

*Privy Council Appeal No. 29 of 1932.*

*Patna Appeal No. 13 of 1931.*

Lachmi Narain and another - - - - - *Appellants*  
v.

Syed Ibrahim Hussain *alias* Manjhle Nawab, through Manager,  
Court of Wards, Patna - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT PATNA.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 10TH JULY, 1934.

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*Present at the Hearing :*

LORD BLANESBURGH.

SIR JOHN WALLIS.

SIR LANCELOT SANDERSON.

[*Delivered by* LORD BLANESBURGH.]

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This is an appeal from a decree of the High Court of Judicature at Patna, dated the 4th February, 1931, which reversed an order of the First Subordinate Judge there, passed on an objection taken to an application by the present appellants for execution of a decree of theirs against the respondent.

The decree which the appellants sought to execute was passed on the 19th September, 1922, as a money decree. It was directed against the respondent Ibrahim Hussain Khan personally, in a suit to which he alone was defendant.

The objection to its execution was taken under section 47 of the Code of Civil Procedure 1908, and was made on behalf of the respondent through the general manager of the Court of Wards, Patna, as his next friend. The estate of the respondent had been under the management of the Court of Wards since the 9th September, 1902, when on his own application under section 6 (e) of the Court of Wards Act (Bengal Act IX of 1879) that Court assumed charge and took possession of all the property to which he was entitled. The decree holders, the appellants, had before their present application made attempts to

attach and sell in execution of their decree, properties of the respondent in charge of the Court, but, it being held that such action of theirs was in contravention of section 60A of the Court of Wards Act, their execution petitions were struck off by orders of the High Court. This, the appellant's further application for execution, was directed pointedly against certain specified properties of the respondent inherited by him from his brother, Sayid Mehdi Hussain Khan, who died on the 19th of March, 1919, the appellant's contention being that these properties have never in fact been in charge of the Court of Wards so that, to them, section 60A of the Act has no application. The sole question in the case, therefore, is whether the appellants in view of the relevant provisions of the Court of Wards Act and the action of that Court with regard to them are entitled to have recourse to these properties to satisfy their decree.

Ibrahim Hussain Khan, the respondent, was one of a family of three brothers and two sisters. Mehdi Hussain, the deceased, was the eldest of the brothers, Akbar Ali the youngest.

On the death of Mehdi Hussain the respondent and his brother, Akbar Ali, became each entitled according to Mahomedan law to a one-third share of his estate, the remaining one third devolved upon his two sisters.

Mehdi had, in his lifetime, executed two wakf deeds, dated the 25th May, 1917, and the 19th February, 1919, respectively, and at his death one Ali Zamin was, as Mutwali, in actual possession of the property comprised therein. The property against which the appellants now seek to execute their decree is in effect the interest of the respondent in some of the properties included in the wakf, so that any right or interest of his in these properties depends upon the question whether or not the wakfnamas are void.

In 1920 Akbar Ali instituted a suit against Ali Zamin as the Mutwali in possession to have it declared that the wakfnamas were void. In that suit the plaintiff claimed the recovery of possession of his one third of the wakf property, and to it he joined as co-defendants the respondent and his two sisters. The manager of the Court of Wards was not made a party but as will be seen presently, that Court was clearly cognisant of all the proceedings.

On the 31st July, 1922, Akbar's suit was decreed in his favour, and on appeal by the defendant Mutwali the High Court on the 16th January, 1928, affirmed the decree of the Subordinate Judge, declaring the wakfnamas invalid and inoperative. Against that decree of the High Court a further appeal to His Majesty in Council has been presented by the defendant. That appeal in February, 1931, when this matter came before the High Court was, and so far as their Lordships know, is still pending. It appears, however, that so far as the plaintiff Akbar was concerned execution of these decrees in his favour has not been stayed; and

possession of his share has been given up to him. But as to the remaining two-thirds shares the Mutwali still remains in and retains possession of the property.

It is convenient at this stage to state in detail the action taken by the Court of Wards for the protection of the respondent's interest in the property inherited by him from his brother.

First of all, the Court made early intimation that it treated the respondent's share in Hussain's estate as being in its charge. Medhi Hussain having died in March, 1919, the Collector of Patna on the 12th November, 1919, issued a notification that the Court of Wards had taken charge of the one-third share of the deceased's property inherited by the respondent. Then, on the 31st July, 1922, the day on which the decree of the Subordinate Judge in Akbar's suit was pronounced the Collector ordered the manager of the Court of Wards to take possession of the respondent's one-third share. On the same day, the manager issued orders to his tahsildars to collect rents from tenants in respect of the respondent's share in the estate, and the High Court having, on the 16th January, 1928, affirmed the decree of the Subordinate Judge against the Mutwali, the manager of the Court of Wards, in the respondent's name, instituted, on the 18th August, 1928, a suit against the Mutwali to recover possession of his share of the wakf property. By a subsequent order of the High Court that suit has been stayed pending the result of the Mutwali's appeal on the main issue to His Majesty in Council.

In the result, therefore, while it is true that, as the property now sought to be brought into execution has ever since the death of Hussain Khan been in the adverse possession of the Mutwali, neither actual beneficial possession of the property nor receipt of its rents and profits has been enjoyed either by the respondent or by the Court of Wards on his behalf it is also true that the decision of the Court of Wards to take charge of the property has since the date of Mehdi Hussain's death been avowed, and the steps taken by the Court to make the interest of the respondent effective, have in view of the adverse claim and possession of the Mutwali, represented all, even in the matter of time, that could have been done with any result.

These are the facts with reference to which this appeal must be determined.

Section 6 of the Court of Wards Act provides that proprietors of estates shall be held disqualified to manage their own property when they are—

(e) persons as to whom the Local Government has declared on their own application that they are disqualified and that it is expedient in the public interest that their estates should be managed by the Court.

This was amended to "the Court" in 1915 for Bengal and in 1916 for Bihar and Orissa.

Section 7 enacts that the Court shall have power to take charge of all the property of every such disqualified proprietor

within its jurisdiction and also of the property of any minor member of the family of any such proprietor " who has an immediate or reversionary interest " in his property.

Section 35 provides that whenever the Court has determined to take the property of a disqualified proprietor under its charge, the Court is to make an order declaring the fact and directing that possession be taken of such property on behalf of the Court, " and the Court shall be held to be in charge of such property from the time when possession shall have been so taken."

Section 51 provides that in every suit brought against any ward he shall be therein described as a ward of Court, and the manager of such ward's property or, if there is no manager, the Collector designated in the section shall be named as guardian for the suit and shall in such suit represent such ward.

Section 60A is in the following terms :—

" No property which is or has been under the charge of the Court shall be liable at any time, except with the leave of the Court, to be taken in execution of a decree made in respect of any contract entered into by the ward without the leave of the Court while his property was under his charge."

The learned Subordinate Judge of Patna, on the 21st August, 1928, delivered judgment on the objection taken to the appellants application for execution. In his view the case turned upon the fact that the properties in question had been throughout in the possession of Ali Zamin, and not in that of the Court of Wards, that the mere issue of orders to the servants of the Court of Wards to make collections was not enough to give the Court of Wards possession, that in his opinion the Court of Wards was not yet in charge of the properties in question and that therefore section 60A of the Act had no application, and he held that the property was liable to attachment and sale in execution of the appellant's decree even although the manager of the Court of Wards was no party to the suit or decree. He dismissed the respondent's objection.

In delivering judgment in the High Court on appeal from that order of dismissal Ross J. expressed the view that any property that came to a ward by inheritance or otherwise after he had been declared a disqualified proprietor and after the Court of Wards had taken over his property under section 35 of the Act—as in this case it had done—must be property which he was disqualified from managing, and the management whereof must automatically vest in the Court of Wards. In this case the Court of Wards had actually exercised over the property all the rights which the judgment debtor himself could have exercised had he not been a disqualified proprietor. The Court of Wards had done all that it could do or could be required to do in order to take charge of the property sought to be sold. He therefore held that the application for execution should be dismissed.

In a separate judgement leading to the same conclusion Fazl Ali J. said that the action of the Court of Wards plainly

showed that it had assumed control of whatever interest was then possessed by the disqualified proprietor and that being so section 60A applied. The learned Judge, as a separate ground of decision, expressed the view that the word "property" in the sections of the Act above set forth plainly meant the entire estate possessed by the disqualified proprietor, no attempt being made in the Act to distinguish the estate as a whole from the individual properties composing it.

Their Lordships arrive at the same conclusion as did the High Court. The learned Subordinate Judge, in their judgment, failed to appreciate the governing importance of the fact that throughout the property in question was in the adverse possession of the Mutwali, and that from him actual possession could only be obtained by legal process, which had in fact been instituted and is not yet finally concluded. Their Lordships agree with the High Court in their view that "possession" under the Act must depend upon the nature of the interest in the property in question of the disqualified proprietor. It is, for instance, assumed by the Act that a reversionary interest is one of which possession can be taken.

With regard to the matter adumbrated by both of the learned Judges of the High Court, namely, whether the whole property of the disqualified proprietor automatically comes under the control of the Court of Wards, their Lordships are not in this case called upon to settle the question whether that Court is entitled to disclaim onerous property, as it did or purported to do in *Krishna Pershad Singh v. Gosta Behari Kundu* 5 Calc. L.J. 434). It is sufficient to say with reference to the property now in question that there was no disclaimer by the Court—quite the reverse. The case cited on which the learned Subordinate Judge mainly relied has therefore, in their Lordships' judgment, no application to the facts of the present case even if on principle it be not open to criticism—as to which they say nothing.

Their Lordships would add that they think that insufficient attention has, so far, been paid to section 51 of the Act and to the fact that in the appellants' suit no attempt was made to comply with its provisions. That omission must have a most important bearing on the question whether leave should ever be granted to execute against property of the disqualified proprietor any decree obtained in a suit so defective.

On the whole case their Lordships are of opinion that the decree of the High Court was quite right, and they will humbly advise His Majesty that this appeal therefrom be dismissed and with costs.

In the Privy Council.

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LACHMI NARAIN AND ANOTHER

vs.

SYED IBRAHIM HUSSAIN *alias* MANJHLE  
NAWAB, through MANAGER, COURT OF  
WARDS, PATNA.

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DELIVERED BY LORD BLANESBURGH.

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