1911.

KAIKHUSRU ADERJI v. SECRETARY OF STATE.

to the year 1843, when it was occupied by an army surgeon. It afterwards came into the hands of a contractor, Nundram Sundarji, and in 1860 he is found petitioning the Commander-in-Chief against a proposal by the military authorities to remove his bungalow along with others for various reasons, which illustrated the limited and precarious character of his tenure. Again, in 1882, Adarji Dorabji applied for permission to build a fowl shed on the site, and duly obtained the sanction of the Commander-in-Chief. These circumstances tend to show that the appellants' predecessors in title did not regard the property as differing in its tenure and terms from other property in the cantonment.

Their Lordships are of opinion that the appellants are mere licensees, and that the land in question has been lawfully resumed by the Government, and they will therefore humbly advise His Majesty that this appeal should be dismissed with costs.

Solicitors for the appellants: Messrs. *T. L. Wilson & Co.*

Solicitor for the respondent: *The Solicitor, India Office.*

Appeal dismissed.

J. V. W.

ORIGINAL CIVIL.

Before Mr. Justice Robertson.

1911.

February 3.

In re GUARDIANS AND WARDS ACT (VIII OF 1890)

AND

In re BAI JAMNABAI, WIFE OF LILADHAR KHETSEY, A MINOR, AND HARIDAS NARANJI, PETITIONERS.

Guardians and Wards Act (VIII of 1890), section 12, clause 3 (b)—Power to order money to be paid into Court—Civil Procedure Code (Act V of 1908), section 141, Order XXXIX, rule 10, Order XL, rule 1.

H petitioned the Court under the Guardians and Wards Act, 1890, to be appointed guardian of the property of J, a minor; he also applied to the Court in the following terms:—

"In the meanwhile and pending these proceedings a receiver may be appointed to take charge of the amount of Rs. 4,141-9-1 due and payable to the minor by

G or such other order may be passed to protect the property of the said minor as to this Honourable Court may seem meet."

Held, that it was open to the Court to pass an order directing G to forthwith deposit in Court the sum of Rs. 4,141-9-1 to abide by the further order of the Court.

In the year 1907 a sum of Rs. 4,000 was deposited with Goverdhandas Goculdas Tejpal by Purshotam Vassonji in the name of his minor daughter Bai Jamnabai and an entry was made in the cash books of Goverdhandas which provided that the monies should be repaid when Purshotam Vassonji and Thaker Dhanji Jeram should come together to demand the same. It was subsequently agreed that Liladhar Khetsey should come with Purshotam Vassonji to receive the monies. A *samadaskat* book was also given to Purshotam Vassonji in which a credit entry had been made of the said sum of Rs. 4,000.

On 14th November 1909 a sum of Rs. 4,574-10-9 was due to Bai Jamnabai at the foot of the account.

On 19th July 1910 a sum of Rs. 700 was paid by Goverdhandas out of the monies so deposited with him, and Purshotam Vassonji and Liladhar Khetsey passed a joint receipt for the same.

On the 18th November 1910 Goverdhandas received a letter from Messrs. Maneklal & Co., attorneys for Haridas Naranji, demanding payment of the amount due to Bai Jamnabai at the foot of the account and informing him that they would present a petition to the Court for the appointment of the petitioner as guardian of the property of the minor Bai Jamnabai. They also stated that an application would be made to the Sitting Judge in Chambers the very next day for the appointment of a receiver to take charge of the sum of Rs. 4,141-9-1 due and payable to the minor Bai Jamnabai. On the 19th November 1910 the Court passed an order in the absence of Goverdhandas, directing Goverdhandas to deposit in Court the said sum of Rs. 4,141-9-1 mentioned in the petition to abide by the further order of the Court. Goverdhandas therefore took out a Chamber summons calling upon the petitioner to

1911.

BAI JAMNABAI *In re.*

show cause why the Judge's order of the 19th November 1910 should not be set aside, alleging that he had not appeared at the hearing of the application on the 19th November, since in Messrs. Maneklal's letter to him it was simply stated that an application would be made for the appointment of a receiver.

The summons was adjourned into Court for argument.

Raikes for Goverdhandas.

Lowndes for the petitioner.

ROBERTSON, J.:—In this case Mr. Goverdhandas Goculdas Tejpal has taken out a summons calling upon one Haridas Naranji to show cause why the order made by me on the 19th of November 1910 should not be set aside. The order referred to was made at the instance of the petitioner Haridas Naranji and directed Mr. Govardhandas Goculdas Tejpal to pay into Court the sum of Rs. 4,141-9-1, being the amount due by him to Bai Jamnabai, the minor, at the foot of her *samadaskat* account.

The summons is supported on two grounds: (1) that no notice of the particular order which was made on the 19th of November was ever given to Mr. Tejpal; and (2) that the facts were not fully set before the Court.

As to the notice that was sent, it appears that on the 18th of November a letter signed by Messrs. Maneklal & Co., the petitioner's attorneys, was served on Mr. Tejpal and it distinctly gives him notice that an application will be made the next day to the Sitting Judge in Chambers for an order in terms of prayer (*b*) to the petition. The terms of that prayer (*b*) are set out in the letter and are as follows: "That in the meanwhile and pending these proceedings a receiver may be appointed to take charge of the amount of Rs. 4,141-9-1 due and payable to the minor by Mr. Goverdhandas Goculdas Tejpal or such other order may be passed to protect the property of the said minor as to this Honourable Court may seem meet." It appears to me that Mr. Tejpal has no grievance on the ground that he did not get sufficient notice of the application about to be made. It was impossible for the applicant to know beforehand the exact order that the Judge in Chambers

would be willing to make. As a matter of fact the application that was made was for a receiver and the order that was made was made at the instance of the Court itself.

As to the facts, which are said to have been concealed from the Court, I have considered the petition very carefully and I cannot see that any fact of any real importance was concealed by the petitioner from the Court when the order of the 19th of November was asked for and made.

Turning now to the points of law, which were relied upon as showing that the order of the 19th of November was made without jurisdiction, it was suggested that under section 12 of the Guardians and Wards Act the Court had no power to direct that the property in the hands of Mr. Tejpal and belonging to Bai Jamnabai should be paid into Court. The words of the Act are that the Court "may make such order for the temporary custody and protection of the person or property of the minor as it thinks proper." But reliance is placed on clause 3 (*b*) of that section which provides that any person to whom the temporary custody and protection of the property of the minor is entrusted is not empowered by anything under that section to dispossess otherwise than by due course of law any person in possession of any of the property.

In the first place as to the power to order the money to be paid into Court, it is necessary to note the exact circumstances under which this money came into the hands of Mr. Tejpal. In Exhibit A, to the affidavit of Mr. Tejpal of the 5th of December 1910, is set out the entry in his cash book under date the 9th of August 1907 and it runs as follows:—"Credited to the account of Bai Jámnabai the daughter of Thakar Purshotam Vassonji and Thakar Liladhar Khetsey, Rs. 4,000, *i. e.*, rupees four thousand. The moneys have been deposited as the Palla monies of Bai Jamnabai for making ornaments for her. The same have been credited. This amount is payable when both Thakar Purshotam Vassonji and Thakar Dhanji Jeram come jointly. Interest at annas 8 to be paid." Exhibit B to the same affidavit is a writing dated 22nd March 1909 signed by Dhanji Jeram and is as follows:—"To Shet Goverdhandas Gokuldas

1911.

BAI JAMNABAI *In re.*

Tejpal. Written by Thakar Dhanji Jeram on Ashad Vad 30 Friday, Samvat 1963 (9th August 1907). A sum of Rs. 4,000 has been deposited with you in the name of Bai Jamnabai daughter of Thakar Purshotam Vassonji and wife of Thakar Liladhar Khetsey. The same are desposited for the Palla ornaments on the occasion of her being betrothed to Thakar Liladhar Khetsey. In your books it has been got written by us that the said monies should be returned to me and Thakar Purshotam Vassonji when we jointly approached you. By this writing I authorize Thakar Liladhar Khetsey to join the said Thakar Purshotam Vassonji in my place and stead and to receive jointly the said monies. Samvat 1965, Chaitra Sud 1, 22nd March 1909. (Sd.) Thakar Dhanji Jeram by his own-hand." Exhibit C is a translation of an entry in Mr. Tejpal's Nondh for October-November 1909, and is as follows:—"Credited to Bai Jamnabai daughter of Thakar Purshotam Vassonji Mudrawalla, Kartak Sud 1st, Sunday, Rs. 4,574-10-9, *i. e.*, four thousand five hundred and seventy-four annas ten and pies nine. Your Palla monies are credited in your and your husband Liladhar Khetsey's account. That account having been closed by your father's request the said amount is credited to you and debited to you and your husband Liladhar Khetsey. Until you come of age the said amount is to be payable to both your father the said Thakar Purshotam Vassonji and to your husband the said Thakar Liladhar Khetsey when they come jointly. Interest runs at annas 8. Rs. 4,574-10-9. Debited to Bai Jamnabai and Thakar Liladhar Khetsey. Rs. 4,574-10-9."

In the petition of Haridas Naranji two entries are set out, one of the 18th of July in the *samadaskat* book given by Mr. Tejpal to Bai Jamnabai; the earliest of these is dated the 14th of November 1909 and from that it appears that the balance of Palla money was on that date transferred to the personal account of the minor Bai Jamnabai. The entry is signed by Mr. Tejpal himself. The other entry of the 18th of July 1910, also in the *samadaskat* book, shows that on that date the sum of Rs. 700 was drawn from this money and that

the same were credited by the hands of Thakar Purshotam Vassonji and Thakar Liladhar Khetsey. As to how these two persons' names appear in the last entry, it is only necessary to refer to the exhibits to the affidavit of Mr. Tejpal of the 5th of December 1910 which have already been set out.

The result of these entries appears to me to be clear, namely, that this money was paid over by the father of the bridegroom as the Palla monies of the minor Bai Jamnabai to Mr. Tejpal and that after the marriage they were transferred by Mr. Tejpal to the personal account of Bai Jamnabai, it being agreed that the account should be operated upon until the coming of age of Bai Jamnabai by these two persons Thakar Purshotam Vassonji and Thakar Liladhar Khetsey. I consider, under these circumstances, that Mr. Tejpal has definitely acknowledged the amount to be due to the minor Bai Jamnabai; and that being so, the authorities leave no doubt on my mind that the proper order to make is to direct the payment of the money into Court.

I may refer in this connection to Mr. Simpson's Book on Infants, 3rd Edition, at page 345. There he says at the top of the page:—"Where there was any danger that the fund would be lost, or that the trustees would not properly execute the trusts, the old practice seems to have been to require them to give security; but the modern practice is to order the funds to be paid or transferred into Court. It is not necessary to show that the fund is in danger, or that the trustee has abused or intends to abuse his trust; the *cestui que trust* has a right *ex debito justitiæ* to have the fund brought into Court. Applications for this purpose are generally made by summons, and must be founded upon some admission by the person required to make the payment." The cases cited in the foot-note fully bear out the statement of the law contained in the text:—*Richardson* v. *Bank of England*[1]; *Dubless* v. *Flint*[2]; *Hagell* v. *Currie*[3].

(1) (1838) 4 My. & Cr. 165. (2) (1839) 4 My. & Cr. 502.

(3) (1867) L. R. 2 Ch. 449.

This English practice appears to be embodied in the Civil Procedure Code in Order XXXIX, rule 10, which provides that "where the subject-matter of a suit is money . . . and any party thereto admits that he holds such money . . . as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in Court or delivered to such last-named party, with or without security, subject to the further direction of the Court."

I think, however, it is desirable to deal with the argument that was pressed before me on the question as to whether or not the Court had power in such cases to appoint a receiver. As a matter of fact Mr. Tejpal, in his affidavit, upon which he founded his application for this summons, stated in para. 5:— "I did not think it necessary to appear in the notice and incur unnecessary costs as I was not at all concerned with the appointment of a receiver herein." And I understood from his counsel that by that he meant that if a receiver had been appointed he would not have taken objection to the order or sought to have it set aside. However, in the course of the argument on the first point, namely, whether the proper order was to direct the payment of the money into Court, it appeared that his counsel made it a part of his argument that not only did the provisions of section 12 of the Guardians and Wards Act not justify the Court in ordering the money to be paid into Court but that also it had no power to appoint a receiver in such a case. This, of course, he put forward as part of the argument and as a matter of law and not as in any way meaning that his client wished to resile from the position that he had taken up in his affidavit. As the matter is one of very great importance in the administration of the Court's jurisdiction in relation to infants, I think it desirable to say that I have no doubt that the Court would have had power in this case to appoint a receiver had it considered it necessary or proper to do so. Turning, again, to the English practice, as stated in Simpson on Infants, at page 352, I find it stated that "though a receiver of an infant's estate may be appointed on petition or summons without suit, yet the more usual course is to appoint a guardian of the person

and estate without receiver. . . . Under the Judicature Act, 1873, section 25 (8), a receiver may be appointed by an interlocutory order of the Court in all cases in which it shall appear to the Court to be just or convenient that such order should be made. . . . The Court is now freed from the old rules as to the time at which and cases in which a receiver would be appointed." Turning to the Code, very wide powers are given to the Court as regards the appointment of a receiver. Section 141 of the Code provides that the procedure laid down in the Code in regard to suits should be followed as far as it can be made applicable in all proceedings of any Court of civil jurisdiction; and having regard to the terms of section 12 of the Guardians and Wards Act that the Court may make such order for the protection of the person and property of the minor as it thinks proper, I am of opinion that section 141 of the Code makes applicable in a proceeding on a petition under that Act the sections and orders dealing with the appointment of the receivers. This view is supported to some extent by the observations of their Lordships of the Privy Council in *Thakur Prasad* v. *Fakir-ullah*[1].

Under Order XL, rule 1, where it appears to the Court to be just and convenient, the Court may by order appoint a receiver of any property, whether before or after decree. The terms of that order could hardly be wider and it appears to me that if the Court is of opinion that it is necessary for the protection of the property of the minor to appoint a receiver, then reading these sections and orders together it has the clearest power to do so. I cannot think that Order XL, rule 1, is confined, as was suggested, to a suit. It is quite true that the words "whether before or after decree" are used in sub-clause (*a*) of sub-section (1) of Order XL, rule 1. But having regard to what I have already said as to section 141 of the Code, I do not think that the appearance of those words in that Order ousts the jurisdiction of the Court. In my opinion to hold otherwise than as I have done would be to render section 12 of the Guardians and Wards Act practically nugatory. If the Court can neither order the person having the custody of the property

(1) (1894) 17 All. 106.

1911.

BAI JAMNABAI *In re.*

to pay the money into Court (Order XLIX, rule 10) nor appoint a receiver (Order XL, rule 1) of the property pending the further order of the Court, it is difficult to see what effective means it could take to protect the property if it considered that it was in danger in the hands of the person having possession or custody of the property at the time the application is made to the Court.

The only other point that I think I need notice on this part of the case is the suggestion that the order for payment into Court effected a hardship on Mr. Tejpal in that the receipt of the Prothonotary for the money would not be an effectual discharge of his liability to Bai Jamnabai. But I do not think there is any substance in this contention. As a matter of fact, if anybody was a trustee of this property it was Mr. Tejpal himself. He had expressly acknowledged that he held the money on account of Bai Jamnabai; and the account stood, so far as can be gathered from the entries to which I have already referred, in the name of Bai Jamnabai. It did not stand in the names of the alleged trustees Thakar Purshotam Vassonji and Thakar Liladhar Khetsey. The arrangement that the money was to be paid to them on their joint application was merely one of convenience in order to enable the minor to have the ornaments made for her without waiting until she came of age. But in any case it is obvious that all parties acknowledged that the monies belonged to Bai Jamnabai, whoever held them in trust for her. Both Liladhar Khetsey and Purshotam Vassonji had demanded this money from Mr. Tejpal and both those persons consented to the appointment of a guardian of the minor's property for the purpose of recovering this very sum from Mr. Tejpal. This seems sufficient to dispose of any contention of Mr. Tejpal that he was exposed to the risk of further demand if he had complied with the order of the Court.

It was not contended before me that the order had been made wrongly so far as the order was based on the alleged danger to the property. The points that were taken before me were purely legal ones and no point was made that any

1911.

BAI JAMNABAI *In re.*

false statement had been made to the Court regarding the necessity of some means being taken for the protection of the minor's property.

In my opinion, therefore, there is no ground whatever for setting aside or modifying my order of the 19th of November, and this summons must, therefore, be discharged with costs.

Attorneys for the petitioner: Messrs. *Maneklal & Co.*

Attorneys for Goverdhandas: Messrs. *Bhaishankar, Kanga* and *Girdharlal.*

Summons discharged.

B. N. L.

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Hayward.

1911.

July 18.

GHELABHAI GAVRISHANKAR (ORIGINAL PLAINTIFF), APPELLANT, *v.* UDERAM ICHARAM AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

Civil Procedure Code (Act XIV of 1882), section 539—Trust for public religious purpose—Dedication of property as Shivarpana—Ejectment of trespassers from the trust property—Court—Jurisdiction—Trust created by will—Trust coming into being at a future date—Duty of heirs to carry out the trust—Hindu law—Will.

A suit to eject a trespasser from property, which is the subject of a public religious trust, does not fall within the purview of section 539 of the Civil Procedure Code of 1882.

Lakshmandas Parashram v. *Ganpatrav Krishna*(1); *Vishvanath Govind Deshmane* v. *Rambhat*(2); *Kazi Hassan* v. *Sagun Balkrishna*(3); *Ravichand* v. *Samal*(4), followed.

Where the trustees named by the testator for the purpose of making and completing the trust at the point of time fixed by him are dead, and the object of the trust as named by him is specific and definite, the Court will take the administration of the trust.

Moggridge v. *Thackwell*(5); and *In re Pyne. Lilley* v. *Attorney-General*(6), followed.

* Second Appeal No. 131 of 1910.

(1) (1884) 8 Bom. 365.
(2) (1890) 15 Bom. 148.
(3) (1899) 24 Bom. 170.
(4) (1886) P. J. 273.
(5) (1803) 7 Ves. Jun. 36.
(6) [1903] 1 Ch. 83.