

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Nánábhái Haridás.

NA'G THÁKUR, A MINOR, BY HIS NEXT FRIEND^c GOVIND VISA'JI
(ORIGINAL PLAINTIFF No. 2), v. MADNA'JI SADA'SHIV AND ANOTHER
(ORIGINAL DEFENDANTS), RESPONDENTS.*

1883
December 20.

*Minor--Suit by minor--Next friend--Certificate of administration--Security of
minor's estate--Act XX of 1864.*

Where there is a next friend of a minor willing and competent to act for him, such next friend may file a suit on his behalf, or continue one already filed, without a certificate of administration.

In the event of a decree being passed in the minor's favour, the Court can, in the absence of an administrator under Act XX of 1864, make such arrangements as it deems expedient for the security of the minor's estate, as by appointing an administrator under the Act.

THIS was a second appeal against the decision of C. E. G. Crawford, Assistant Judge of Ratnágiri, confirming the decree of Ráv Sáheb G. G. Somen, Subordinate Judge of Málvan.

On the death of one Visáji Pándurang Thákur, his widow Lakshmi sued the defendant No. 1, Madnáji Sadáshiv, for the rent of a piece of land alleged to have been let by the deceased. To this suit Nág Thákur, who alleged himself to be the adopted son of the deceased, was, at his request, added as co-plaintiff; but Nág Thákur being a minor, the name of his natural father Govind was added as his next friend on the record. The defendant Madnáji Sadáshiv denied Lakshmi's right to represent her husband, and denied also the adoption of Nág Thákur. He contended that one Báلكrishna Bháskar was the heir of the deceased landlord Visáji Pándurang Thákur and that he had paid the rent, now improperly claimed, to the said Báلكrishna Bháskar, who was subsequently added in the suit as defendant No. 2. Under these circumstances Lakshmi was required to produce a certificate of administration to her minor adopted son, and she applied to the District Judge to grant her one, but her application was rejected. The Subordinate Judge thereupon rejected the plaintiff's claim, and the Assistant Judge confirmed his decree, they being of opinion that the adoption set up should be first established by a regular suit.

* Second Appeal, No. 573 of 1882.

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The plaintiff No. 2, Nág Thákur, by his next friend Govind Visáji appealed to the High Court.

Pándurang Balibhadra for the appellant.

Máneksháh Jehángirshah Taleyárhán for the respondents.

The judgment of the High Court was delivered by

WEST, J.—The Courts below have held that the plaintiffs in this case could not sue. The first plaintiff is the adoptive mother of the second plaintiff, and a certificate of administration seems to have been refused to her by the District Court. This need not have prevented her from suing, as next friend of the infant, to establish and enforce such rights as he really had, but it appears that the natural father of the minor came forward as his next friend and endeavoured to carry on the suit in his interest. This he might do, according to the case of *Jádow Mulji v. Chhagan Rdichand*⁽¹⁾, without obtaining administration of the minor's estate or seeking it. The rejection of the suit, because a certificate had not been obtained, was wrong if there was a next friend competent and willing to act for the minor. In the event of a decree in the minor's favour the Court could, in the absence of an administrator under Act XX of 1864, make such arrangements as it should deem expedient for the security of the minor's estate, as by appointing an administrator under the Act. An application for a certificate by the minor's father and next friend was, in fact, pending when this suit was heard and disposed of, and the father has now got a certificate which puts him in a position to sue as one having charge of the minor's estate whatever it may be; but he ought, in the absence of special objections, to have been allowed to sue as next friend as he sought to do.

We reverse the decrees of the Courts below, and remand the cause for retrial on the merits. Costs to follow the final decision.

Decree reversed and case remanded

(1) I. L. R., 5 Bom., 306.