

Orissa Court Of Wards Act, 1947

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SCHEDULE 1 :- SCHEDULE I

Orissa Court Of Wards Act, 1947

An Act to consolidate and amend the law relating to the Court of Wards in Orissa Whereas it is expedient to consolidate and amend the law relating to the Court of Wards within the State of Orissa It is hereby enacted as follows : Published vide Orissa Gazette Ext./ 21.a. 1947-O.A. No. 26 of 1947. For Statement of Objects and Reasons, see Orissa Gazette Ext./ 20.1.1947, p. 28 ; for Report of the Select Committee, see Orissa Gazette Ext./23.5.1947, and for Proceedings, in the Assembly, see Proceedings of the Orissa Legislative Assembly, 1947, Vol III. p. 183.

CHAPTER 1

PRELIMINARY

1. Short Title, Extent And Commencement :-

- (1) This Act may be called the Orissa Court of Wards Act, 1947.
- (2) It extends to the whole of the State of Orissa.
- (3) It shall come into force at once.

2. Repeal And Savings :-

(1) The enactments mentioned in the Schedule are hereby repealed to the extent specified in the fourth column thereof.

(2) All rules and appointments made, notifications and orders issued, authorities and powers conferred, farms and leases granted, rights acquired, liabilities incurred and other things done under any of the said enactments shall, so far as they are consistent with this Act, be deemed to have been respectively made, issued, conferred, granted, acquired, incurred and done under this Act.

3. Saving Of Jurisdiction Of High Court :-

Nothing in this Act shall be construed to affect or in any way to derogate from any power possessed by any High Court of judicature over the persons and estates of infants, idiots and lunatics.

4. Definitions :-

In this Act, unless there is anything repugnant in the subject or context-

(a) "The Court" means the Court of Wards;

(b) "Minor" means a person who has not completed the age of twenty-one years;

(c) "Property" includes both immovable property and movable property;

(d) "Proprietor" means a person who owns or has a life interest in land either solely or as a co-sharer;

(e) "Ward" means a person who is under the charges of the Court or whose property is under such charge.

CHAPTER 2

CONSTITUTION, JURISDICTION AND POWERS OF THE COURT OF WARDS

5. Court Of Wards :-

(1) The Revenue Commissioner shall be the Court of Wards for the areas to which this Act extends.

(2) The Court shall deal with every person and every property of which it may take or retain charge under this Act, or which may be placed under its charge by order of a competent Court, in accordance with the provision of this Act.

6. Control Of State Government :-

The Court shall be subject to the control of the State Government and the State Government may, if they think fit, revise, modify or reverse any order passed or proceedings taken under this Act, whether a petition is presented against such order or proceeding or not.

7. Power Of The Court How Exercised :-

The Court may exercise all or any of the powers conferred on it by this Act through the Collector of the district within the limits of which any part of property of a ward is situated or through any other person whom it may at any time appoint in that behalf ; and may confer any of its powers on any such Collector or person and withdraw any powers so conferred.

8. Appeals :-

An appeal shall lie from every order passed under this Act by a Collector to the Court.

9. Control Of Court :-

All orders or proceedings of the Collector or other person as aforesaid under this Act shall be subject to the supervision and control of the Court, and the Court may, if it thinks fit, revise, modify or reverse any such order or proceeding whether an appeal is presented against such order or proceeding or otherwise.

CHAPTER 3

ENQUIRY AND ASSUMPTION OF SUPERINTENDENCE

10. Disqualification :-

The following properties shall be deemed to be disqualified for the management of their property :

- (a) minors;
- (b) women declared by the State Government to be incapable of managing their property ;
- (c) proprietors adjudged by a competent Civil Court to be of unsound mind and incapable of managing their property;
- (d) proprietors declared by the State Government to be incapable of managing their property owing to any physical or mental defect

or infirmity rendering them unfit to manage their property ;

(e) proprietors declared by the State Government to be incapable of managing their property owing to their having been convicted of a non-bailable offence and being unfitted by vice or bad character; and

(f) proprietors declared by the State Government to be incapable of managing or unfitted to manage their property owing to -

(i) their having entered upon a course of wasteful extravagance likely to dissipate their property, or

(ii) their failure without sufficient reason to discharge the debts and liabilities due by them, or

(iii) their ordinarily not residing in the State of Orissa, or

(iv) their persistent failure to discharge the duties imposed on them by any law for the time being in force :

Provided that no such declaration under Sub-clauses (i) and (ii) shall be made unless the State Government are satisfied-

(a) that the aggregate annual interest payable at the contractual rate on the debts and liabilities due by such proprietors exceeds one-third of the average annual profits of the preceding five years; and

(b) that such extravagance or such failure to discharge the said debts and liabilities is likely to lead to the dissipation of property.

11. Immediate Protection Of Disqualified Heirs :-

(1) Whenever a Collector receives information that a proprietor of land situated, in his district has died and he has reason to believe that the heir of such proprietor is, or should be declared to be disqualified under Section 10

(a) he may take such steps and make such orders as he thinks proper for the temporary custody and protection of the property and of all deeds, documents or papers relating to the property which he has reason to believe to belong to the heir;

(b) he may call upon any other Collector in whose jurisdiction any property or any deeds, documents or papers belonging to the proprietor may be, to take charge of the same ; and thereupon such other Collector shall have the same power with respect to such property, deeds, documents and paper within his district as are conferred by this section on the first-mentioned Collector;

(c) if the heir be a minor, he may direct that the person, if any, having custody of the minor shall produce him or cause him to produce at such place and time and before such person as he

appoints, and may make such order for the temporary custody and protection of the minor as he thinks proper :

Provided that where the minor is a female and belongs to a class, of females who do not usually appear in public, her production shall be required only in accordance with the manners and customs of the country.

(2) Whenever a Collector proceeds under this section he shall forthwith report his action for the information of the Court.

12. Recovery Of Expenditure :-

All expenses incurred by a Collector acting under Section 11 shall whether the property is afterwards taken under the superintendence of the Court or not, from a charge upon the property concerned, and shall be recovered from the owner of such property, or from the person whom the Collector shall find to be in possession of such property, as a public demand under the provisions of the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act IV of 1914) or, in any area where the said Act is not in force, as an arrear of land revenue under the provisions of the law for the time being in force in such area for the recovery of arrears of land revenue.

13. Report By A Collector :-

Whenever any Collector, after making such enquiry as he deems necessary, has reason to believe that any proprietor in his district is or should be declared to be disqualified under Section 10, he shall submit a report to the Court setting forth all the circumstances of the case :

Provided that nothing in this section shall be construed as affecting the power of the Court or the State Government to call for a report on any case if deemed necessary.

14. Proprietor To Be Given Opportunity To Be Heard And, To Adduce Evidence :-

(1) Before reporting to the Court under Section 13 that a proprietor ought to be declared that disqualified under Clause (b), (d), (e) or (f) of Section 10, the Collector shall give notice to-such proprietor and afford him a reasonable opportunity to be heard and to adduce evidence.

(2) All questions as to whether the provisions of this section have

been complied with shall be decided by the State Government whose decision shall be final and shall not be called into question of any Court.

15. Report By Court :-

The Court shall consider the Collectors report and except in the case of the female proprietors not being minor, whom it decides to leave in charge of their property, shall report the case to the State Government with its recommendation and pending the receipt of orders shall have power to take such steps as it may deem, necessary for the protection of the person and property of the proprietor in question.

16. Superintendence By Court Of Property Of A Disqualified Proprietor :-

The State Government on receipt of the Courts recommendation may, in any case falling under Clause (b), (d), (e) or (f) of Section 10, declare the proprietor to be disqualified, and in all such and other cases falling under Section 10, may order the Court to assume the superintendence of the property of the proprietor.

17. Superintendence By Court Of The Person Of A Disqualified Proprietor :-

Where the Court assumes the superintendence of the property of a person falling under Clause (a), (c) or (d) of Section 10, it may with the previous sanction of the State Government assume the superintendence of his person also :

Provided that nothing in this section shall authorize the Court to assume the superintendence of the person of a female who has an adult husband and is in his custody.

18. Proprietor Not To Be Declared Disqualified Unless On Ground Of Public Interests :-

The State Government shall not declare any proprietor to be disqualified under Clauses (d), (e) and (f) of Section 10 unless satisfied that it is expedient in the public interest that his property should be managed by the Court, and a statement to this effect shall be interested in the declaration made by the State Government under Section 16.

19. Provision To Meet Case Of Undivided Hindu Families And Co-Sharers :-

(1) The State Government shall not order the Court to take the property of an undivided Hindu family under its superintendence unless all the co-parceners are, declared to be disqualified under Section 10.

(2) When two or more proprietors are co-sharers otherwise than as co-parceners in an undivided Hindu family and one of such co-sharers is, or is declared to be, disqualified under Section 10, the State Government may order the Court to institute a suit for partition on behalf of the disqualified proprietor and to take under its superintendence the property allotted to such proprietor in the partition.

20. Application By Proprietor Himself :-

A proprietor may apply to the State Government to have all his immovable property and such part of his movable property as he may specify placed under the superintendence of the Court, and the State Government may, on being satisfied that it is expedient in the public interest that such property should be managed by the Court, make a declaration to that effect and order the Court to assume the superintendence of such property.

21. Notification Of Assumption Of Superintendence :-

(1) Whenever under Section 16, 17 or 20 the State Government order the Court to take under its superintendence the person or property of a proprietor or both, such order of the State Government, together with any declaration made under the aforesaid sections, shall be notified in the gazette. The notification shall specify the Collector who shall discharge the duties imposed upon a Collector by this Act in respect of such person or property or both, as the case may be.

(2) Consequences of such notification-Such proprietor shall be deemed to have become a ward under Court, from the date of the said order of the State Government and the superintendence of his person or property or both shall take effect from the said date, and as to property shall, subject to the provisions of the second proviso to this Sub-section, extend to all movable and immovable property belonging to him at the date of the order, or to which he shall afterwards become in any way entitled whilst he continues under

such superintendence :

Provided that it shall be in the discretion of the Court to assume or refrain from assuming the superintendence of any property which the ward may acquire otherwise than by inheritance subsequent to the date of order of the State Government under Section 16, 17 or 20 :

Provided further that where the order of the State Government is under Section 20, the superintendence of the Court over the movable-property of the proprietor shall extend only to such part of that property as it was specified in his application under that section.

CHAPTER 4

MANAGEMENT AND GUARDIANSHIP

22. Collector To Take Charge Of Wards Property :-

When the Court has assumed the superintendence of the property of a ward, the Collector specified in the notification under Section 21 or if so directed by the Court, the Collector of the district in which any part of the property is situated shall take possession and custody of such property on behalf of the Court.

23. Powers Of Collector In So Doing :-

It shall be lawful for such Collector-

(a) to order any person in possession of any movable property to the possession of which the ward is entitled or of any accounts or papers relating to the property of such ward, to deliver up such movable property, accounts or papers;

(b) in case there is reason to believe that any movable property to the possession of which the ward is entitled or any accounts or papers relating to the property of the ward are to be found in any room, box or receptacle within any house in the actual possession of the ward, to break open such room, box or receptacle or authorize the same to be broken open for the purpose of searching for such property, accounts or papers;

(c) to order any person who is or has been in the employ of the ward, and any person who was in the employ of the deceased proprietor, if any, from whom the ward derives his title, to attend before him for examination and to defray the necessary expenses of any person so attending out of the assets of the estate;

(d) to order all holders of tenures on the wards property to produce their titles before him.

24. Allowances For Ward And Family :-

The Court may, from time to time, determine what sums shall be allowed for the expenses of the ward and of his family and dependents.

25. Custody, Residence, Education And Marriage Of Ward Or Minor Relatives :-

The Court may make such orders and arrangements, as to it may seem fit, in respect of the custody, residence, education and marriage-

- (a) of any ward whose person is for the time being under its superintendence;
- (b) of any minor child, minor brother, or minor sister of such ward, who, in the opinion of the Court, is entitled to maintenance at the charge of the wards estate;
- (c) of the wards next male heir being a minor and also so entitled to maintenance.

26. Appointment, Etc. Of Managers And Guardians :-

(1) The Court may appoint managers for the property, and guardians for the person, of any ward, and may control or remove any manager or guardian so appointed:

Provided that it shall not appoint a guardian for a person who has become a ward in pursuance of an order under Section 20 or who has been declared to be disqualified under Clauses (e) and (f) of Section 10.

(2) Any appointment made under this section shall terminate when the Court ceases to exercise superintendence over the person for whom a guardian, or over the property for which a manager, has been appointed.

27. Collector To Act If There Are None :-

If no manager of the property or guardian of the person of a ward is appointed by the Court, or the office is temporarily vacant, the Collector specified in the notification under Section 21, or any other Collector whom the Court may appoint in this behalf, shall be competent, under the control of the Court, to do anything that might be done by such manager or guardian.

28. Who May And May Not Be Guardians :-

(1) No person being the next legal heir of a ward, or appearing to have a direct or indirect advantage in the death or continued disqualification of such ward, shall be appointed guardian of such ward :

Provided that the mother of a ward, or any person appointed guardian by the Will of a person authorised to make such appointment may be appointed guardian by the Court at its discretion.

(2) A female guardian shall be appointed for a female ward, and a male guardian for a male ward above seven years of age, unless, in any case, the Court, for special reasons, shall direct otherwise :

Provided that no guardian shall ordinarily be appointed for a female ward if she has no adult husband.

29. Duties Of Guardians :-

A guardian appointed under Section 26 shall be charged with the custody of the ward, and subject to the control of the Court, shall make suitable provision for his maintenance and health, and, if he be a minor, for his education, and for such other matters as are required by the personal law to which the wards is subject, and shall-

- (a) give such security, if any, as the Court thinks fit, for the due performance of his duty;
- (b) submit such accounts as the Court may direct;
- (c) pay the balances due from him thereon;
- (d) continue liable to account to the Court after he has ceased to be guardian for his receipts and disbursements during the period of his guardianship;
- (e) apply for the sanction of the Court to any act which may involve expenses, not previously sanctioned by the Court; and
- (f) be paid such allowance out of the property of the ward as the Court thinks fit.

30. Powers Of Manager :-

Every manager appointed by the Court shall have power, subject to the control of the Court, to collect the rents of land placed under his charge, as well as all other money due to the ward, and to grant receipts therefor, and may, under the orders of the Court, grant or renew such leases as may in his opinion be necessary for the good management of the property, and do all such lawful acts

as may be generally or specially authorised by the Court to do for the good management of the property.

31. Duties Of Manager :-

Every manager appointed by the Court shall manage the property placed under his charge diligently and faithfully and shall-

- (a) give such security, if any, as the Court thinks fit, duly to account for what he may receive in respect of the rents and profits of the property under his charge;
- (b) keep such accounts in such form and submit them at such times as the Court may direct;
- (c) deal with all moneys received by him in such manner as the Court may direct;
- (d) apply for the sanction of the Court to any act which may involve the property in expense not previously sanctioned by the Court;
- (e) be responsible for any loss occasioned to the property by his negligence or wilful default;
- (f) continue liable to account to the Court after he has ceased to be manager for his receipts and disbursements during the period of his managership; and
- (g) be paid such allowance out of the property of the ward as the Court thinks fit.

32. Employees Of Court Deemed To Be Public Servants :-

Every guardian, manager, or other servant of the Court shall be deemed to be public servant within the meaning of Section 21 of the Indian Penal Code 1860 (XLV of 1860) and in the definition of legal remuneration contained in Section 161 of the said Code, the word "Government" shall, for the purposes of this section, be deemed to include the Court.

33. Sums Due To Court Recoverable As Public Demands :-

Every sum due to the Court from a manager or guardian or from the sureties of a manager or a guardian or from any officer or servant employed under the Court or from the sureties of such officer or servant shall be recoverable as public demand under the provisions of the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act IV of 1914) or, in any area where the said Act is not in force, as an arrear of land revenue under the provisions of the law for the time being in force in such area for the recovery of

arrears of land revenue.

34. Court May Order Guardian Or Manager To Make Over Property :-

The Court may order any past or present manager or guardian or past or present officer subordinate to a manager or guardian to deliver up his accounts or any property which may be in his possession within such time as may be fixed by the Court.

35. Regulation Of Expenditure :-

Unless the Court otherwise directs, all moneys received by, or on behalf of the Court on account of the property of any ward, shall be employed in meeting the charges included in Class I hereinafter specified before they are employed in meeting the charges in Classes II and III hereinafter specified, and in meeting in charges in Class II before they are employed in meeting those in Class III.

Class-I

- (a) charges necessary for the maintenance, residence, education, marriage and indispensable religious observances of the ward and his family;
- (b) charges necessary for the management and supervision of the property of the ward ;
- (c) charges on account of Government revenue and of all cesses and other public demands due in respect of such property, or any part of such property.

Class-II

- (a) charges on account of rent, cesses or demands due to any superior landlord, or landlord as the case may be, in respect of any land held on behalf of the ward ;
- (b) the liquidation of debts payable by the ward;
- (c) expenses necessary to protect the interests of the ward in the Civil Courts or otherwise ;
- (d) the maintenance in efficient condition of the estates, buildings and other immovable property and the suitable upkeep of the furniture, equipage, live-stock and other movable property belonging to the ward.

Class-III

- (a) the prevention and relief of distress among the wards tenantry;
- (b) the improvement of the land and property of the ward and the benefit of the ward and his property generally;
- (c) the payment of such charges for the religious observances of

the ward and his family and of such religious, charitable and other allowances and of such donations befitting the position of the wards family, as the Court may authorise to be paid;

36. Disposal Of Surplus Money :-

If the ward is a female of sound mind, who has completed her age of twenty-one years, or a male who has completed his age of twenty-one years, whose property is under the charge of the Court under the provisions of Clauses (e) and (f) of Section 10 or under Section 20, any surplus which remains after providing, so far as the Court may think fit, for the objects mentioned in Section 35 shall be paid to such ward :

Provided that before paying any portion of such surplus to such ward the Court may deduct therefrom and retain at its disposal any sums which it may consider necessary to retain-

- (1) as a working balance for the management of the property and expenses incidental thereto ;
- (2) in order to make provision for any special charges which are expected to become payable on account of the property, and which probably cannot be met from the expected surplus of the following years.

37. Power To Invest Surplus :-

If the ward is not a female as aforesaid, and if any surplus remains after providing so far as the Court may think fit, for the objects mentioned in Section 35, the same shall be applied in the purchase of other landed property or invested at interest on the security of-

- (a) promissory notes, debentures, stock and other securities of the Central Government or the Government of the United Kingdom of Great Britain and Ireland;
- (b) bonds, debentures and annuities charged by the Parliament of the United Kingdom before the fifteenth day of August, 1947 on the revenues of India or of the Governor-General in Council or of any Province;
- (c) stock or debentures of or shares in railway or other companies, the interest whereon has been guaranteed by the Secretary of State for India in Council ;
- (d) debentures or other securities for money paid by or on behalf of any municipal body under the authority of any Central Act or Provincial Act or Act of the Legislature of a Part A State ;
- (e) such other securities, stocks or shares, guaranteed by the

Central Government or the Provincial Government as the Court shall deem fit; or

(f) first mortgages of immovable property situate in Part A States and Part C States provided that the property is not a lease-hold for a term of years and that the value of the property exceeds by one-third or if consisting of buildings, exceeds by one-half, the mortgage-money.

38. Disabilities Of Wards :-

(1) A ward shall not be competent-

(a) to transfer or create any charge on, or interest in, any part of his property which is under the superintendence of the Court, or to enter into any contract or to make any acknowledgement involving him in pecuniary liability personally or in respect of such property; but nothing in this clause or in Section 25 shall be deemed to affect the capacity of a ward to enter into a contract of marriage ; provided that he shall not incur in connection therewith any pecuniary liability, except such as, having regard to the personal law to which he is subject and to his rank and circumstances, the Court may, in writing, declare to be reasonable;

(b) to grant valid receipts for the rents and profits arising or accruing from such property or for debts or other moneys due to the estate;

(c) to adopt, or to give a written or verbal permission to adopt, without the previous consent of the Court;

(d) to dispose of his property by Will without the previous consent of the Court:

Provided first, that the Court shall not withhold its consent under Clause (c) or (d) if the adoption or testamentary disposition is not contrary to the personal or special law applicable to the ward, and does not appear likely to cause pecuniary embarrassment to the property, or to lower the influence or respectability of the family in public estimation :

Provided secondly, that the provisions of Clauses (c) and (d) shall not apply to any proprietor in regard to whose property a declaration has been made under Section 20 :

Provided thirdly, that nothing contained in this Act shall affect the competency of a ward to surrender his estate in accordance with the provisions of Section 4 of the Orissa Estates Abolition Act, 1951 (Orissa Act I of 1952).

(2) No claim under Section 68 of the Indian Contract Act, 1872 (IX

of 1872) shall be enforceable against the property of a ward which is under the superintendence of Court; but the Court may, in its discretion, satisfy in whole or in part, any such claim.

39. Powers Of Court As To Property Under Its Superintendence :-

The Court may mortgage or sell the whole or any part of any property under its superintendence and may give leases or farms of the whole or any part of such property or such terms as it thinks fit, and, may make remissions of rent or other dues, and may generally pass such orders and do such acts not inconsistent with the provisions of this or any other Act for the time being in force as it may judge to be for the advantage of the ward or for the benefit of the property.

40. Establishments And Distribution Of Charges :-

The Court may order such establishments to be incurred as it shall consider requisite for the care and management of the persons and properties under its superintendence and generally for all the purposes of the Act, and may order that such charges shall be borne by and distributed amongst the said properties in such proportions as it deems fit.

CHAPTER 5

ASCERTAINMENT AND SETTLEMENT OF DEBTS

41. Notice Calling Upon Claimants To Notify Claims :-

(1) On, the publication of a notification under Section, 21, the Collector therein specified may, at any time publish in the Gazette a notice in English and in the vernacular calling upon all persons having pecuniary claims, whether immediately enforceable or not against the ward or his property to notify the same in writing to the Collector within six months from the date of such notification.

(2) The notice shall also be published at such places and in such other manner as the Court may, by general or special order, direct and shall be sent by registered post to every person who is known to the Collector as having a pecuniary claim against the ward of his property and of whose address the Collector is credibly informed.

(3) The State Government may at any stage of the proceedings under Sections 41, 42 and 44 invest any persons either by name or in virtue of his - office with the powers of a Collector for any or all

of the, purposes of these sections.

Explanation-A claim shall be deemed to be pecuniary for the purpose of this section and Sections 42 and 45 notwithstanding that a suit for its enforcement or a reference of such claim to arbitration is pending or that a decree or award has been passed establishing the same.

42. Claimants To Furnish Full Particulars And Documents :-

(1) Every such claimant shall within the period prescribed by Section 41 notify to the Collector in writing his claim with full particulars thereof :

Provided that any claim presented after the expiration of such period and within a further period of six months may be admitted if the claimant satisfies the Collector that he had sufficient cause for not notifying the claim at an earlier date.

(2) Every document (including entries in books of account) in the possession of or under the control of the claimant on which he founds his claim, shall be produced before the Collector with the statement of claim or within such time after the preferring of the claim as may be allowed by the Collector in that behalf :

Provided that if the claim relates to an amount secured by a decree or award, it shall be sufficient for the claimant to produce before the Collector a certified copy of the decree and certificate from the Court which passed or is executing the same declaring the amount recoverable thereunder or a true copy of the award and a statement of the sum recoverable thereunder, as the case may be; and if the claim is pending adjudication in any Court or has been referred to arbitration, it shall be sufficient for the claimant to produce a certified copy of the plaint or a true copy of the reference to arbitration, as the case may be.

(3) It shall be lawful for the Collector to require the production by any claimant of such of the documents in his possession or power relating to his claim other than the documents, if any, produced under Sub-section (2) as the Collector may consider necessary.

(4) Unless the Collector shall otherwise direct every document produced under this section shall be accompanied by a true copy thereof. The Collector shall mark the original document for the purpose of identification and, after examining and comparing the copy with it, shall retain the copy and return the original to the claimant.

43. Pecuniary Claim Of Government, Etc. Not Affected :-

Nothing contained in Sections 41 and 42 shall apply to any pecuniary claim of Government or any local authority, or to claims for maintenance or for wages or salaries due to servants.

44. Claims Admitted And Disallowed :-

The Collector shall, after making such enquiry as he may deem fit, decide which claims notified or admitted under Section 42 are to be allowed in whole or in part, and which are to be disallowed-, and, on his decision being confirmed by the Court, shall give written notice of the same to the claimants :

Provided that nothing herein contained shall be construed as precluding any claimant from continuing or instituting proceeding in any Civil Court in respect of any claim whether such claim be allowed or disallowed by the Court in whole or in part.

45. Claims Not Notified Cease To Carry Interest :-

Every pecuniary claim against the ward or his property which has not been duly notified to, or admitted by the Collector under Section 42 shall notwithstanding any law, contract, decree or award to the contrary, cease to carry interest from the expiration of the period prescribed by Section 41, and shall not be paid until after the discharge or satisfaction of the claims notified or admitted under Section 42.

46. Inadmissibility In Evidence Of Documents Not Produced :-

No document in the possession or under the control of the claimant which should have been but has not been produced in accordance with the requirements of Section 42, shall be admissible in evidence against the ward or his representative in any suit brought by or against claimant, or any person claiming under him unless it be proved to the satisfaction of the Civil Court that it was not within his power to produce such document before the Collector.

47. When Mortgagee In Possession May Be Dispossessed :-

(1) When any property of a ward is in the possession of a mortgagee, or any person claiming under a mortgagee, the State Government may, on being satisfied that it is expedient in the public interest that the estate should be preserved and that such

encumbrancer should deliver up possession of the mortgaged property, make a declaration to that effect and direct the Court to take possession thereof; the Court shall, thereupon by an order in writing, require such incumbrancer to deliver up possession of the same to the manager at the end of the then current revenue year.

(2) If such encumbrancer refuses or neglects to obey such order, the Collector may, without resorting to a Civil Court., enter upon the property, and summarily evict therefrom the said encumbrancer and any other person obstructing or resisting on his behalf.

(3) The dispossession of the encumbrancer under Sub-sections (1) and (2) shall not deprive him of remedy for the recovery of arrear rents due to him at the date of his dispossession, under any law for the time being in force.

(4) If in the instrument of mortgage under which the incumbrancer is in possession of the property, no rate of interest is specified, the Collector shall, in cases where the mortgage debt has been notified to or admitted by him, offer to the encumbrancer the rate of interest which appears to him to be reasonable; and pass an order fixing the rate accordingly. Copy of the order shall be served upon the incumbrancer in the manner prescribed by the Code of Civil Procedure, 1908 (V of 1908) for service of summons upon a defendant. If the encumbrancer be dissatisfied with the rate of interest so fixed, he may, within three months from the date of service upon him of such order, institute a suit against the ward in a District Court within whose jurisdiction the property mortgaged or any portion thereof is situate, and the said Court shall, if the mortgage debt has been notified or admitted as aforesaid, pass a declaratory decree fixing such rate of interest as to it may seem reasonable. If no such suit be instituted within the said period, the encumbrancer shall be deemed to have agreed to the rate fixed by the Collector.

(5) If an encumbrancer is dispossessed under this section, the money due to him under the instrument of mortgage at the date of such dispossession together with subsequent interest on the unliquidated principal of the mortgage debt at the rate stipulated in the said instrument, and in the absence of such stipulation at the rate determined as hereinbefore provided, shall, subject to the provisions of Section 45 and subject to the charges specified in Clauses I and II in Section 35, excepting the liquidation of debts payable by the ward, and the provisions with reference to the upkeep of the furniture, equipage, live-stock and other movable property belonging to the ward, be recoverable, together with any

money which he may be legally entitled to add to the principal money on the security of the property mortgaged and of the rents and profit; arising or accruing therefrom subsequent to the date of such dispossession, in the same manner as if he were a simple mortgagee under the said instrument of such property and of such rents and profits.

(6) The Collector shall, as soon as conveniently may be, after the expiration of the revenue year commencing with the date of such dispossession and of every successive revenue year declare, subject to the approval of the Court, the gross annual rents and profits realized from such property, the several heads of expenditure and the balance and such declaration shall be conclusive evidence of the statements therein contained. A copy of such declaration shall be furnished to the dispossessed encumbrancer free of charge.

48. Provision Regarding Leases For Insufficient Consideration :-

(1) When any property of a ward is in the possession of any person claiming to hold under a lease granted by the ward and dated within the three years immediately preceding the commencement of the superintendence or of any person claiming under such lessee, the Collector may enquire into the sufficiency of the consideration for which the lease was granted ; and if such consideration appears to him inadequate, he may, with the previous sanction of the Court, give notice in writing that the lease shall determine at the end of the then current revenue year unless the lessee or any one claiming under him pays or agrees to pay such additional consideration as may be mentioned in such notice within a date therein fixed. If within such date such person does not pay or enter into an agreement to pay the additional consideration demanded, or such other consideration as the Collector may be willing to accept the lease shall determine at the end of the then current revenue year :

Provided that such person may, if dissatisfied with the said notice of the Collector, institute a suit against the ward within three months from the date of service of such notice in a District Court within whose jurisdiction the property comprised in the lease or any portion thereof is situate for determining whether the consideration for the lease was adequate, and if not whether the additional consideration demanded by the Collector or what other amount is reasonable.

(2) If the said District Court be satisfied that the lease was granted, for adequate consideration and it is not shown to be otherwise invalid, it shall pass a decree establishing the validity of the lease.

(3) If the District Court holds the consideration for the lease to be inadequate, it shall determine the amount of additional consideration to be paid by the lessee.

(4) If no such suit be instituted or if on the institution of such suit the lessee does not within one month from the date of the decree therein pay or enter into an agreement to pay the additional consideration, determined by the District Court, the Collector may without resorting to a Civil Court enter upon the property and summarily evict therefrom such person and any other person obstructing or resisting on his behalf.

49. Execution Of Decrees To Be Transferred To Collector In Certain Cases :-

(1) In the case of any specified ward of the Court, the State Government may declare, by notification that execution of decrees passed by Civil Courts, which are capable of execution by sale of any immovable property of such ward, or which in pursuance of a contract specifically affecting any such immovable property order the sale of the same, whether such decrees be passed prior to such notification or subsequent thereto, shall be transferred to the Collector of the district in which such property or any portion thereof is situate and rescind such notification.

Provided that when a portion only of a decree passed by a Civil Court is of the description aforesaid, such portion alone shall be transmitted to the Collector for execution.

(2) The State Government may also notwithstanding anything contained in the Code of Civil Procedure, 1908 (V of 1908) prescribe rules for the transmission of the decree from the Civil Court to the Collector, and for regulating the procedure of the Collector in executing the same, and for retransmitting the decree from the Collector to the Civil Court.

(3) Rules under this section may confer upon the Collector or any gazetted subordinate of the Collector all or any of the powers which a Civil Court might exercise in the execution of the decree if the execution thereof had not been transferred to the Collector, including the powers of the Civil Court under Rules 72 and 92 of Order XXI of the First Schedule to the Code of Civil Procedure,

1908 (V of 1908) and may provide for orders passed by the Collector or any gazetted subordinate of the Collector or orders passed on appeal with respect to such orders, being subject to appeal to and revision by superior revenue authorities as nearly as may be as the orders passed by the Civil Court, or orders passed on appeal with respect to such orders, would be subject to appeal to and revision by appellate or revisions Civil Courts under the Code of Civil Procedure, 1908 (V of 1908) or other law for the time being in force if the decree had not been transferred to the Collector.

(4) A power conferred, by the rules upon the Collector, or any gazetted subordinate of the Collector, or upon any appellate or revisional authority, shall not be exercisable by the Civil Court which passed the transferred decree or by any Civil Court in exercise of any appellate or revisional jurisdiction which it has with respect to decrees or orders of the aforesaid Civil Court.

(5) In executing a decree transferred to the Collector under this section the Collector shall be deemed to be acting judicially within the meaning of the Judicial Officers Protection Act, 1850 (XVIII of 1850).

50. Collector To Whom Execution Of Decree Has Been Transferred To Cease To Discharge The Functions Of A Collector Under The Act :-

(1) When the Collector to whom the execution of any decree has been transferred under Section 49, is also the Collector who has to discharge the other functions of a Collector under this Act in respect of the ward against whom such decree has to be executed, the State Government shall appoint some other person by name or by virtue of his office to exercise the functions of a Collector under this Act in respect of such ward other than the execution of the decrees., transferred to him.

(2) The Revenue Commissioner may, in those areas where the Madras Proprietary Estate Village Service Act, 1894 (Madras Act II of 1894) is in force authorise the person so appointed to exercise all or any of the powers conferred on a revenue officer-in-charge of a division by Sub-section (2) of Section 16 of that Act.

51. Certain Provisions Of Civil Procedure Code To Be Applicable To Execution Of Decrees Transferred To Collector :-

The provisions of the Third Schedule to the Code of Civil Procedure,

1908 (V of 1908) shall, subject to the provisions of this Act and to such rules as may be prescribed by the State Government under Section 49, be applicable as far as may be to the execution of decrees transferred under Section 49.

CHAPTER 6

SUITS

52. Bar Of Certain Suits And Proceedings :-

(1) No declaration made by the State Government under Section 16 or 20 and no act done by the State Government or by the Court in exercise of any discretionary power conferred by this Act shall be called into question in any Civil Court.

(2) No suit or other legal proceeding shall lie against any officer of the Government or any guardian, manager or servant appointed by and discharging his duties under the Court of Wards for anything in good faith by him done or ordered to be done in pursuance of this Act.

53. Notice Of Suits :-

(1) No suit relating to the person or property of any ward shall be instituted in any Civil Court until the expiration of two months after notice in writing has been delivered to or left at the office of the Collector specified in the notification under Section 21 or the Collector appointed under Section 50, as the case may be.

(2) Such notice shall state the name and place of abode of the intending plaintiff, the cause of action and the relief which he claims ; and the plaint shall contain a statement that such notice has been so delivered or left :

Provided that notice under this section shall not be required in the case of any suit the period of limitation for which will expire within three months from the date of the notification under Section 21.

54. Suit Or Proceeding By Or Against :-

(1) In all suits or proceedings in any Civil or Revenue Court the wards shall sue and be sued in his own name and the manager of his property appointed under Section 26 or, if there is no such manager, the officer competent to act as manager under Section 27 shall represent him, as next friend or guardian ad litem, as the case may be.

(2) The Court of Wards may, by an order, nominate or substitute

any other person to be next friend or guardian for any such suit or proceeding; and upon receiving a copy of any such order, the Civil or Revenue Court in which such suit or proceeding is pending shall substitute the name of the next friend or guardian for the suit or the proceeding so appointed for the name of the manager or Collector.

55. Costs Against Next Friend Or Guardian How Paid :-

If in such suit or proceeding, any Civil or Revenue Court shall decree any costs against the next friend or guardian for the suit of the ward, the Court of Wards shall cause such costs to be paid out of any property of the ward which for the time being may be in its hands.

56. Process Against Wards To Be Served Through Collector :-

Every process which may be issued out of any Civil or Revenue Court against any ward shall be served through the Collector on the next friend or guardian for the suit as aforesaid of such ward.

57. Suits Must Be Authorised By Court :-

No suit shall be brought, and no appeal shall be preferred, on behalf of any ward unless it is authorised by an order in writing of the Court :

Provided as follows :

(a) a manager may authorise a plaint to be filed in order to prevent a suit from being barred by the law of limitation, but the suit shall not afterwards be proceeded with except under the sanction of the Court;

(b) a suit for arrears of rent may be brought on behalf of a ward, if authorised by an order of the manager of the property on which the rent is due.

58. Adjudication Of Civil Disputes Between Two Or More Wards :-

(1) When any question arises as between two or -more wards of such a nature that an adjudication upon it by a Civil Court is expedient, it shall be lawful for the Court of Wards, acting through the Collector of the district in which a case might have been stated for the opinion of the Civil Court with regard to such matter under

Order XXXVI, Rule 1 of the First Schedule to the Code of Civil Procedure, 1908 (V of 1908) to file in the Civil Court having jurisdiction a statement containing the point or points for determination.

(2) When such statement has been filed, the Civil Court shall appoint a guardian ad litem for each ward having a separate interest, and such guardians shall thereupon conduct the case subject to the general control of the Court of Wards.

(3) The Civil Court may, if it thinks fit, amend the case so stated, and shall then proceed to hear and dispose of the case in the manner provided in Order XXXVI of the First Schedule to the Code of Civil Procedure, 1908 (V of 1908) for hearing and disposal of cases stated for opinion under that Order.

CHAPTER 7

RELEASE OF PERSONS AND PROPERTY FROM SUPERINTENDENCE

59. Release From Superintendence :-

The Court may with the previous sanction of the State Government, in all cases where superintendence has been assumed in pursuance of orders under Section 16 or 17 at any time release from its superintendence the person or property of a ward or both and shall save as provided in Section 62 release from, superintendence-

(a) the person and property of a ward disqualified under Clause (a) of Section 10 as soon as he ceases to be a minor;

(b) the person and property of a ward disqualified under Clause (c) of Section 10 as soon as it is found by a competent Civil Court that the disability has ceased;

(c) the person and property of a proprietor declared to be disqualified under Clause (b), (d), (e) or (f) of Section 10 as soon as the State Government revoke their declaration that such proprietor is disqualified; and

(d) the property of an undivided Hindu family, and the person of every coparcener therein who is not possessed of separate estate, as soon as any coparcener ceases to be disqualified under Section 10.

60. Release Of Estate Taken Under Management When The Estate Is Inextricably Involved :-

(1) The Court may with the previous sanction of the State Government, at any time 1[within five years] from the date of the notification published under Section 21, release from its

superintendence, on a day to be notified, the property of a person who has been made a ward of the Court in pursuance of an order under Section 20 without liquidating any of his debts and liabilities or after liquidating some of the debts and liabilities, when the Court is satisfied that it is impracticable to liquidate within a reasonable time all the debts and liabilities or such of them as have not been liquidated and in either case the legal incapacity of such ward shall cease on the date so notified.

(2) Whenever an encumbrancer is dispossessed under Section 47, and his debt remains unliquidated at the time the Court releases from its superintendence the property of such ward under Subsection (1), the Collector shall replace the encumbrancer in possession.

(3) Whenever the property of a person is released under Subsection (1) from the superintendence of the Court, the provisions of Sections 45 and 46 shall not apply to any of the debts and liabilities of the ward remaining unliquidated at the time when his property is so released.

(4) In computing the period of limitation applicable to a suit brought or application made against such person or his legal representative after the Court has released his property under Subsection (1) the time during which the superintendence of the Court continued shall be excluded.

1. Substituted vide Orissa Act No. 15 of 1964.

61. When Estate Taken Under Management Under Section 20 May Be Made Over To Proprietor :-

The Court may, with the previous sanction of the State Government, replace any proprietor made a ward of the Court in pursuance of an order under Section 20, in the management of his estate on a day to be notified if the debts and liabilities binding on his estate have been discharged, and the Court is satisfied that he will thereafter be competent to take charge of his estate and administer his own affairs and his legal incapacity shall cease on such date.

62. Option To Retain Superintendence In Certain Cases :-

When a ward dies or ceases to be disqualified before the debts and liabilities binding on his estate have been discharged, the Court may, with the previous sanction of the State Government, retain the property under its superintendence until the debts and

liabilities are discharged or for any shorter period, and when for the purpose of discharging such debts and liabilities the Court has raised money on condition that it should retain the superintendence of the property until the money so raised is repaid, the Court shall not without the consent of the lender or his representatives withdraw from superintendence until the money so, raised has been repaid :

Provided that, after the death of the ward, the Court shall not retain charge on account of any debt or liability which has been declared by a Civil Court not to be binding on the representatives of the deceased ward.

63. Disabilities Of Proprietor In Such Cases :-

If the Court retains the superintendence under the provisions of the last preceding section, the person who has succeeded to the property, or the person who has ceased to be disqualified shall in so far as the property in question is concerned, be deemed to be a ward of the Court for the purposes of Clauses (a) and (b) of Sub-section (1) and Sub-section (2) of Section 38.

64. Appointment Of Guardian Before Release :-

(1) When the Court decides to release from its superintendence the person and property of a minor, it may, before such release, by an order in writing, appoint any person to be the guardian of the person or property or both of such minor.

(2) Such appointment shall take effect from the date of such release.

(3) In appointing a guardian under this section, the Court shall be guided by the provisions of Section 17 of the Guardians and Wards Act, 1890 (VIII of 1890).

(4) Every such guardian shall have and be subject to the same rights, duties and liabilities as if he had been appointed under the Guardians and Wards Act, 1890 (VIII of 1890).

65. Recovery Of Expenses After Release :-

Any expense incurred by the Court on account of any property under its charge, and not delayed from such property during the Courts superintendence may, after the release of such property be recovered from any person into whose possession such property or any part thereof may have passed, as a public demand under the

provisions of Bihar and Orissa Public Demands Recovery Act, 1914 (B and O. Act IV of 1914) or, in any area where the said Act is not in force, as an arrear of land revenue under the provisions of the law for the time being in force in such area for the recovery of arrears of land revenue:

Provided that the sum so recovered from any such person shall not be greater than the value of any such property, which so passed into the possession of such person.

66. Procedure When Succession To Wards Property Is Disputed :-

Whenever, on the death of any ward, the succession to his property or any part thereof is disputed, the Court may either direct that such property, or part thereof, be made over to any person claiming the property, or may retain the superintendence of the property until a claimant has established his title to the same in a competent Civil Court, or institute a suit of interpleader against all the claimants.

67. Notification Of Release From Superintendence :-

Whenever the Court releases any person or property from its superintendence the fact of such release shall be notified in the Gazette and also published in such manner as the Court may direct.

CHAPTER 8

MISCELLANEOUS

68. Powers Of Courts In Regard To Religious Endowments Of Which Ward Is Hereditary Trustee :-

If a ward is the hereditary trustee or manager of a temple, mosque or other religious endowment or establishment, the Court, notwithstanding anything contained in Section 22 of the Religious Endowments Act, 1863 (XX of 1863) or any other law for the time being in force, make such arrangements as it thinks fit for the discharge, during the wardship of the wards duties as trustee or manager ; provided that for the direct and personal management of the religious affairs of any such institution, establishment or endowment, the Court shall appoint suitable persons other than servants of the Government and that the Court shall as far as possible restrict its superintendence to the preservation of the property belonging to the institution, endowment or establishment.

69. Judicial Power Of Collector In Making Enquiries :-

A Collector making an enquiry under this Act may exercise any power conferred by this Code of Civil Procedure, 1908 (V of 1908) on a Civil Court for the trial of suits.

70. Property Under Superintendence Not Liable To Sale For Arrears :-

Subject to the provisions of the next succeeding section, no immovable property under the superintendence of the Court shall be liable to sale on account of arrears of land revenue accruing while such estate is under the superintendence of the Court :

Provided that all such arrears of revenue shall be the first charge upon the sale proceeds of any such property which may be sold for any other cause than for arrears of land revenue.

71. Conditions Under Which Estate May Be Sold For Arrears Of Revenue :-

Notwithstanding anything contained in the preceding section or in any law for the time being in force, any estate, share or part of an estate on which an arrear of land revenue has accrued, while under the superintendence of the Court, may at any time be sold under the provisions of the law for the time being in force for the recovery of arrears of Government revenue, if the Court has certified in writing that the interest of the ward would require that such estate, share or part be so sold, and has stated in such writing the reasons upon which it has arrived at such conclusion.

72. Power To Make Rules-The Court May, With The Previous Sanction Of The State Government, Make Rules Consistent With This Act :-

(a) regulating the management of property under the superintendence of the Court ; and

(b) generally for the guidance of all persons in all proceedings under this Act and for carrying out the provisions of this Act.

CHAPTER 9 **PENALTIES**

73. Abetting Unsanctioned Marriage Of Wards, Etc :-

Whoever, without the previous consent of the Court, abets the marriage of any of the persons specified in Clauses (a), (b) and (c) of Section 25 shall be liable, on conviction before a Court of Session; to a fine not exceeding two thousand rupees or to imprisonment for a term not exceeding six months, or to both.

74. Disobeying Certain Orders Of Collector :-

(1) Any person who refuses to comply with an order of the Collector under Section 11 or 23 shall be liable by an order of the Collector to pay a fine not exceeding five hundred rupees.

(2) When any penalty is imposed by an order under Sub-section (1), the Collector passing such orders shall make a formal record of the same with reasons thereof.

75. Disobeying Order Of The Court :-

Any person who disobeys any lawful order of the Court shall be liable, on conviction before a Magistrate, to a fine not exceeding five hundred rupees, and if he is a manager or a guardian appointed by the Court, to a fine not exceeding one thousand rupees.

76. Application Of Act To Estates Of Rulers Of Indian States :-

The powers and functions conferred on the State Government by or under this Act shall, in relation to the estates of Rulers of Indian States, be powers, and functions of the Central Government.

SCHEDULE 1

SCHEDULE I

[See section 2]

Enactments Repealed

Year (1)	Number (2)	Short title (3)	Extent of Repeal (4)
1879	Bengal Act IX	The Court of Wards Act, 1879	The whole
1899	Act XXIV	The Central Provinces Court of Wards Act, 1899	Ditto
1902	Madras Act I	The Madras Court of Wards Act, 1902	Ditto