
(1919) 11 BOM CK 0011
In the Bombay High Court
Case No : Second Appeal No. 399 of 1918

Shankar Sana

APPELLANT

Vs

Shivabhai Vallavbhai

RESPONDENT

Date of Decision : 14-11-1919

Acts Referred:

Court of Wards Act — Section 13, 14

Citation : (1920) 22 BOMLR 223 : 55 Ind. Cas. 831

Hon'ble Judges : Norman Macleod, J;Heaton, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Norman Macleod, Kt., C.J.—The plaintiff brought this suit by his next friend the Talukdari Settlement Officer against the defendant to recover possession of the plaint land with mesne profits for the year 1915, alleging that his estate was in charge of the Court of Wards; that a notice calling for submission of claims was published in the Government Gazette of the 6th June 1907; that the defendant did not submit his claim as a mortgagee within six months as required by the said notice; that, therefore, notice was issued to the defendant to give up possession of the land on the 25th October 1913 under the Bombay Land Revenue Code; that possession was taken of the land on the 3rd June 1914 in the presence of the Panch; that defendant took back such possession wrongfully on or about the 6th June 1914 when the cause of action for this suit accrued. The defendant denied the claim and alleged that the notice did not bind him; that Section 14 of the Court of Wards Act did not bind him, nor did it entitle the plaintiff to maintain the present suit against him, a mortgagee in possession. The trial Court dismissed the suit. The plaintiff appealed and his claim was decreed with costs throughout. It is admitted that a notification u/s 14 (1) was properly published and also the notice u/s 13 (1) to file claims was properly published. The only defence the defendant has, is that he is an illiterate cultivator and could not read the Government Gazette. The learned District Judge admitted that it

was a hard case. He says:

It is absurd to suppose (hat an illiterate cultivator will read the Government Gazette. It is, however, just as absurd to suppose that he will read the "Praja Bandhu" or "Gujarati". No doubt where there are numerous creditors the fact that an application is necessary soon gets about, but it is not always the case that there are numerous creditors. It would be much more satisfactory, if there were public notification by beat of drum in the principal village of the estate and at the taluka town. To give notice to each credits as suggested by the lower Court is impracticable as the object of the Statute is to enable the Court of Wards to ascertain who the creditors are.

2. I agree with the remarks made by the learned District Judge. It is certainly desirable that there should be some further publication of the notice calling for claims than the mere publication in the Government Gazette. u/s 14 (1) the notice would be published in the Government Gazette and in such other manner as the Governor-in-Council may, by general or special order, direct, and I think our best course is to send a copy of the proceedings in this case and our judgment to Government, suggesting that some special order should be made u/s 14 (1) of the Court of Wards Act with regard to the further publication of notices calling for claims under that section. At present this appeal must be dismissed with costs.

Heaton, J.

3. I agree.