

(1956) 12 MP CK 0046
In the Madhya Pradesh High Court
Case No : First Appeal No. 141 of 1951

Zankar Singh and Others	Vs	APPELLANT
State of Madhya Pradesh and Another		RESPONDENT

Date of Decision : 31-12-1956

Acts Referred:

Central Provinces Court of Wards Act, 1899 — Section 19(1)

Citation : AIR 1957 MP 78

Hon'ble Judges : Sen, J; Bhutt, J

Bench : Division Bench

Advocate : J.A. Khare, for the Appellant; S.B. Sen, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

1. This is plaintiff's appeal against the decree passed by the Additional District Judge, Balaghat, in Civil Suit No. 15-B of 1949, dismissing his suit for recovery of damages.
2. By virtue of the State Government notification No. 3814-2447-XII, the estate of the plaintiff-appellant was placed in charge of the Court of Wards with effect from 8-12-1930. Its superintendence terminated on 16-4-1946 when the estate was returned to the plaintiff. During this period, decrees were obtained against persons owing money to the estate. The case of the plaintiff was that decrees as per Schedules A and B, amounting to Rs. 11,689-10-9 were negligently allowed to be barred by limitation. He accordingly filed the suit, out of which this appeal arises, for recovery of the said amount.
3. The suit was instituted principally against the State of Madhya Pradesh. The Deputy Commissioner, Balaghat, was also joined as a defendant as representing the Court of Wards. The defendants contended that the Manager, Court of Wards, who was in actual charge of the estate should be added as a defendant. The lower Court, by order dated 20-3-1950, however, negatived the contention that

he was a necessary party. The suit accordingly proceeded against the two defendants alone.

4. The gist of the plaintiffs action against the defendants is contained in paras. 4 and 5 of the plaint which are reproduced below:

"4. That the Court of Wards acted with gross negligence and allowed the recovery of the claims of the plaintiff mentioned in the Schedules A and B to get barred by time; that no attempts were made to have the amounts recovered either privately or by filing and conducting execution proceedings against the judgment-debtors, who were quite solvent and could have easily paid off the decretal amounts due by them. The Court of Wards had sufficient funds of the plaintiff at its disposal to file and conduct execution proceedings against the judgment-debtors.

""5. That the Provincial Government had the supervision of the Court of Wards and it was charging the plaintiffs estate a certain percentage of its income on this account. Due to the assumption by the Government of management of the plaintiff's estate, he (plaintiff) was unable to act independently. The Provincial Government and the Court of Wards together were in the position of a trustee in respect of the property of the plaintiff in their charge. They were in duty bound to take reasonable care of it, and to avoid the loss caused to the plaintiff, which is the subject-matter of this claim. There was a breach of this duty on the part of the Provincial Government and the Court of Wards and the loss caused to the plaintiff is the direct result of this breach of duty on their part."

It will appear from the above that no positive act was ascribed to the defendants as part of the cause of action. As the actual management admittedly was in charge of the Manager, Court of Wards, he would be the person primarily responsible for the loss, if any, u/s 19(1)(c) of the Central Provinces Court of Wards Act, 1899. The question, therefore, is whether the plaintiff has succeeded in proving the alleged loss through his negligence.

5. On 31st August 1949, the defendants made an application to the lower Court under Order 12, Rule 8, Civil Procedure Code, for production by the plaintiff, inter alia, of all his books of accounts. They also averred in their written statement that according to their information many of the decretal claims were settled privately and the Manager, Court of Wards, had taken notes of the settlement in the books of accounts and the suit registers. The plaintiff, however, did not produce the books of accounts and filed only 5 suit registers at the stage of evidence. He also did not put the Manager, Court of Wards, in the witness-box to explain if any decretal claim remained unrealised and, if so, the reason therefor.

6. In AIR 1949 60 (Nagpur) , a Division Bench of this Court has laid down the principles governing the suit based on negligence. It was held that the plaintiff, in order to succeed in his suit for damages for negligence, must establish, firstly a duty to take care, secondly a breach of the duty and thirdly that such breach was the proximate cause of the loss or injury sustained by him. That suit was filed

against the Kamdar who was responsible for making the realisations, and also the Manager, Court of Wards, whose principal duty was to supervise the work of the Kamdars. The receipts passed by the Kamdar were filed in the suit, and his signature thereon was proved. Their Lordships did not hold the receipts as sufficient to prove the loss as against the Manager, Court of Wards.

In the present case also, the plaintiff has only filed 5 suit registers in regard to which only the writing of some of the entries by the Kamdar, Trimbak Rao Lokhare has been proved. Even assuming these documents to be duly proved, they only establish that steps to execute the decrees amounting to Rs. 11,669-10-9 were not taken after a certain time. They do not, however, prove that the decretal claims were not otherwise realised or settled. Whatever evidentiary value, therefore, these registers may have against the kamdar, they do not establish the loss as against the defendants.

7. Trimbakrao Lokhare (P.W. 2) was in charge of the Court work of the plaintiff's estate. He has doubtless deposed that the debtors of the decrees which became barred by limitation, were solvent persons. He also stated that he was warning the Manager, Court of Wards, for taking steps for execution. His evidence, however, is uncorroborated and has to be read with caution because he was the person primarily responsible for the realisation of the decrees.

The best evidence of the loss, if any, would have been furnished by the plaintiff's account books. It was, therefore, his duty to produce them. He should also have led evidence of an independent and reliable character to prove that the loss, if any, was caused by the wilful negligence of the Manager, Court of Wards. In the absence of such evidence, the lower Court was justified in holding that the plaintiff had failed to prove that any actual loss was caused to him. We, therefore, confirm this finding and further hold that it is also not proved that the loss, if any, was caused by the negligence of the Manager, Court of Wards.

8. In the view that we have taken, it is not necessary to consider whether the assumption of the management of the plaintiff's estate by the Court of Wards was an act of the State in exercise of its sovereign power, which exempts the defendants from-liability for the loss, if any, caused to the plaintiff during the course of management.

9. The appeal fails and is dismissed with costs.