

(1916) 04 CAL CK 0023
In the Calcutta High Court

Umakunta Sen Chowdhury and Others	APPELLANT
Vs	
Hira Lal Roy and Another Chowdhury and Another Vs Kehetra Mohan Saha	RESPONDENT

Date of Decision : 04-04-1916

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 90, 47
Limitation Act, 1963 — Section 7

Citation : 34 Ind. Cas. 86

Hon'ble Judges : D. Chatterjee, J;Beachcroft, J

Bench : Division Bench

Judgement

1. In Appeal from Order No. 161 of 1913.

2. The decree-holder obtained a decree for money against the judgment-debtors in 1911, when their estate was in charge of the Court of Wards. The decree not being satisfied by the Court the properties of the judgment-debtors, were sold on the 15th April 1912. The Court of Wards did not apply for setting aside the sale and the judgment-debtors after waiting for the Court of Wards to take action in the matter, made an application for setting aside the sale u/s 47 and Order XXI, Rule 90, of the Civil Procedure Code. The Court below has rejected the application as incompetent in that it was not made by the Court of Words Manager. This was on the 11th January 1913. This appeal was filed on the 11th of April 19 3 and the estate was released by the Court of Wards on the 14th of June 1914. It is contended in appeal before us that the order of the Court below is wrong:

(1) Because the judgment-debtors were competent to prosecute the application for themselves when the Court of Wards did not move in the matter.

(2) Because the judgment-debtor Bimal had already attained majority, being 24 years of age, and his share at least should have been released long before the application, so that he was a free agent in law and could maintain the application.

(3) Because in any case the estate having been released pending appeal we should allow, the debtors to prosecute their original Application.

3. It will be convenient to examine the provisions of the Court of Wards Act before dealing with these grounds.

4. Section 6 (Act IX of 1879) lays down who shall be held to be disqualified proprietors. Section 7 empowers the Court to take charge of the estate and person of disqualified proprietors in certain cases. Section 8 lays down that when a person ceases to be disqualified, the Court should be bound to release him and his property. Section 11 lays down that if one or more of several joint owners under the charge of the Court cease to be disqualified, the Court will release his share unless he consents to his share remaining in the hands of the Court until the still disqualified co-owners cease to be disqualified. Section HA. (introduced by amendment in 1907) lays down an exception to the preceding sections and provides that notwithstanding the provisions of the preceding sections, the Court may retain possession of an estate even after the disqualification ceases, if there is an unpaid debt to discharge. In the present case there were unpaid debts and the Court chose to retain possession even after some of the co-sharers ceased to be disqualified. and it was within its rights in doing so. It cannot, therefore, be said that the Court retained possession of any share without legal authority. This disposes of the second ground. The other grounds are based on certain rulings of the Court and we have to see whether those rulings support those grounds. The first case referred to is that of *Norendra Nath Pahari v. Bhupendra Narain Roy* 23 C. 374 . There the Sub-Manager under the Court of Wards made an application for execution. There was no objection by the judgment-debtor who also was represented by the Manager of his estate under the Court of Wards. An objection was, however, made in the appeal for the first time and Banerjee, J., said that the objection was of a purely technical character and could not be entertained at that stage, especially as the defect might have been cured if the objection had been taken in the first Court and as at the time of the appeal the estate of the applicant was no longer in the hands of the Court of Wards, it is this last distinction which is strongly relied upon in this case, as here also the estate was released pending appeal. The objection, however, was taken in the Court of first instance.

5. The next case is that of *Krishna Pershad Singh v. Gosta Behari Kundu* 5 C.L.J. 434 . There the Court of Wards had not taken possession of the Gudigunde estate and it was not considered necessary to have the Manager as a guardian or next friend of the ward in a litigation respecting that property; besides the mother, having been recognised as a guardian ad litem. of the minor, was entitled to act as such until she was removed. The last case relied on is that of *Tekait Krishna Prasad Singh v. Moti Chand* 19 Ind. Cas. 296 : 17 C.W.N. 637 : (1913) M.W.N. 487 : 11 A.L.J. 517 : 17 C.L.J. 573 : 15 Bom. L.R. 515 : 14 M.L.J. 37 : 25 M.L.J. 140 : 40 C. 635 : 40 I.A. 140. Their Lordships held that the mother of the minor was competent to apply for setting aside the sale of

Gudigunde as this property had not been taken possession of by the Court of Wards. Looking at the provisions of the Act itself we find that Section 51 requires that in suits by or against wards the Manager of the Court of Wards must be the guardian or next friend of the wards, and Section 55 lays down that no suit shall be brought on behalf of any ward by a Manager except by the authority of an order of the Court. It has been held that the word suit covers miscellaneous proceedings: Bhoopendro Narain Dutt v. Baroda Prosad Roy Chowdhary 18 C. 500. The wards were, therefore, incompetent to prosecute the application in this case except through the Manager of the Court of Wards as their next friend.

6. The only matter that is left for consideration is the effect of the release of the estate pending appeal. The appellants were from the 15th June 1914 competent to act for themselves without the intervention of any Manager or guardian. They cannot, however, claim the benefit of Section 7 of the Limitation Act as they were not minors at the time when the right to apply accrued. They were wards of the Court which assumed all their rights. There is no further provision of law which is relied on for giving them a fresh start. In any case we are unable to say that the lower Court was wrong in rejecting the application when it did reject it. Our powers of revision also are not available in favour of the appellants and we must dismiss the appeal without costs as the respondent did not appear; and Miscellaneous Appeal No. 1 of 1914 with costs, two gold mohurs.