

(1868) 08 CAL CK 0016

Calcutta High Court

Case No: Special Appeal No. 2127 of 1867

Madhusudan Manji

APPELLANT

Vs

Debigobinda Newgi

RESPONDENT

Date of Decision: Aug. 7, 1868

Judgement

Sir Barnes Peacock, Kt., C.J.

This case appears to me to be very clear when we look at the whole of Act XL of 1858. The recital declares, "that it is expedient to" make better provision for the care of the persons and property of minors not "brought under the superintendence of the Court of Wards, "treating those whose estates have been brought under the Court of Wards as minors. Certain Regulations are repealed, and then by Section 2 it is enacted that "except in the" case of proprietors of estates paying revenue to Government, who have been or "shall be taken under the protection of the Court of Wards, the care of the "persons of all minors not being European British subjects, and the charge" of their property, shall be subject to the jurisdiction of the Civil Court. "By this section, also, proprietors of estates paying revenue to Government who have been taken under the care of the Court of Wards are treated as minors, for such persons are excepted out of the general term "all minors," as if it had been said "all minors except those who are under the care of the Court of Wards." Section 26 declares that, "for the purposes of this Act, every person shall be held a minor who has not attained the age of eighteen years." Every person, therefore, not being a European subject, who has not attained the age of 18 years, is a minor for the purposes of the Act, and unless he is a proprietor of an estate paying revenue to Government, who has been taken under the jurisdiction of the Court of Wards, the care of the person and the charge of his property are subject to the jurisdiction of the Civil Court.

3. Then, can it be said that being a minor subject to the jurisdiction of the Civil Court, he is not a minor unless proceedings are taken in the Civil Court for the protection of his property, or for the appointment of a guardian. His relatives may neglect his interests, but he is still a minor. There may be a minor whose interests are neglected

as well as a minor whose interests are looked after and protected. The exception of the Statute of Limitation in the case of minors is more necessary for the former than for those who have some one to look after their interests. Being a minor, the plaintiff came within Sections 11 and 12 of Act XIV of 1859,² and was under a disability until he attained the age of 18. As pointed out by Mr. Justice E. Jackson, if the law were otherwise, this anomaly would follow, that a minor may have attained his majority on one day and become a minor on the next. A man cannot be said not to be under a disability as a minor when he is liable as a minor to have his property and person put under the charge of a guardian. If he is a proprietor of an estate paying revenue to Government and has been taken under the protection of the Court of Wards, he is still a minor up to the age of 18. (Regulation XXVI of 1793, Section 2). It cannot be said that he is not a minor when on account of his minority his estates have been taken under the charge of the Court of Wards, under the provisions of Regulation X of 1793, when by Section 22 of that Regulation he is to have a guardian of his person; and by Sections 7 and 15, a manager of all his estates, real and personal; and by Section 32, he cannot sue in the Civil Courts for any cause of action.

¹[Sec. 26:--For the purposes of this Act, every person shall be held to be a minor, who has not attained the age of eighteen years.]

Persons under the age of 18 years to be held minors for the purposes of this Act.

²Computation of period of limitation in suite where the cause of action is founded on fraud. Sec. 11:--If at the time when the right to bring an action first accrues the person to whom the right accrues is under a legal disability, the action may be brought by such person or his representative within the same time after the disability shall have ceased as would otherwise have been allowed from the time when the cause of action accrued, unless such time shall exceed the period of three years, in which case the suit shall be commenced within three years from the time when the disability ceased; but if, at the time when the cause of action accrues to any person, he is not under a legal disability, no time shall be allowed on account of any subsequent disability of such person or of the legal disability of any person claiming through him.

Sec. 12:--The following persons shall be deemed to be under legal disability within the meaning of the last preceding section--married women in cases to be decided by English law, minors, idiots, and lunatics.]

When persons to be deemed to be under legal disability under preceding section.