(1957) 11 AHC CK 0009

Allahabad High Court (Lucknow Bench)

Case No: First Appeal No. 2 of 1948

Amar Krishna Narain Singh		APPELLANT
	Vs	
Deputy Commissioner, Barabanki		RESPONDENT

Date of Decision: Nov. 22, 1957

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 23 Rule 3
- Uttar Pradesh Court of Wards Act, 1912 - Section 16, 37, 38, 55, 56

Citation: AIR 1958 All 710

Hon'ble Judges: Randhir Singh, J; B. Mukerji, J

Bench: Division Bench

Advocate: Niamatullah and Ali Hasan, for the Appellant; Iqbal Ahmad, Bishun Singh and M.L. Tilahri, for the Respondent

Final Decision: Dismissed

Judgement

B. Mukerji, J.

This is an application on behalf of Rani Drigraj Kuar, widow of Raja Harnam Singh, praying that the work of the preparation of the paper book under Chapter XIII of the Rules of Court may be resumed from the stage at which it was interrupted on account of the passing of certain decrees which should be treated as being without effect.

2. The prayer in the application looks innocuous but the effect of graning that prayer would mean the ignoring of the existence of two decrees of this Court passed on the basis of a certain compromise made on 25-4-1952.

3. In order to appreciate the scope of the prayer and the arguments on which the prayer was claimed it is necessary to state some facts.

4. One Raja Sarabjit Singh was a taluqdar of some status and position. He died sometime in the year 1898 leaving behind a son, Raja Udit Narain Singh, who succeeded to his estate. It may be mentioned at this stage that the Rule of Primogeniture applied to the succession in respect of the estate which was owned by Raja Sarabjit Singh, in so far as Raja Sarabjit Singh was mentioned as one of the taluqdars in list 2 of Act I of 1869.

5. Raja Udit Narain Singh died on 5-6-1927, leaving a will dated 2-9-1925. At Raja Udit Narain Singh''s death he left behind two sons, Raja Harnam Singh, the elder son, and Kunwar Sarnam Singh, the younger son. Under the will of Raja Udit Narain Singh the elder son Harnam Singh, who was at that date issueless, was to succeed to the estate for life, without power of alienation except in regard to seven villages specified in the will which were to go to him as a full heir with powers of transfer etc.

After the death of Harnam Singh the estate was to devolve on Kunwar Sarnam Singh but that too for life, and thereafter the estate was to vest in the son of Sarnam Singh, namely, Amar Krishna Narain Singh. The will further declared that a village called Bichalka was to go to Rani Drigraj Kuar, the applicant, who was the wife of the elder son of Raja Udit Narain Singh, since that village had been given to her by way of a wedding present termed Runumai for life. The will further provided for a maintenance (guzara) of Rs. 500/- a month for life to Rani Drigraj Kuar : this sum was made a charge on the estate.

6. The will had a schedule attached to it, of the properties covered by the will but somehow this schedule omitted to mention five villages which admittedly formed part of the estate of Raja Udit Narain Singh. The applicant averred that this may have been either by accident or by design.

7. The afore-mentioned will of Raja Udit Narain Singh was deposited with the District Judge of Fizabad under a sealed cover. This was opened after the death of Udit Narain Singh, which took place on 5-6-1927, and was subsequently registered.

8. On the death of Raja Udit Narain Singh Harnam Singh succeeded to the estate. Sarnam Singh was in service of Government as a Deputy Collector. Nevertheless, he possessed a number of villages which appear to have come to him otherwise than under the will or as part of his father''s estate.

9. Raja Harnam Singh died on 9-1-1935, leaving behind his widow Rani Drigraj Kuar, who is the applicant before us. Raja Harnam Singh had executed a registered will on 26-2-1953, by which he left all the properties, cash, moveable and im-moveable, over which he had any disposing power to his wife absolutely. The will expressly conveyed a number of villages, including the seven villages which had come to Harnam Singh absolutely under the will of his father.

The five villages which did not figure in the schedule of the estate attached to the will of Raja Udit Narain -Singh were also given by him to his wife by the will. The

right under which Raja Harnam Singh appears to have made a bequest of the five villages not mentioned in the schedule of Raja Udit Narain Singh''s will, appears to have been based on the ground that as the eldest son he succeeded to those villages in intestacy. Raja Harnam Singh also executed a deed of gift on 8-7-1933, in favour of his wife Rani Drigraj Kuar, by which he transferred most of the Immovable properties which had been covered by the will, this gift also included several houses which were alleged to have been owned by him.

10. As fate would have it Sarnam Singh predeceased his elder brother, for he died sometime in the year 1928, while Raja Harnam Singh died on 9-1-1935.

11. On Raja Harnam Singh''s death, dispute arose between his widow, Rani Drigraj Kuar, the present applicant, and Sarnam Singh''s widow Parvati Kuar, acting as guardian for her minor son Amar Krishna Narain Singh. It appears that the then. Deputy Commissioner of Bara Banki, within whose jurisdiction the estate of the parties fell, interceded and the disputes which had cropped up in the family were settled and a deed of family settlement was duly drawn up with the approval of the District Judge of Bara Banki on 22-1-1935.

By this deed of settlement or family arrangement all the depositions which had been made by Raja Harnam Singh either by his will or gift, except as regards some villages, were confirmed. The exception appears to have been made in respect of those villages which had been mentioned in the schedule to the will of Raja Udit Narain Singh and in which Raja Harnam Singh had only been given a life estate.

12. It appears that the family settlement of 1935 survived the cupidity of parties only for a period of a little over eight years, because in 1943 two suits were filed, one by Amar Krishna Narain Singh and the other by Rani Drigraj Kuar.

13. The suit of Amar Krishna Narain Singh, was filed on 6-9-1943, that is to say just within three years of his attaining majority. By this suit, Amar Krishna Narain Singh sought to have the family settlement set aside and to get possession over everything that was with Rani Drigraj Kuar. He also claimed a very large sum of money, about sixteen lakhs, which the Rani was alleged to havepossessed as part of the family estate. In this suit an injunction appears to have been obtained freezing, all the assets of the Rani.

14. On 16-12-1943, Rani Drigraj Kuar, filed a suit for a declaration of her rights under the will and the gift of Raja Harnam Singh -- this apparently was by way of a counter blast to Amar Krishna Narain Singh''s suit. Both the suits were connected and went to trial together. The suits were transferred for trial to a Special Taluqa Judge, who was appointed to try such suits.

15. During the pendency of the aforementioned two suits certain events of grave consequences-occurred. One such event was that Rani Drigraj Kuar went off her mind and was declared a lunatic by the District Judge under the Lunacy Act on

12-11-1945. As a consequence of the declaration of the District Judge under the Lunacy Act the estate possessed by Rani Drigraj Kuar was taken over by the Court of Wards under the provisions of Section 8 (1) (c) of the U. P. Count of Wards Act, 1912, as amended by Act No. V of 1933.

16. The aformentioned suits appear to have been decided by the Taluqa Judge sometime in 1947. By his decision the Judge decreed Amar Krishna Narain Singh''s suit for the recovery of two villages, Gopalpur and Gayapur (which were items Nos. 13 and 14 of Schedule A) only, with the right to recover mesne profits for the same against Rani Drigraj Kuar. The rest of Amar Krishna Narain''s claim was dismissed with proportionate costs to Rani Drigraj Kuar. Since Amar Krishna Narain Singh''s suit failed mainly on the ground that the family arrangement was upheld, the suit of Rani Drigraj Kuar, as a necessary corollary, was dismissed.

17. Two appeals were filed against the two decrees mentioned above. Since the estate of Rani Drigraj Kuar was under the superintendence of the count of Wards, an appeal which was to enure to her benefit was filed by the Deputy Commissioner Bara'' Banki, representing Drigraj Kuar''s estate : This appeal was First Appeal No. 99 of 1947. Amar Krishna Narain Singh filed another appeal, which was First Appeal No. 2 of 1948, and by that appeal he challenged that part of the decree by which his claim in regard to the other properties, save Gopalpur and Gayapur, had been dismissed. Both the appeals were filed in the erstwhile Chief Court of Avadh.

18. The second significant event that happened took place on 8-2-1950, when Amar Krishna Narain Singh''s estate was taken over by the Court of Wards. It appears that Amar Krishna Narain Singh made an application to the Collector to take over his property under the superintendence of the Court of Wards. As has been pointed out earlier, the estate of Amar Krishna Narain Singh was taken over under the superintendence of the Court of Wards on 8-2-1950, presumably because the Court of Wards was satisfied that it was expedient to undertake the management of such property and a declaration to that effect was made.

After the assumption by the Court of Wards of the estate of Krishna Narain Singh the Deputy Commissioner of Bara Banki also became in charge of this estate. The position therefore was that after 8-2-1950, the two warring estate-holders, Rani Drigraj Kuar and Amar Krishna Narain Singh vested in one single hand, namely that of the Deputy Commissioner of Bara Banki.

It is interesting to note at this stage that the two estates about this time got two separate names --the estate belonging to Rani Drigraj Kuar was called the Ganeshpur estate, while the estate belonging to Amar Krishna Narain Singh was called the Ramnagar estate. It may also be pointed out here that after the resumption by the Court of Wards of the estate of Amar Krishna Narain Singh, the Deputy Commissioner of Bara Banki was substituted in place of Amar Krishna Narain Singh as appellant and respondent respectively in the two appeals.

19. It appears that the Count of Wards felt that it would be waste of money, and more or less futile, for two of its wards to litigate when then disputes could be settled amicably. Attempts, therefore, were made and a settlement appears to have been arrived at. Whether the settlement had been arrived at by the parties or had been arrived at properly or was a fair and proper settlement are not questions about which we should be taken to pronounce at this stage, for all which we wish to state here is that factually a settlement was arrived at and a compromise in terms of that settlement was put into Court in the appeals which were pending on 25-4-1952.

It appears further that the Court passed a decree in terms of that compromise and the appeals were disposed of accordingly. Before the compromise had been put in into court certain proceedings apparently had been taken towards the translation and printing of the record of the appeals in accordance with the Rules of Court. The appeals having been disposed of, there remained no further necessity to proceed with the translation and printing of the record and therefore those proceedings remained at the stage up to which they had reached.

20. Paragraph 5 of this compromise is material and we shall now Quote it :

"That the parties in both the above appeals have adjusted their disputes by a compromise which is as follows :

(a) The Deputy Commissioner Bara Banki incharge Court of Wards Ganeshpur estate (appellant in F. C. Appeal No. 99 of 1947 and respondent in F. C. Appeal No. 2 of 1948) will pay Rs. 2,25,000/-to the Deputy Commissioner, Bara Banki incharge Court of Wards Ramnagar estate district Bara Banki (appellant in F. C. Appeal No. 2 of 1948 and respondent in F. C. Appeal No. 99 of 1947) within two months.

(b) That henceforth Kothi No. 21 situate at Railway Station Road Lucknow bounded as below and claimed as item No. 19 in Schedule A in suit No. 58 of 1943 be owned with all proprietary rights and interest by Rani Shri Amar Krishna Narain Singh now represented by appellant in F. C. Appeal No. 2 of 1948. The actual possession of this building with all its appurtenances, compound and outhouses etc., is also delivered to Raja Shri Amar Krishna Narain, Singh.

(The boundaries of kothi No. 21 are not given which we do not think it necessary to quote).

(c) That the decree about the Villages Gagiyapur and Gopalpur in favour of Raja Shri Amar Krishna Narain Singh would be binding upon Rani Drigraj Kuar now represented by the Deputy Commissioner Bara Banki incharge court of Wards Ganeshpur estate district Bara Banki. Raja Shri Amar Krishna Narain Singh now represented by the Deputy Commissioner Bara Banki incharge court of Wards Ram Nagar estate district Bara Banki relinquishes his claim about mesne profits.

(d) That village Bichilka be decreed as reverting to Raja Shri Amar Krishna Narain Singh now represented by the Deputy Commissioner Bara Banki incharge Court of

Wards Ramnagar estate district Bara Banki on the death of Rani Drigraj Kaur now represented by the Deputy Commissioner Bara Banki incharge Court of Wards Ganeshpur estate district Bara Banki.

(e) F. C. Appeal No. 99 of 1947 should be allowed to be withdrawn and Raja Shri Amar Krishna Narain Singh be recognised as the full and absolute owner of all the properties claimed therein."

Mr. Niamatullah appearing on behalf of Rani Drigraj Kuar in support of her petition severely criticised" the wisdom and the fairness of the compromise. He stated that by this compromise interest of the Rani had been jeopardised and that she was deprived of much of what she had gained by the family settlement as also by the result of the dismissal of the suit which had been filed by Raja Amar Krishna Narain Singh. It was pointed out by Mr. Niamatullah that if nothing else, by this compromise the estate which Rani Drigraj Kaur got in village Bichilka was restricted to a life estate only.

It was further contended by him that by virtue of paragraph 5 (e) of the compromise quoted above. Rani Drigraj Kuar appeared to lose all along the line. Mr. Niamatullah strenuously contended that this position was brought about because of the fact that the two estates had fallen for management under a single hand, namely that of the Deputy Commissioner, Bara Banki, and consequently proper assessment of the rights of Rani Drigraj Kuar was not made, since she was a female lunatic having no independent advice or support for her cause.

Sir Iqbal Ahmad, on the other hand, equally vehemently contended that everything in regard to this compromise was fair and above board and that the compromise had not only been properly brought into existence but was a fair and equitable settlement under the circumstances of the case. It was pointed out that with the Abolition of Zamindari in the offing the wards had nothing to gain but everything to lose by costly litigation being prolonged.

For our purpose, however, it is not necessary to go into the question whether the compromise was a proper compromise, entered into fairly and properly, because the argument on which relief was claimed in this petition was based not on the validity or otherwise of the compromise but on the fact that there was no jurisdiction or power in the Deputy Commissioner of Bara Banki as inchargs of the two estates, Ganeshpur estate of Rani Drigraj Kuar and the Ramnagar estate of Amar Krishna Narain Singh, to enter into a compromise.

We shall, (therefore, not express any opinion about the merits of the compromise but shall confine ourselves to the latter argument which it would be necessary to elaborate further in order to appreciate its true scope.

21. It was contended that whenever two wards figured as opposite parties in any suit or proceedings and had conflicting interests, then it was obligatory on the Court

of Wards to appoint for each ward a representative and that it was within the Special and exclusive power of that representative to conduct or defend the case on behalf of the ward whom he represented.

It was pointed out that admittedly no representatives had in fact been appointed for the two wards who were litigating because of their conflicting interests and therefore any compromise which was conceived and brought into existence by the Court of Wards and subsequently filed in Court was without any power and as such a nullity. Reliance was placed for this contention on the provisions of section 56 of the Court of Wards Act.

Section 56 is in these terms :-

"When in any suit or proceeding two or more wards, being parties have conflicting interests, the court of wards shall appoint for each such ward a representative, and the said representative shall thereupon conduct or defend the case on behalf of the ward whom he represents, subject to the general control of the Court of Wards."

It was contended that the position of a ward was analogous to that of a minor and it was further contended that as in the case of a minor an improper representation meant no representation in law and a non-representation of a minor in litigation made the decree obtained in such a litigation a nullity, similarly where a ward was not represented properly in Court within the provisions of Section 56, any decree in such a suit was a nullity.

Reliance was placed on certain decisions which indicated that where the appointment of a minor was invalid, then in such a case the decree was void and it was not necessary to file a suit to get a declaration that such a decree was void but that such a decree could just be disregarded because under the law such A decree could not be deemed to have any existence.

22. Reliance was placed largely on the case of Nathumal Vs. Mohd. Nazir Beg and Another, , where the learned Chief Justice and Agarwala, J. held that where in a suit not only the service of notice on the proposed guardian is defective but no order is made by the Court under Order XXXII rule 3, a decree passed against the minor in such circumstances is void and may be ignored.

It was further pointed out in this case, and on this proposition much reliance is also placed by Mr. Niamatullah, that a void decree is a decree which has no existence in the eye of law and may be ignored and therefore it was not necessary to file a suit to have the decree declared void. We are in respectful agreement with the view expressed in Nathumal''s case.

The question before us is not whether the decree which is obtained against a minor who had no proper guardian was a proper decree or not or whether it was necessary to have such a decree set aside in a suit or whether such a decree would be ignored. The point that is before us is whether firstly, the position of a ward is

precisely the same as the position of a minor in a suit and secondly whether the representative contemplated u/s 56 stands on the same footing in law as a guardian ad litem of a minor does.

If the position is different, then obviously the decision in Nathumal''s case and such other similar cases would have no application but if the position were identical, then these cases would undoubtedly apply. We have, therefore, to see what exactly is the position. When an estate is taken over by the Court of wards, then the whole of the moveable and Immovable property of a ward gets under the Superintendence of the Court of Wards, The Collector or other person appointed is to take possession and custody of the property and is to manage it in accordance with the rules made u/s 64 of the Act.

Any property which a ward may inherit subsequent to the date of the assumption or declaration is also deemed to be under the superintendence of the Court of Wards. The Court of Wards have further the discretion 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 such assumption of or declaration -- this is provided for by Section 16 of the Court of Wards Act.

Under Section 55 of the Court of Wards Act, no ward can sue or be sued, nor can any proceedings be taken in the civil Court otherwise than by and in the name of the Collector in charge of his properly or such other person, as the Court of Wards may appoint. A ward therefore, is strictly speaking not in the sams position as a minor is. Minor under the law is incompetent as a minor is. A minor therefore is incompetent to enter into any kind of contract because of his inherent incapacity, namely the incapacity born out of immaturity of mind.

The disability which a ward suffers, on the assumption of his estates by the Court of Wards does not embrace the entire field of his contractual competency. The disabilities which award suffers on the resumption of his estate are enumerated in Section 37 of the Act. The terms of that Section clearly indicate that the ward''s incapacity relates in essence to his capacity to deal with that estate of his which is under the superintendence of the Court of Wards and to his incurring any financial liabilities under any contract.

The ward is left free to deal with his property under certain condition: a ward whose estate has been taken over u/s 10 of the Act can make an adoption without the consent of the Court of wards as also make a testamentary disposition in regard to his property. Even when an estate is taken over by the Court of wards under the provisions of Section 7, it appears that the power to make an adoption or testamentary disposition of property is vested in the ward subject of course to the consent of the Court of wards, which consent however is not to he withheld if the adoption or the testamentary disposition is not contrary to the personal or special law applicable to the ward or it does not appear that such acts were likely to cause

pecuniary embarrassment to the property or lower the influence or respectability of the family in public estimation: this is so provided by the first proviso to Section 37 of the Act,

A consideration of the afore-quoted provisions makes it perfectly plain that the position of a ward is not the same as the position of a minor at law, so that those authorities which lay down that any decree obtained against a minor when such a minor was not properly represented in the suit would be a nullity would have no application to the case of a decree obtained against a ward if there was any procedural error in regard to representation in the suit under the provisions of the Court of Wards Act.

23. What was contended by Mr. Niamatullah was that under the provisions of Section 56 of the Act the two wards in this case, viz. Rani Drigraj Kuar on the one hand and Raja Amar Krishna Narain Singh on the other, had to be represented in the suit by separate representatives appointed by the Court of Wards for the conduct and defence respectively of the case on behalf of each ward.

It was contended further that the provision was a mandatory provision and if there was the slightest breach of any part of that provision, then the decree whether it was a consent decree or a decree in compromise or a decree after contest, was a nullity. It is no doubt true that Section 56 says in terms that the Court of wards shall appoint for each ward a representative: the question is whether the use of the word "shall" in Section 56 makes it so obligatory on the Court of wards to appoint representatives that their non-appointment has the effect of vitiating the entire trial and the result thereof.

It is one of the well-recognised rules of interpretation that a provision like this should be held to be non-mandatory unless non-compliance with the provision was visited with some penalty. See the decision of the Supreme Court in Jagan Nath Vs. Jaswant Singh and Others, . There is in the Court of Wards Act no penalty provided for non-compliance with the provision of Section 56. We are, therefore, of the opinion that a non-compliance with this provision could not lead to the decree, which was a compromise decree in this case, to be void.

24. The reason for incorporating Section 56 in the Act appears to have been with the idea of avoiding any embarrassment to the officers of the Court of wards who may have had the task in certain cases of representing rival interests. It is significant to note that even though separate representatives were to be appointed to represent the interests of the rival wards, the general control over those representatives was vested in the Court of wards.

It is, therefore, plain that the seal representation of each of the two contesting wards remained vested in the Court of wards and that the Court of wards remained the ultimate authority under the law to act on behalf of the wards. In the case of Mussammat Bibi Walian v. Banke Behari Pershad Singh 30 Ind App 182 (C) their

Lordships of the Privy Council held that where it appeared that in a suit the minors interests were effectively represented by their mother with the sanction of the Court, the absence of the formal order appointing her and an immaterial defect of service of summons on the minors and their guardian which did not cause any real prejudice were mere irregularities which could form no ground for reversing the judgment and execution proceedings on appeal or in a separate suit for the purpose.

That there was effective representation of the interests of the ward in this case admits of little doubt, for it is clear from the documents filed that there was a good deal of negotiation and consideration given before the compromise actually was put into Court and made the rule of Court.

25. Mr. Niamatullah contended that the compromise was on its mertis detrimental to the interests of his client, namely Rani Drigraj Kuar. In our view the question whether the compromise was detrimental to the interest of any of the parties to it or not was not a question that could be investigated in these proceedings. If an investigation of such a question is to be made, then it Could in our view be made only by a separate suit, for if Mr. NiamatuIIah''s contention were right, then the decree could at best be a voidable decree and not a void decree ab initio.

It was further contended by Mr. Niamatullah that fraud was practised on the Court inasmuch as the Court was not told when it made the compromise decree that the compromise had not been arrived at by representatives who should have been appointed under the provisions of Section 56 of the Court of Wards Act. We cannot agree with this contention, for in our opinion there was no occasion or necessity to draw the attention of the Court to that fact.

All that the Court had to be satisfied was that a compromise which was not otherwise unlawful had been entered into. The mere fact that the compromise had been made in a suit in which representatives for the two contesting wards had not been appointed did not make the compromise unlawful, for there is no provision in the Court of Wards Act specifically enjoining that a compromise can be effected between two rival wards only through their appointed representatives and not otherwise. In Mirza Husain Yar Beg Vs. Radha Kishan and Others, a Bench of this Court held that the word ''lawful'' in Order XXIII rule 3 refers to agreements which in their very terms or nature are not unlawful and may therefore include agreements which are voidable at the option of one of the parties thereto because they had been brought about by either undue influence, coercion or fraud.

It was further held in this case that a party alleging fraud cannot be allowed to avoid a compromise admittedly executed by it in proceedings started by an application under Order XXIII, Rule 3, of the Code of Civil Procedure. This view has since been reiterated in this Court in other cases.

26. Mr. Niamatullah further contended that a compromise must be the act of two parties to it and unless there are two parties to a compromise, such a compromise can in law be no compromise. He contended that since the compromise had been entered into really by the Deputy Commissioner of Bara Banki, there were no two parties to this compromise.

This argument, in our opinion, is not correct for the compromise had been entered into on the one hand on behalf of Rani Drigraj Kuar by the Deputy Commissioner incharge of her estate and on the other, on behalf of Raja Amar Krishna Narain Singh by the Deputy Commissioner incharge of his estate -- these must be held to be two legally distinct personalities even though the two happened to vest in the same individual. The Court of Wards have been given power u/s 61 (4) of the Act to execute all deeds, contracts and other instruments between two wards and such deed, contract or other instrument was specifically made valid under the Act.

Under Section 38 of the Court of Wards Act, the Court of Wards have been given plenary powers in regard to dealing with the property of the ward; the Court of Wards have been empowered to do all such acts as are not inconsistent with the other provisions of the Act or any other Act in force for the time being "as it may judge to be" for the advantage of the ward or for the benefit of his property.

Section 18 of the Bengal Court of Wards Act (No. IX of 1879), had similar words a& in Section 38, namely "as it may judge most for the benefit of the property arid the advantage of the ward" and their Lordships of the Supreme Court in the case of Karanpura Development Co. Ltd., v. Kamakshya Narain Singh, (S) AIR 1956 SC 446 (E) had occasion to express their opinion in regard to these words and their Lordships said that the words "as it may judge most for the benefit of the property and the advantage of the ward"" in Section 18 cannot be construed as equivalent to "as may be judged to be most for the benefit of the property and the advantage of the ward."

The statute confides in clear and unambiguous terms the authority to judge whether the act is beneficial to the estate, to the Court of Wards and not to any outside authority. Their Lordships further pointed out that the exercise of such a power can be attacked on the ground that the Court of Wards did not act bona fide and in the interest of the ward and that its action amounted to a fraud on the power & it could also be attacked on the ground that the Court of Wards did not in fact apply its mind to the question whether the act was for the benefit of the property or the advantage of the ward.

Their Lordships further pointed that where the Court of Wards applied its mind and gave thought to the question whether the act is for the benefit of the property or the advantage of the ward and came to an honest judgment in the matter, its decision was not liable to be questioned on the ground that it was erroneous on the merits, or that it was reached without considering some aspects which ought to

have been considered unless the failure to cosider them was of such a character as to amount to there being no exercise of judgment at all.

In the present case it cannot be said on the'' facts that there was any failure on the part of the Court of Wards to apply its mind to the question or that the action of the Court of Wards was not bona fide. As we have already said, an attack on the compromise on the grounds mentioned immediately above could not make the compromise void ab initio but could at best make it voidable,

27. In AIR 1950 1 (Privy Council) their Lordships of the Privy Council pointed out that it was plain that under the Court of Wards Act it is the Court of Wards which is responsible for the control of the person and the estate of the minor, and u/s 18 of the Bengal Court of Wards Act, which in terms is similar to Section 37 of the U. P. Court of Wards Act, the Court of Wards had the power to arrange a compromise of a suit on behalf of a minor.

It is clear on an examination of theSs. provisions of the Court of Wards Act that the Court of Wards have an over-riding power in the matter of the management, disposal and settlement in regard to the estate of a ward under its superintendence.

28. Sir Iqbal Ahmad appearing on behalf of the opposite party contended that so far as the question of entering into a compromise was concerned; representatives who were to be appointed u/s 56 of the Act could have no power of compromise for they had only power to "conduct or defend the case."

It was pointed out that if the intention of the Legislature was to give a power of compromise to the representatives, then provision would have been made to that effect in the same manner as provision has been made in Sub-section (2) of Section 59. Sub-section (2) of Section 59 reads thus :

"Such manager may, subject to the control of such Collector, or, where there is no such manager, such Collector may institute, defend, compromise, or otherwise deal with suits, applications, or other proceedings in revenue courts relating to the property entrusted to him,"

This argument of Sir Iqbal Ahmad appears plausible but we do not consider it necessary in the view we have taken to go further into it to see whether or not the argument was assailable on some grounds.

29. It was also contended on behalf of the applicant that even if the power to compromise way vested in the Court of Wards, yet a compromise entered into by the Court of Wards on behalf of the wards could only be put into Court by the respective representatives. This contention does not appear to us to be sound, but even if it were so, the mere fact that a compromise was put into Court by some one who may not have had the authority to actually put it into Court would not make the compromise invalid or make the decree which was made on that compromise by the Court a nullity.

The compromise in this case was filed by different Counsel appearing for the two wards and the compromise was properly verified in Court. We have, therefore, no reason to hold that there was any such defect in the filing of the compromise or an the making of the decree on it which could make the decree a nullity.

30. For the reasons given above we have come to the conclusion that the decree which was made by this Court on the basis of the compromise was not a nullity and could not be ignored, and if the decree could not be ignored, then there could be no question of directing the office of the Court to continue the work of the preparation of the paper book in the appeal under Chapter XIII of the Rules of Court.

31. In the result we dismiss these applications and direct that the applicant to pay the costs of these applications to the opposite party.