

Order issued on the same subject, are *ultra vires*, in so far as they relate to lickerin wire and that the Cotton Textiles (Raw Marterials and Stores) Order, 1946, did not continue in force after September 30, 1946, in so far as it related to lickerin wire.

Appeal allowed.

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### APPELLATE CIVIL

Before Mr. Justice Rajadhyaksha and Mr. Justice Dixit.

MURLIDHAR NARAYAN KULKARNI AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS *v.* DATTAJIRAO GANGARAM SHINDE AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.\*

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*Bombay Court of Wards Act (I of 1905), s. 14—Claims contemplated by, —Whether claims relating to immoveable property included.*

Section 14 (1) of the Bombay Court of Wards Act, 1905 which requires persons having claims against the Government ward or his property, to submit the same to the Court of Wards, applies to claims relating not only to money but also to immoveable property.

Hence a suit by the plaintiff to recover possession of immoveable property, which was under the superintendence of the Court of Wards, is barred under s. 14 (3) if the plaintiff has failed to submit his claim against it to the Court of Wards in conformity with s. 14 (1) of the Bombay Court of Wards Act, 1905.

Second Appeal from the decision of L. Y. Ankalgı, Judge Small Causes Court, Poona (with Appellate Powers).

Suit for possession of immoveable property.

The suit property which was a house belonged originally to a joint Hindu family consisting of two brothers, Ramkrishna and Gopal. Gopal died in 1902 leaving a widow Saraswatibai. Ramkrishna died in 1908 leaving a widow Laxmibai and a son, Laxman. Laxmibai died in 1913 and Laxman died in the same year but after Laxmibai. Gopal's widow Saraswatibai succeeded to the estate as a Hindu widow. On June 19, 1920 Saraswatibai sold the suit property to one Dr. Shinde. The Court of Wards assumed management of Dr. Shinde's property in October 1932. Saraswatibai died on June 15, 1932. The Court of Wards published a notice on March 20, 1933, calling

\* Second Appeal No. 106 of 1948.

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upon persons having claims to the estate to submit the same to the Court of Wards within six months. On October 16, 1933 the Plaintiffs, who were the reversionary heirs of Laxman, wrote to the Court of Wards saying that they were entitled to the suit property as the alienation made by Saraswatibai was unauthorised. The Court of Wards called upon the Plaintiffs to produce the certificate which was granted by the District Judge to Saraswatibai and that on the production of the said certificate the Plaintiffs' claim would be considered. The Plaintiffs did not move further in the matter. On April 6, 1942, the Court of Wards sold the suit property to Defendant No. 4. On June 11, 1943, Plaintiffs filed the present suit claiming possession of the suit property on the ground that the alienation made by Saraswatibai was without legal necessity. Dr. Shinde having died in 1932 his sons were impleaded as Defendants Nos. 1 to 3.

The trial Court held, *inter alia*, that the suit was barred under Section 14 (3) of the Bombay Court of Wards Act, 1905.

On appeal by the Plaintiffs, the Small Causes Court Judge (with A. P.) at Poona, confirmed the decision of the trial Judge.

The Plaintiffs appealed to the High Court.

V. D. Tulzapurkar, for the appellants.

D. V. Patel, for respondents Nos. 1 to 3.

P. S. Joshi, for respondent No. 4.

DIXIT J. This second appeal raises a question under s. 14 of the Bombay Court of Wards Act, 1905, and the facts giving rise to the suit out of which the appeal arises are briefly these.

The property in suit is a house, No. 30, situate in Khadki Juna Bazar in the Poona District. This property belonged to one Maharudra Balwant Pandav. He died in 1900 leaving him surviving two sons, Ramkrishna and Gopal. Gopal died in 1902 leaving him surviving his elder brother Ramkrishna and a widow by name Saraswatibai. Ramkrishna himself died in 1908 leaving him surviving a widow by name Laxmibai and a son by name Laxman. Laxmibai and Laxman died in the year 1913 but on the same day, Laxman having survived his mother. After the death of Laxman the property in suit was inherited by Saraswatibai, the widow of Gopal.

On June 19, 1920, Saraswatibai sold the suit property to one Dr. Gangaram Hariba Shinde for Rs. 1,225. Dr. Shinde was

the father of defendants Nos. 1 to 3. During the lifetime of Dr. Shinde, the Court of Wards assumed management of his property in October of 1932. It appears that on October 27, 1932, a notification was published in the Gazette inviting claims relating to his property. On December 25, 1932, Dr. Shinde died and a fresh notification dated March 20, 1933, was issued inviting those claims. This notification was published in the *Bombay Government Gazette* on March 23, 1933, and it was also published in an issue of "*Dnyana Prakash*" on April 2, 1933. In accordance with the aforesaid notification the present plaintiffs, who are the maternal uncles of Laxman, notified their claim to the Manager, Court of Wards, on October 16, 1933. In that notice the plaintiffs stated that the alienation made by Saraswatibai was unauthorised and that, as the heirs of Laxman, they were entitled to the property in suit. To this notice a reply was given by the Manager, Court of Wards, on November 20, 1933, the notice and the reply being respectively exhibits 79 and 86. The reply recites that the notice dated October 16, 1933, was duly received and that it appeared that Saraswatibai had obtained a certificate, No. 273 of 1914, from the District Court which should be forwarded and upon receipt of the same the notice will be considered. The plaintiffs apparently did not move in the matter, and in the meanwhile the Court of Wards sold the suit property to defendant No. 4 on April 6, 1942, for a sum of Rs. 2,300.

On June 11, 1943, the plaintiffs filed the present suit against the sons of Dr. Shinde who are defendants Nos. 1 to 3 and defendant No. 4, an alienee from the Court of Wards, claiming possession of the property. The basis of the plaintiffs' claim was that the alienation made by Saraswatibai on June 19, 1920, was not supported by legal necessity and that the alienation was not binding upon the plaintiffs. They, therefore, claimed possession of the property with mesne profits and costs.

Defendants Nos. 1 to 3 resisted the plaintiffs' suit, contending that the alienation was supported by legal necessity and that the plaintiffs' claim was barred both under s. 14 and s. 31 of the Court of Wards Act. They pleaded, in the alternative, that they had effected improvements and said that they were entitled to the amount of the improvements effected by them. Defendant No. 4 also resisted the plaintiffs' suit, and his contentions were similar to those of the other defendants.

The trial Court dismissed the plaintiffs' suit, holding that the suit was barred under s. 14 (3) of the Court of Wards Act, that

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the plaintiffs had proved that they were the heirs of Laxman, that the defendants did not prove that the alienation was for legal necessity. The trial Court also held that the suit was not barred under s. 31, nor was it barred by limitation, and that defendants Nos. 1 to 3 had effected certain improvements costing Rs. 600. From the decree made in the suit, the plaintiffs appealed in the District Court, Poona, and the learned Judge of the Small Cause Court, Poona, with appellate powers, remanded the proceedings on July 9, 1943, and upon receipt of the finding upon an issue sent by him, he heard the appeal and eventually dismissed it on August 30, 1947, and confirmed the trial Court's decree. He held that the suit was barred under s. 14 (3) of the Court of Wards Act, that the notice exh. 79 and the reply exh. 86 did not amount to waiver within s. 14 (2) of the Court of Wards Act, and that the improvements made by defendants Nos. 1 to 3 were in respect of the sum of Rs. 600. From the appellate decree the plaintiffs have come up in second appeal.

The principal point taken on behalf of the plaintiffs is that s. 14 (1) of the Bombay Court of Wards Act, 1905, applies to money claims only and can have no application to claims relating to immoveable property. It is not clear from the record as to the circumstances in which the Court of Wards was moved to take up the superintendence of the property of Dr. Shinde. But it appears from the evidence of the Manager who has been examined at exh. 109 that the property was under the management of the Court of Wards for about 10 years. The property was taken up under the management of the Court of Wards originally during the lifetime of Dr. Shinde, and whether Dr. Shinde himself applied in writing to Government to have the property placed under the superintendence of the Court of Wards or whether the Court of Wards themselves assumed superintendence is not apparent from the record. However, a notification was published in October of 1932 and the material notification with which we are concerned in this appeal is dated March 20, 1933, which was published on March 23, 1933, in the *Bombay Government Gazette* and which was also published in an issue of the "*Dnyana Prakasha*" dated April 2, 1933. The question raised in this appeal involves the consideration of certain sections of the Act. According to s. 9, assumption of superintendence by the Court of Wards is made when it is expedient in the public interest to preserve the property of a landholder or a pensionholder for the benefit of family, and

when the property is of such value that an economical management of the Court of Wards is practicable. Therefore, the considerations which are decisive of the question are that it is expedient in the public interest to preserve the property for the benefit of his family and when the property is of such value that an economical management of the Court of Wards is practicable. Then reference is to be made to s. 13 which requires the assumption of the superintendence of the property of a landholder or a pensionholder to be notified in the official Gazette. According to s. 13 (2), the whole of the property, moveable and immovable, of a landholder or a pensionholder is then to be deemed to be under the superintendence of the Court of Wards. Section 14 which follows s. 13 is the section on which the main argument is based, and it may, for the sake of convenience, be reproduced in this place. It runs as follows:

“(1) On the issue of a notification under s. 13, sub-s. (1), the Court of Wards shall publish in the *Official Gazette* and in such other manner as the Provincial Government may, by general or special order, direct a notice, in English and also in the vernacular, calling upon all persons having claims against the Government ward or his property to submit the same in writing to it within six months from the date of the publication of the notice.

(2) Where the Court of Wards is satisfied that any claimant was unable to comply with the notice published under sub-s. (1), it may allow his claim to be submitted at any time after the date of the expiry of the period fixed therein; but any such claim shall, notwithstanding any law, contract, decree or award to the contrary, cease to carry interest from the date of the expiry of such period until submission.

(3) Every claim against the Government ward or his property (other than a claim on the part of the Crown) not submitted to the Court of Wards in compliance with the notice published under sub-s. (1), or allowed to be submitted under sub-s. (2), shall, save in the cases provided for by s. 18, sub-s. (2), clause (c), and by ss. 7 and 13 of the Indian Limitation Act, 1877, be deemed for all purposes and on all occasions, whether during the continuance of the superintendence or afterwards, to have been duly discharged, unless, in any suit or proceeding instituted by the claimant, or by any person claiming under him, in respect of any such claim, it is proved to the satisfaction of the Court that he was unable to comply with the notice published under sub-s. (1).”

Mr. Tulzapurkar's contention is that the expression “having claims against the Government ward or his property” has a reference to money claims only, and he has endeavoured to support his argument by reference to certain other sections of the Act. He refers, for example, to s. 14 (2) where the sub-section speaks of a claim ceasing to carry interest under certain circumstances. He next refers to s. 15 (1) in which the words used

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*inter alia* are "all documents (including entries in books of account)", and he suggests that this is in reference to a money claim only. He then referred us to s. 16 (2) where the subsection refers to a reduction of a claim and also refers to the rate of interest. He has also drawn our attention to the proviso to s. 16 where the proviso refers to the recovery of a sum of money. He next referred us to s. 18 (1) which speaks of a schedule of debts and liabilities of the Government ward. He also referred to s. 18 (2), cl. (c), which refers to the claims referred to in s. 14, sub-s. (3). His argument is that from a reading of these sections with particular reference to the expressions used in those sections, it is clear that s. 14 (1) must be taken to be intended to apply to a money claim. At first sight, the argument seems to be attractive. But it seems to me that it is not possible to accept this interpretation of s. 14 (1). Upon the assumption of the superintendence by the Court of Wards of a landholder's property, the whole of his property, moveable and immoveable, goes under the superintendence of the Court of Wards. This means that the whole of the property of a Government ward is under the management of the Court of Wards. The expression "persons having claims against the Government ward or his property" is a wide expression, and to accept the argument urged in support of the appeal would mean that in regard to the immoveable property of a Government ward, it would not be necessary for a claimant to submit claims against such property. It seems to me that this interpretation of s. 14 (1) is a narrow interpretation, and when the words are capable of a wider interpretation, it seems to me that it is not right to put a restricted interpretation upon the words occurring in s. 14 (1). It seems to me that it would be more reasonable to interpret s. 14 (1) as one which embraces the claims not merely relating to money but also those relating to immoveable property. Mr. Tulzapurkar, in order to succeed in his contention, has to show that in regard to claims relating to immoveable property, there is some other provision in the Act according to which claims against immoveable property can be invited, and there is no such provision in the Act and I cannot conceive that the Legislature intended s. 14 to be restricted to money claims only and did not intend that s. 14 should apply not merely to money claims, but also to claims relating to immoveable property. It is to be remembered that the whole of the property of a Government ward, whether moveable or immoveable, goes under the superintendence of the Court of Wards, and it is in reference to such property that

is, moveable and immoveable, that s. 14 (1) contemplates calling upon persons having claims against the Government ward or his property to submit those claims in writing.

Mr. D. V. Patel appearing for defendants Nos. 1 to 3 contended that the language employed in s. 14 (1) is general, and where the language used is general, then it would not be right to cut down the meaning of the words used, unless such a construction is justified by the provisions of the Act. In this connection it is to be noted that the Court of Wards assumes management of the property of a Government ward because Government consider that the property can be better managed in the interest of the landholder himself, and a reference to s. 9 shows that the property has to be managed for the benefit of the family of a landholder and that the management has got to be economical and the management must be practicable. From this point of view the Court of Wards has to make up its mind and it could not be the intention of the Act to place the Court of Wards in management of the property where it is not in the interests of the landholder himself to place the property in the management of the Court of Wards, because by taking up the management of the property, the Court of Wards is taking up a liability. Now, s. 18 (1) shows that an investigation of the claims preferred against the Government ward or his property has to be forwarded to Government by a report and a schedule of the debts and liabilities of the Government ward has to be prepared. It is then that the Court of Wards is in a position to know as to whether the Court of Wards would be in a position to efficiently and satisfactorily manage the property of a Government ward, and if s. 14 (1) is interpreted in the sense suggested by Mr. Tulzapurkar, it would mean that the Court of Wards will be concerned only with considering the claims of claimants in relation to money claims only and not in relation to immoveable property. It seems to me that this is not the correct reading of the section, because a reference to other sections of the Act will show that the other construction which I have already pointed out is the right construction. For example, a reference may be made to s. 27. Under s. 27 of the Act, the Court of Wards has got power to sell, exchange, mortgage, charge or lay out the property of a Government ward, and in the management of the property the Court of Wards should have such a power. Now, if at the initial stage the Court of Wards is not in a position to ascertain the nature of the property, superintendence of which has been taken up

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by the Court of Wards, it will not be possible for the Court of Wards to make up its mind as to whether a certain property should be sold or not. To take the present case, in this case the Court of Wards called upon claimants to submit claims. The plaintiffs by a notice preferred a claim. The Court of Wards sent a reply to the notice given by the plaintiffs. The Court of Wards required the plaintiffs to send them a certificate No. 273 of 1914 referred to in the reply. The plaintiffs did not attempt to send a certificate, and in the year 1942 the Court of Wards, presumably thinking that there was no claim against the property, sold the property to defendant No. 4. It seems to me therefore that having regard to the provisions contained in s. 27, it would be necessary for the Court of Wards to ascertain the nature of the property, the superintendence of which has been taken up, and unless the claims, both relating to money as well as immoveable property, are submitted by the claimants, the Court of Wards would not be in a position to ascertain the nature and the extent of the property of a Government ward. In this connection reference may also be made to s. 17. Section 17 of the Act refers to execution of decrees which are to be stayed till a certificate is filed. This certificate is a certificate stating that the decree-holder has duly submitted the decree-claim. This means that the Court of Wards is anxious to know as to whether or not in relation to the property of the Government ward a claim has been duly submitted by the claimant before the Court of Wards. Then again a reference may be made to s. 16 (3). That sub-section shows that subject to the provisions contained in sub-s. (2), nothing in the section should bar the institution of a suit in a civil Court for the recovery of a claim against the Government ward and his property which has been duly submitted to the Court of Wards. That again means that although a claim has been submitted by a claimant, that does not prevent the claimant from filing a suit subject to the provisions contained in sub-s. (2). Mr. Tulzapurkar for the plaintiffs argued, and I think with some justification, that if this construction were adopted, the result would be that a claimant may even be compelled to submit claims to the Court of Wards, as for example, claims relating to an easement or claims relating to pre-emption. If these claims are claims against the property of a Government ward, then in that event those claims have got to be submitted, and even if these claims are submitted, that only means that the various claimants have asserted their claims

when they are called upon to do so, and in such cases, I apprehend there cannot be any hardship. It seems to me therefore that to place a restricted construction upon s. 14 (1) would be on the one hand to do violence to the language of the section, and if the construction contended for by Mr. Tulzapurkar were to be adopted, it seems to me that the Court of Wards would find itself in some difficulty in properly managing the property of the Government ward himself. For these reasons I think the construction contended for on behalf of the appellants cannot be accepted, and we think that the claims contemplated by s. 14 (1) against a Government ward or his property must mean claims both relating to money as well as immovable property. In my opinion, this contention must be rejected.

But then Mr. Tulzapurkar contended that, in any case there was a waiver on the part of the Court of Wards, and this contention is sought to be supported by a reference to the contents of the notice exh. 79 and the reply exh. 86. In this connection the provisions of s. 14 (2) have to be noted. Under s. 14 (2) the Court of Wards may allow a claim to be submitted at any time after the date of the expiry of the period fixed in the notification. That is therefore a matter in the discretion of the Court of Wards. In this case the plaintiffs notified their claim by the notice dated October 16, 1933. This was admittedly six months after the notification which was published on March 23, 1933. Mr. Tulzapurkar strongly relies upon the contents of the reply exh. 86. That reply has been signed by a manager, Court of Wards, Poona. In the concluding part of the reply, it is stated that the notice will be considered upon the receipt of the certificate No. 273 of 1914. The reply is dated November 20, 1933. Mr. Tulzapurkar relied upon an endorsement which appears at the end of the notice exh. 79. The endorsement is in pencil. A reference to the endorsement shows that after the notice was received by the office of the Court of Wards, it was noted that the period of six months had already expired. It is not proved in this case as to who wrote out the endorsement and, in any case, in the reply the Manager stated that upon receipt of the certificate, the notice will be considered. It cannot, I think, be suggested that by the notice the Court of Wards expressly intended to condone the delay which had admittedly taken place in the case. At the same time, reasonably construed, the reply meant only this that if the certificate was forwarded to the office of the Court of Wards, the Court of Wards may look up into the matter. We think that to place

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another construction upon the contents of this reply would be doing violence to the language used in the reply. This is apart from the question whether the Manager who sent the reply had power to send it. It is to be noted that the property was placed under the management of a Manager, and in this connection, certain sections were referred to. Section 20 of the Act refers to the appointment of a Manager of the property of a Government ward. Section 21 refers to the liability of a Manager. Section 23 refers to the general powers of the Court of Wards, and the Court of Wards has to do all things requisite to the proper care and management of the property of which it assumes the superintendence, and this it can do through the Manager. The expression "through" suggests that the Manager is not placed on the same footing as the Court of Wards itself. But then Mr. Tulzapurkar relied upon s. 26. Under s. 26, the Court of Wards or the manager appointed by it has to manage the property of every Government ward under its superintendence or under his management diligently and faithfully for the benefit of the Government ward. Mr. Tulzapurkar contended that the powers of the Manager must be taken to be identical with those of the Court of Wards. The use of the word "or" in s. 26 suggests that the powers of a Court of Wards and those of the Manager are identical. At the same time, the section has to be read as being intended to apply to what is stated in the section itself. That is, the property is to be managed diligently and faithfully for the benefit of the Government ward. Mr. Tulzapurkar contended that the Manager must be taken to be a person authorised to send this reply. Now, it is to be remembered that under s. 46 of the Court of Wards Act, power is given to frame rules, and rules have been framed under s. 46 and they are called the Bombay Court of Wards Rules, 1908. Rule 10 of the Rules contemplates delegation of powers to managers. This delegation has got to be notified by notices posted at the places mentioned in r. 10. It is not clear from the present record whether the Manager had or had not the power to consider the claims preferred by the claimants, because, according to s. 14, it is the Court of Wards which has to be satisfied about the claims. However, it is not necessary to decide this question, because, in our opinion, the language of the reply exh. 86 cannot justify the construction that the Court of Wards intended to consider the claim of the plaintiffs after the expiry of the period contemplated by s. 14. In our opinion, therefore, the lower Court was right in holding that when the notice exh. 79 and the reply

exh. 86 are read together, they do not justify the construction that the Court of Wards intended to consider the claim of the plaintiffs after the expiry of the period of limitation.

The last point taken on behalf of the plaintiffs is that in any case the civil Courts had power to condone the delay. A reference to s. 14 (3) shows that the civil Court has got such a power. But sub-s. (3) of s. 14 requires that the Court must be satisfied that the claimant was unable to comply with the notice published under sub-s. (1). In the present case, nothing was suggested by the plaintiffs in the notice exh. 79 as to why they were unable to comply with the notice. But Mr. Tulzapurkar contended that the plaintiffs were unable to comply with the notice because they came to know of the notification sometime after the date of the notification. It seems to me that that is not contemplated by the language employed in s. 14 (3). Rather, the language suggests that for some unavoidable reason it was not possible for a claimant to comply with a notice. No such ground has been mentioned in the notice, and it seems to us that the plaintiffs cannot therefore successfully rely upon the concluding part of the provisions contained in s. 14, sub-s. (3). This point also must in our opinion, fail.

Mr. Tulzapurkar, however, urged, relying upon s. 14 (3) that there is a saving in the case of the withdrawal of superintendence contemplated by s. 18. He said that there was a Government resolution dated the 2nd September 1946, as a result of which the superintendence was withdrawn on November 1, 1946. It was contended that under those circumstances the provisions of s. 14 (3) will not apply. But the difficulty in the way of accepting this argument is that we are not in a position to know the terms of the resolution. It is not possible to accede to this argument in the absence of adequate material upon the point. This contention must also therefore fail and will be rejected.

As all the contentions urged in support of the appeal fail, the decree of the lower appellate Court will have to be confirmed.

The result is that the appeal fails and the same will be dismissed with costs.

*Appeal dismissed.*

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