

**(1885) 06 AHC CK 0003**

**Allahabad High Court**

**Case No:** None

Masuma Bibi and Another

APPELLANT

Vs

The Collector of Ballia on behalf  
of the Court of Wards

RESPONDENT

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**Date of Decision:** June 10, 1885

**Citation:** (1885) ILR (All) 687

**Hon'ble Judges:** W. Comer Petheram, C.J; Straight, J

**Bench:** Division Bench

**Final Decision:** Dismissed

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### **Judgement**

W. Comer Petheram, C.J.

I am of opinion that this appeal should be dismissed as it stands. This was a suit brought by Masuma Bibi and Nawab Ahmad Husain Khan to recover possession of the property which, at the time when the suit was instituted, was in the hands of the Collector as Manager of the Court of Wards. The suit was brought on a statement that the plaintiff, Masuma Bibi, had placed the property in the hands of the Court of Wards some years ago, and had done so because she was not in a position to manage the property herself. She alleged that the Court had managed the property badly, and that its condition had become worse, and that she, having given it to her grandson, was now capable of managing it, and desired to get it back. Upon this state of things the case went to trial, and the plaintiff gave no evidence. The defendant did give some evidence, of which it is not necessary to say more than that its effect was to show that the estate had been managed properly. If this is the true state of things, and the plaintiff did hand over the property to the Court of Wards, and the property could be so handed over, I am of opinion that the action could not be maintained with reference to the provisions of Act XIX of 1873 and Act VIII of 1879. If she could hand over the property, it could only be on the ground that she, as a female, was incapable of managing it properly herself, and it would be necessary that she should be deemed incapable of the management by the Local

Government, which, in my opinion, means the Lieutenant-Governor. The statement of claim was all that she put before the Court and that says that she herself made over the property to the Court of Wards, and therefore she must have satisfied the Lieutenant-Governor that she was incapable of managing it. Then we come to Section 20 of Act VIII of 1879. The suit was in the form of an action for ejectment and it is said that the Court of Wards properly had charge of the property, but was now desirous to release it to the persons entitled to it. Section 20 of Act VIII of 1879 enacts, by way of proviso to Section 195 of Act XIX of 1873, giving the Court power to release property under its management that "the property of a proprietor who has been held disqualified under the same section [(Section 194), Clause (a), Clause (e), Clause (f), or Clause (g)] shall not be released from the superintendence of the Court of Wards without the previous sanction of the Local Government." Now there is no evidence of this sanction having been obtained, and I am therefore of opinion that the suit as brought and the appeal must both be dismissed.

2. It has been suggested during the argument before us that Masuma Bibi may be entitled to bring the action upon a different ground altogether, which is that this is property which the Court of Wards had no jurisdiction to take, that the Court's possession was merely the result of an arrangement to which the plaintiffs were consenting parties, and which they now desire to terminate. If this view is correct, and it is not necessary for me to express any opinion upon that point, they would be entitled to get back the property. But they cannot do so in the present suit. They cannot, now at least, contend that the Court of Wards should be compelled to release the property. Whether it was legally under the Court's management or whether the defendant-vendee is legally in possession, we need not now decide. The appeal is dismissed with costs.

Straight, J.

3. I concur in what has fallen from the learned Chief Justice, but I wish to add that the main ground upon which I hold that this appeal should be dismissed is, that the case which is now put forward by Mr. Hill, the nature of which was shadowed forth by the second plea in the memorandum of appeal, is not the case upon which his client came into Court, or that which is presented on the face of the plaint. It is an entirely new case which has been stated in this Court for the first time in appeal, and raises an issue, which necessarily was not considered by the Court below, nor did the plaintiff give any evidence in support of it.

4. Under such circumstances, I do not consider that we should allow the plaintiff in appeal entirely to change the nature of the grounds upon which she alleges herself to be entitled to relief, and for this reason I concur in dismissing this appeal with costs.