:--One Lachho Tonjin had two sons, Cheeboo and Dudock. The parties came from the State of Sikkim and the law applicable to the parties is the Buddhist or the customary law as is recognised and which is in force in the State of Sikkim. Cheeboo, who seems to have rendered important political services to the British Government, was awarded for such services a grant of 74,016 acres of land in the district of Darjeeling. Cheeboo died in 1866, having been predeceased by his brother Dudock. Cheeboo left one son named Rechak Dewan and daughter named Eaden. Rechak died on the 26th August 1899, having been married twice, his first wife being Nakimo Dewani, who is the first Plaintiff in the present suit and the other wife being one Gadenputty, who died in 1903 without issue. Nakimo has had two children both of whom are daughters, namely, Ishay Chhoden and Tashi Lhamoo who are the other Plaintiffs. Cheeboo's brother Dudock left an only son Phurboo. Phurboo had two sons, the eldest being Jerung Dewan. There seems to have been some controversy at the earlier stage of these proceedings and in the former suit as to whether Jerung was, in fact, a son of Phurboo; but the fact is that he claimed to be so and so far as the evidence goes, he was recognised as being the son of Phurboo. There was another younger son of

Phurboo and that younger son was named Galchhen. He died in May 1903. The dispute arose as follows:--On the 10th August 1877, after Cheeboo's death, the Government made a lease of this property to Rechak, one Tenduck Pulger who was then the manager of the property and Phurboo in three equal shares. The Forest Department acquired 44,000 acres out of this property in 1881 and on the 17th July 1889, there was a partition between Rechak and Phurboo, Phurboo getting all the properties in the State of Sikkim and Rechak getting the properties in the district of Darjeeling. On the 10th March 1893, the Government granted a lease of 19,000 odd acres of land to Rechak. Then, after the detail of Rechak, there having been certain disputes in the Civil Court which arose out of certain land registration proceedings, Nakimo applied to the Court of Wards to take charge of the estate. The Court of Wards at first intimated that Jerung Divan must also be a party to the petition. However, in the result, on the 7th November 1905, the Court of Wards declared Nakimo to be a disqualified proprietor and took over charge of the property. On the 17th February 1906, the Court of Wards declared the two daughters of Nakimo, namely, Ishay Chhoden and Tashi Lhamoo to be minors and on the 7th March of that year, the Court declared them also to be the heirs of Rechak Dewan. From the 17th February 1906, the two minors, Ishay Chhoden and Tashi Lhamoo, were disqualified proprietors and wards under the Court of Wards. Next, on the 5th February 1907, Jerung Dewan instituted a suit against Nakimo and the two minors, Ishay Chhoden and Tashi Lhamoo. In the course of that proceeding, a compromise was arrived at. That compromise was, as it appears from the petition of compromise and the letter of the Board of Revenue annexed to that petition, approved of by the Court of Wards.

2. The first point that has been argued both here and in the Court below and which apparently is the only point argued in the case is this : That the approval of the Civil Court not having been taken to that compromise under the provisions of Section 462 of the Code of Civil Procedure, then in force, the compromise is voidable as against the two minors. That depends purely on an examination of the sections in the CPC and in the Court of Wards Act. The Court of Wards Act contains two sections that are material to the matter. The first is the 18th section. That provides that the Court may sanction the giving of leases or farms of the whole or part of any property under its charge and may direct the mortgage or sale of any part of such property and may direct the doing of all such other acts as it may judge to be most for the benefit of the property and the advantage of the ward. The section by itself clearly authorises the Court of Wards to compromise a claim on behalf of the ward--whether a minor or an adult ward--if the Court judges it to be most for the benefit of the property or the advantage of the ward. The other section is the 51st section. That provides that, in all suits instituted by or against a minor ward, the Collector of the district or the manager shall be named, as the case may be, the next friend or the guardian of the minor for the suit. That is how the matter stands under the Court of Wards Act. It is said that the CPC has placed an additional restriction on the Court of Wards by further enacting under the terms of Section 462 that any compromise

entered into by the Court of Wards on behalf of a minor litigant requires also the approval of the Civil Court. That turns purely on a consideration of the various sections that are in the Code of Civil Procedure. It is, however, a matter to be noticed that Section 464 of the Code as originally passed by the Legislature clearly did not require the sanction of the Civil Court to a compromise entered into by the Court of Wards. It is said, however, that the alteration in the wording of Section 464, which was effected in the year 1888, altered that provision. Section 461 as it ran after the amendment of 1888 was in these terms:--"Nothing in this Chapter shall be construed to affect, or in any way derogate from the provisions of any local law for the time being in force relating to suits by or against minors." The view that the learned Judge took in the Court below was that to give the effect that was suggested by the Plaintiffs to the provisions of Section 462 would, in fact, derogate from the provisions of the Court of Wards Act so far as regards suits relating to minors under their charge were concerned. The I argument is as follows:--Section 51 of the Court of Wards Act takes away from the Civil Court the duty of appointing a next-friend or guardian ad litem of a minor and appoints the manager under the Court of Wards as the statutory next-friend or guardian. Clearly, therefore, the Civil Court has nothing to do with the appointment of a next-friend or guardian. Then Section 18 of the same Act gives power to the Court of Wards to compromise generally which includes both suits in and claims out of Court and to cut down the provisions of Section 18 by stating that, when the ward is a minor, no compromise in a suit should be binding on the minor ward unless the approval of the Civil Court has been obtained as mentioned in the CPC would derogate from the provisions contained in Section 18 of the Court of Wards Act. I am of opinion that that argument is well founded and to hold that the sanction of the Civil Court to every compromise that is entered into under the authority and by the direction of the Court of Wards on behalf of a minor under their charge would seriously affect, or derogate from, the provisions contained in the Court of Wards Act. This point, as appears from the judgment of the Court below was the only point argued before the learned Judge because the learned gentleman who conducted the case in that Court on behalf of the Plaintiffs stated that he rested his case solely on the issue concerning the vulnerability of the decree of the 12th March 1908 and did not invite the Court to decide the issue of title by succession.

3. The case has also been attempted to be argued before us on the question of fraud, the fraud alleged being that the Court of Wards were deceived in giving their consent to the compromise by having been given false information relating to the course of succession under the Sikkim law. It is almost sufficient to deal with that case by stating that no evidence was given in the case as to what the fraud practised on the Court of Wards was. The Court of Wards had before them, as appears from the record, a full statement from the Deputy Commissioner as to what was proposed to be done and before acting on the information and authorising the compromise, they took the precaution of sending all the papers that they had before them to the Legal Remembrancer asking him as to what

ought to be done with regard to the matter and it was only when the Legal Remembrancer had dealt with the matter fully that the Court authorised the compromise. An allegation like this seems to be wholly insufficient to disturb the act of the Court regularly and properly entered into. Moreover, the evidence that we have in this case raises a serious doubt as to whether the Plaintiffs under the Bhutan law had the right of succession to Rechak's properties. There is a considerable body of evidence, notwithstanding some statements more or less loose of His Highness the Maharaja of Sikkim, as to the course of descent which would go to show that the course of succession was not through females, but was confined to agnatic relationship. In that view, it is not denied that Jerung Dewan would be wholly entitled to succeed to Rechak's properties after his death. The statement of the Maharaja of Sikkim that has been read to us seems to vary and nothing definite can be drawn from that. I think that the evidence does show that there was clearly a case in which the Court could enter into the compromise so as to secure the best terms possible for the two minors and there is nothing to suggest that better terms could have been obtained. The alleged fraud is wholly unproved and the gentleman conducting the case in the Court below stated that he did not intend to ask the Court for a decision upon the issue of title by succession. If the Court of Wards acted to the best of their judgment to secure for the two minors, out of the property to which they had no right at all, 2,000 acres of land and a property of some value in Darjeeling plus the payment of their father's debts which amounted to Rs. 64,000, I think the compromise was highly advantageous to the wards that the Court had under their charge. There is no evidence to support the case of fraud as set up in the 23rd paragraph of the plaint, namely, that a fraud of some sort was practiced on the Court of Wards to get them to approve of that compromise. No evidence was given in support of such a case nor do I think that there is any truth in the story. The Court recognised that these minors had, in fact, under the terms of the law by which they were governed no right to their father's property and they entered into the compromise to secure the best terms they could so that something might be got for these female-wards. Whatever might be the state of affairs, I am quite clear that the evidence adduced is wholly insufficient to establish a case of fraud practised on the Court of Wards in the manner suggested. I think the result arrived at by the learned District Judge is correct. The present appeal, therefore, fails and must be dismissed with costs. There will be two sets of costs to the two sets of Respondents.

Richardson, J.

4. I agree.