[APPELLATE CIVIL JURISDICTION.]

1873
July 2.

Regular Appeal No. 52 *of* 1872.

DA'MODARDA'S MA'NIKLA'L ...*Plaintiff and Appellant.*

UTAMARA'M MA'NIKLA'L......*Defendant and Respondent.*

Minor—Accounts of Administrator—Plaint under Act XX. of 1864, *Sec.* 19—*Acts of misconduct—Permission of Judge in Chambers.*

A plaint under Act XX. of 1864 by a relative of a minor against his administrator, must specify one or more acts of misconduct, or assign some satisfactory reason for apprehending an injury to the estate of the minor by the administrator.

THIS was a regular appeal from the decision of W. H. Newnham, Acting Judge of Surat.

Dámodardás brought this suit under Sec. 19 of Act XX. of 1864 for an account of the property of his two minor brothers, whose estate was administered by the defendant under a certificate granted to him under that Act. The District Judge held that the plaintiff was not entitled to the account sought by him without setting forth in the plaint that the defendant had been guilty of some malversation, or without stating that some cause for the action had arisen.

The appeal was argued before WESTROPP, C. J., and MELVILL, J.

Leith (with him *Shántárám Náráyan*) for the appellant.

Anstey (with him *Dhirajlál Mathurádás*) for the respondent.

WESTROPP, C.J.:—This suit is brought for an account under Sec. 19 of Act XX. of 1864 by the plaintiff, as brother of two minors, against his and their elder half-brother, who has obtained a certificate of administration under Sec. 6 of the same Act, and been appointed guardian of the minors. The plaintiff in his plaint merely says that the conduct of the defendant is improper, and that the plaintiff has suspicions that the defendant will waste the property of the minors, but fails to specify any instance of malversation of the defendant in either of his offices of administrator and guardian, or to give any reason

plausible or otherwise, for believing that the defendant will waste the assets. We are clearly of opinion that such a plaint is unsustainable and sets forth no cause of action. It never could have been intended by the Legislature that any relative of a minor might, without assigning a fair reason for such a course, harass an administrator under the Act by bringing a suit for an account of the money or other property of the minor in the care or management of the administrator. Were it so, any relative of the minor, disappointed in obtaining a certificate of administration, as is frequently the case, or for other reasons entertaining vindictive feelings against the administrator, might not only subject the latter to great and useless annoyance, but also injure the estate of the minor. For, in the event of the defeat of the plaintiff, in such a suit the costs awardable against him, being costs between party and party under Reg. II. of 1827 and Act I. of 1846, would not, in the majority of cases, even approximately reimburse the defendant, the administrator, for the actual expenses which he would necessarily incur in his defence, and he would of course be entitled, under such circumstances, to recoup himself, to the extent of the deficiency, out of the estate of the minor. The plaint here in substance amounts to no more than a statement that the plaintiff thinks ill of the defendant as administrator. Were we to hold that to be a sufficient reason for the institution of a suit, we should encourage much idle litigation. Every plaint, under Sec. 19 of Act XX. of 1864, should specify either some one or more acts of misconduct on the part of the administrator in his office, or should state some reasonable ground for supposing that he is about to waste the estate of the minor. We do not go the length of saying that the plaintiff should not be at liberty to prove acts of misconduct in addition to those specified, but we do hold that the plaint should specify one or more such acts or should assign some satisfactory reason for apprehending an injury to the estate of the minor by the administrator. This is the second suit brought by the plaintiff against the administrator (see 9 Bom. H. C. Rep. 39), and he ought to have been more cautious in the manner in which he framed his plaint.

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We, therefore, decline to grant to him leave to amend it, as asked for by his learned counsel, and must, on the grounds assigned by the District Judge, affirm his decree with costs. We may mention that in the Supreme Court, and at the Original Jurisdiction Side of the High Court, the practice has been not to allow a person, as next friend of an infant, to bring a suit on behalf of the latter without the previous permission of a Judge in Chamber.

Decree confirmed.

[APPELLATE CIVIL JURISDICTION.]

1873. July 7.

Special Appeal No. 62 *of* 1873.

ABDUL GANI.................... *Plaintiff and Appellant.*

KRISHNA'JI BHIKAJI for himself and as the heir of the deceased BA'LU KRISHNA'JI............... *Defendant and Respondent.*

Mortgage—Land Revenue—Occupant—Mortgagee's omission to pay Land Revenue—Purchaser at a Revenue Sale—Bombay Act I. of 1865, *Sec.* 36—*Title—Mesne Profits.*

Where land, in the possession of a mortgagee, is sold by the *Mamlatdar* for arrears of Government land revenue :—

Held that as the land revenue is the paramount charge on the land, whoever derives title from the occupant takes it subject to that charge and that, therefore, the purchaser at the sale was entitled to the land, free from any mortgage lien.

THIS was a special appeal from the decision of G. Ayerst, Acting Assistant Judge of Tanna, affirming the decree of the Subordinate Judge of Mahad.

Abdul Gani brought the action to establish his right to, and obtain, possession of certain land with a claim for the mesne profits thereof for two years. The land was sold by the revenue authorities on the 10th February 1868 for