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Court : Allahabad

Decided On : Mar-21-1912

Reported in : 15Ind.Cas.729

Judge : Henry Griffin and ;Chamier, JJ.

Appellant : W. Barrow

Respondent : Gaya Prasad

Judgement :

1. This appeal arises out of a suit brought by the respondent, Gaya Prasad, for the recovery of Rs. 4,618-8 on the basis of a promissory-note said to have been made in his favour by Babu Ram Bahadur Singh, represented in this suit by the Court of Wards, Bengal, on the 11th of September 1906. First appeal No. 336 of 1910 arises out of a suit brought by the same person on three promissory-notes said to have been made in his favour by Ram Bahadur Singh on the 27th of December 1906, 29th of December 1906, and 31st of December 1906. Ram Bahadur Singh was, on his own application, under Section 6 (e) of the Bengal Court of Wards Act, IX of 1879, declared to be a disqualified proprietor and his estate was taken under the charge of the Court of Wards in March 1907. Both the suits were tried together in the Court below and may be disposed of here by the same judgment. The Court of Wards pleaded that the notes were not made for consideration, and that the ward, Ram Bahadur Singh, had, after his estate was taken under the management of the Court of Wards, made the promissory-notes in favour of the respondent in

pursuance of an arrangement that if the amounts of the notes were paid by the Court of Wards, those amounts would be divided between the respondent and the ward. The Court of Wards further pleaded that Ram Bahadur Singh had not mentioned these promissory-notes in the list of debts when his estate was taken under the charge of the Court of Wards, although the claims of other petty creditors were mentioned, that the respondent did not file particulars of his claim before the Collector of Monghyr notwithstanding the publication of a general notice under Bengal Act I of 1906, which amended the Bengal Court of Wards Act of 1879, and that, therefore, no suit could be maintained on the promissory-notes.

2. The Subordinate Judge fixed three issues; (1) Whether the notes were admissible in evidence; (2) whether the notes were made for consideration and whether they were ante-dated, and (3) whether the plaintiff was entitled to interest. The Subordinate Judge found that the notes were admissible in evidence, that they were made for the consideration mentioned therein and were made on the dates on which they purport to have been made, and that the respondent was entitled to interest. Accordingly, he decreed the claims.

3. The Court of Wards appeal. In this Court, they repeat the pleas taken in the Court below and suggest that the trial of the case was unsatisfactory and that this Court should order a further inquiry.

4. [On the question whether the promissory-notes were made on the dates on which they purport to have been made, their Lordships discussed the evidence and proceeded:]

5. In the face of the direct evidence of the respondent and the ward, we are unable to hold that the notes were ante dated, and we affirm the decision of the Subordinate Judge that they were made for consideration and were made on the dates on which they purport to have been made.

6. The next question is, whether the suits are maintainable in view of the provisions of the Bengal Court of Wards Amendment Act No. I of 1906. By Section 3 of that Act, several new sections were inserted after Section 10 of the Court of Wards Act of 1879. The first of them, Section 10A, provides that when the Court of

Wards assumes charge of any person or property under Section 7 or Section 10, it shall publish in the manner provided in Section 64A a notice calling upon all creditors, having claims against the ward or his moveable property, to submit the same in writing to the Court at a place to be named in the notice, within six months, from the date of the publication of the notice, and every such claim not submitted to the Court shall, with certain exceptions which are not material in this case, cease to carry interest from the date of the expiry of the period aforesaid. Section 10B, Sub-section (1), provides that every creditor, submitting his claim in compliance with the provisions of Section 10A, shall submit with his written statement of claim full particulars thereof and shall, within such time as the Court may appoint, produce all documents which are in his possession, power or control, on which he relies to support his claim. Sub-section (3) of the same section provides that if any document, which to the knowledge of the creditor is in his possession, power or control, is not produced by him as is required by Sub-section (1), the document will not be admissible in evidence against the ward in any suit brought by the creditor in respect of such claim. By Section 10 of the Act of 1906, a new section, i.e., Section 64A, was inserted in the Act of 1879 to the effect that any notice required to be published by the provisions of Sub-section (1) of Section 10 A. shall be published,

- (a) In the English and in the vernacular official Gazettes;
- (b) in at least three issues each of one English and one vernacular newspaper published in Calcutta;
- (c) in two issues of a newspaper, (if any), published in the district or division in which the ward ordinarily resides or has last resided, and
- (d) by posting such notice on the notice boards in the offices of the Collector and of the Judge of the district in which the place named in the notice is situate.

7. The Subordinate Judge seems to have misunderstood these provisions. He says that it was incumbent on the Collector to issue notices to the creditors whose names appeared in the list submitted by the ward, and that such creditors are required to produce the documents in their possession, and that the respondent

was never served with any such notice. The Act does not require the Collector to give notice to the creditors entered in any list, but it does require the issue of a general notice. Counsel for the Court of Wards has produced in this Court with our permission a copy of the vernacular official Gazette, issues of Vernacular and English newspapers published in Calcutta and two issues of a newspaper published in the Division in which the ward resided, which show that the provisions of Clauses (b) and (c) of Section 64A were complied with in full and those of Clause (a) were partly complied with. There is no evidence, and it would probably be difficult to produce evidence at this time, that notices were affixed to the notice board in the offices of the Collector and Judge of the district. In view of the notices to which we have already referred, and the evidence of the Special Manager and in view of the fact that due publication of the notices was not denied in the Court below, we may fairly presume that all the notices required by Section 64A were published as required by that section.

8. It is contended by Pandit Sander Lal, on behalf of the respondent, that when a creditor does not submit a claim at all, the penal provisions of Sub-section (3) of Section 10B of the Act are not applicable, and that the only penalty, which such a creditor incurs, is the loss of interest under Sub-section (2) of Section 10A of the Act. It may be doubted if this result was intended by the framers of the Act, but Sub-section (3) of Section 10B provides that if a document is not produced as required by Sub-section (1), the document shall not be admissible in evidence thereafter. Sub-section (1) does not oblige the creditor to produce his documents with his claim. He is required to produce his documents within such time as the Court may appoint. There is nothing to show that the Collector appointed any time for any of the creditors of the ward to produce their documents and he could not require the respondent to produce his documents when he was not aware that the respondent had a claim against the ward. It seems to us that the only penalty which the respondent has incurred by not presenting his claim to the Collector is the loss of interest on the promissory-notes after a certain date.

9. With reference to the suggestion that the case should go back for further inquiry, we need only say that we have examined the record and find that ample time was given to the Court of Wards for the production of evidence. The date

fixed for filing the written statement in each case was altered from time to time, and ultimately the 1st of March 1910, was fixed for the filing of the written statements and the 10th March was fixed for the settlement of issues. On the latter date, the Court of Wards presented a petition in which they asked for further time for the production of evidence, and the Court fixed the 5th May 1910. It is evident that the Court of Wards knew that they had to produce evidence on the 5th of May. They did produce some evidence on that date and a few days before that date they applied for the issue of commissions which were refused on the ground that the evidence to be taken would be irrelevant, and on the 5th of May, the Court of Wards did not ask for any further adjournment. It is impossible to say that they were taken by surprise or that they had not sufficient time to produce evidence. The proceedings in the Court below were certainly somewhat summary, but no definite ground has been made out on which we could order a re-trial, and as we have said above, no objection seems to have been taken to the procedure adopted by the Subordinate Judge. The result is that we hold that the claim for the principal sums of the promissory-notes must be decreed, and we must allow interest in both the cases from the date of the promissory-notes up to the 2nd of October, 1907, that is, the date on which the six months' notice under Section 10 expired. The decrees of the Court below are modified accordingly. The parties will pay and receive costs in proportion to failure and success.