

plea can obviously be recorded only if the accused is informed of the allegations which have been made against him and the offence which he is alleged to have committed. If he puts forward the plea of not guilty, he must be asked to state whether he would like the prosecution witnesses who have already been examined to be recalled under section 256 and to be recross-examined. The right to recall and to recross-examine witnesses is a most valuable right and must be fully preserved, for the law declares that the procedure prescribed for warrant cases must be followed in warrant cases tried under the provisions of Chapter XXII. The observations of Madgavkar, J., in the case referred to above are scarcely relevant for these observations were made in a case in which no appeal was competent. The question must, therefore, be answered in the affirmative.

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Bhandari, C. J

For these reasons, I would uphold the order of the Court below and dismiss the petition.

APPELLATE CIVIL

Before Harnam Singh and Dulat, JJ.

COURT OF WARDS, AMB ESTATE,—Appellant

versus

TIKKA CHAIN SINGH AND OTHERS,—Respondents

Regular First Appeal No. 41 of 1952

1953

Code of Civil Procedure (Act V of 1908)—Section 88, Order 35, Rule 5—Punjab Court of Wards Act (II of 1903), Section 48—Interpleader suit—Court of Wards whether can file—Section 48 of Punjab Court of Wards Act, whether bars such suit.

Oct. 21st

Court of Wards assumed superintendence of the persons and property of 4 wards in 1919. In 1951, it filed an interpleader suit alleging that defendants 1 and 2 (sons of the eldest Ward) claim that by rule of primogeniture governing succession in the family, defendant 1 alone is entitled to possession of the property, while defendants 3 to 5 claim that all the five defendants are entitled to possession of the property, rule of primogeniture being not applicable, and the Court of Wards claimed no interest in the

property other than for charges and costs. Suit was dismissed as barred by section 48 of the Punjab Court of Wards Act. Court of Wards appeals to the High Court.

Held that in order to bring the case within Order XXXV, Rule 5, it has to be shown that the Court of Wards is agent of his wards and has instituted the suit for the purpose of compelling the wards to interplead with persons other than persons making claim through the wards. The rival claimants being the wards themselves, the suit does not come within the prohibition enacted in Rule 5 of Order XXXV of the Code.

Held further, that section 48 of the Punjab Court of Wards Act gives power to the Court of Wards to institute an interpleader suit against several claimants when on the death of any person of whose property the Court of Wards has assumed jurisdiction the succession to his property is disputed. This provision was made out of abundant caution to prevent an argument being advanced that on the reading of section 48 of the Act the Court of Wards was precluded from instituting an interpleader suit against several claimants in the circumstances stated in that section

Held also, that the substitution of the words 'who claims no interest therein other than for charges and costs' for the words 'whose only interest therein is that of a mere stake-holder' occurring in section 470 of the Code of Civil Procedure, 1882, does not affect the application of A.I.R. 1931 Oudh 177 to the facts of the present case, and the interpleader suit by the Court of Wards was, therefore, competent.

Mohammad Azim Khan and others v. Raja Saiyid Mohammad Saadat Ali Khan and others, followed (1).

Regular first appeal from the decree of Shri Jawala Singh, Senior Sub-Judge, Hoshiarpur, dated the 18th December 1951, dismissing the plaintiff's suit, leaving the parties to bear their own costs.

S. M. SIKRI, Advocate-General, and KARTAR SINGH CHAWLA, Assistant Advocate-General, for Appellant.

DAYA KRISHAN MAHAJAN, KRISHAN LAL KAPUR and A. C. HOSHIARPURI, for Respondents.

JUDGMENT

Harnam Singh,
J. HARNAM SINGH, J. In order to appreciate the point of law that arises for decision in Regular First Appeal No. 41 of 1952, the facts of the case may be set out in some detail.

(1) A.I.R. 1931 Oudh 177

By notification No. 601-433-1, dated the 29th of April 1919, the Court of Wards for the Punjab made an order under section 6 of the Punjab Court of Wards Act, 1903, hereinafter referred to as the Act, assuming superintendence of the persons and property of Mian Lachhman Singh, Santdev Singh, Shivdev Singh, and Hardev Singh, sons of Raja Raghunath Singh, of Jaswan, Hoshiarpur District.

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On the 12th of March 1951, the Court of Wards, Amb Estate, instituted civil suit No. 27 of 1951, under section 88 of the Code of Civil Procedure, hereinafter referred to as the Code. In paragraphs Nos. 3 and 4 of the plaint it is stated that defendants Nos. 1 and 2 claim that by the rule of primogeniture governing succession in the family, defendant No. 1 is entitled to the possession of the property in suit, while defendants Nos. 3, 4 and 5 claim that defendants Nos. 1 to 5 are entitled to the possession of the property in suit, rule of primogeniture being not applicable. In paragraph No. 6 of the plaint it is stated that the Court of Wards for the Punjab does not claim any interest in the subject-matter of the suit other than for charges and costs.

Harnam Singh,
J.

In the written statement Kanwar Shivdev Singh, defendant, objected, *inter alia*, to the competency of the suit under section 88 of the Code.

On the pleadings of the parties the following preliminary issue was fixed:—

“Whether an inter-pleader suit is competent in the present case?”

Finding that the interpleader suit was not competent the Court of first instance has dismissed the suit leaving the parties to bear their own costs.

From the decree passed in civil suit No. 27 of 1951, the Court of Wards for the Punjab appeals under section 96 of the Code.

From the provisions of section 88 of the Code, it is plain that by interpleader suit a person in possession of property not his own is enabled to

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call upon the rival claimants to such property to appear before the Court, in order that the right to such property, as between such claimants, may be determined. *Prima facie*, civil suit No. 27 of 1951 falls within section 88 of the Code.

Mr. Daya Krishan Mahajan urges a double-barrelled objection to the competency of the suit. That objection may be stated as follows:—

- (a) that the Court of Wards for the Punjab being an agent for the wards, the suit is barred by rule 5 of Order XXXV of the Code; and
- (b) that section 48 of the Act by necessary implication bars an interpleader suit except in the case covered by that section.

Rule 5 of Order XXXV of the Code reads:—

“5. Nothing in this Order shall be deemed to enable agents to sue their principals, or tenants to sue their landlords, for the purpose of compelling them to interplead with any person other than persons making claim through such principals or landlords.”

In order to bring the case within Rule 5 of Order XXXV of the Code it has to be shown that the Court of Wards for the Punjab is agent of the wards and has instituted the suit for the purpose of compelling the wards to interplead with persons other than persons making claim through the wards. In illustration (a) appended to that rule ‘C’ claims adversely to ‘A’ but not through ‘A’ whereas in illustration (b) ‘C’ claims through ‘A’. In civil suit No. 27 of 1951, the rival claimants being the wards themselves, the suit does not come within the prohibition enacted in Rule 5 of Order XXXV of the Code.

Section 48 of the Act provides:—

“Whenever, in the event of the death of any person of whose property the court of

Wards has assumed superintendence, the succession to his property or any part thereof, is unclaimed or disputed, the Court of Wards may either direct that the property, or part thereof be made over to any person entitled to or claiming the same, or *may institute a suit of interpleader against the several claimants*, or may retain the superintendence thereof until a claimant has, in due course of law, established his title thereto in a competent Court."

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From the provisions of section 48 of the Act it is plain that that section does not define interpleader suit or give procedure governing interpleader suits. For the definition of the expression 'interpleader suit' and the procedure governing such suits, one has to fall back on section 88 and Order XXXV of the Code.

Section 88 of the Code re-enacts with modifications section 470 of the Code of 1882, the modifications being that for the words 'payment or property' occurring in section 470 of the Code of 1882, the words 'debt, sum of money or other property, movable or immovable' have been substituted, and for the words 'whose only interest is that of mere *stake-holder*' occurring in section 470 of the Code of 1882, the words 'who claims no interest therein other than for charges or costs' have been substituted.

That section 88 and Order XXXV of the Code proceed upon the provisions of Order LVII of the Rules of the Supreme Court, 1883 (England), cannot be doubted. Interpleader suit under Rule 1 of Order LVII falls under two heads:—

- (1) interpleader by a stake-holder or persons analogous thereto; and
- (2) interpleader by a sheriff or officer *ejusdem generis*.

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Part (a) of Rule 1 of Order LVII deals with interpleaders by a stake-holder or person analogous thereto and part (b) of that rule deals with interpleader by a sheriff or officer *ejusdem generis*.

In construing section 470 of the Code of 1882, Nanavutty, J., said in *Mohammad Azim Khan and others v. Raja Saiyid Mohammad Saadat Ali Khan and others* (1):—

“The definition of ‘person’ as given in the General Clauses Act, Imperial Act 10 of 1897, and United Provinces Act 1 of 1904 includes a company or association or body of individuals whether incorporated or not. The Board of Revenue of the United Provinces in the Court of Wards Department was thus a juristic person within the meaning of the word ‘person’ as defined in the General Clauses Act; and this juristic person was holding the property of Raja Mohammad Siddique Khan as a stake-holder, and as such it could file under section 470 of the old Civil Procedure Code, an inter-pleader suit, and it could sue and be sued as such. It is obvious that if the Court of Wards took wrongful possession of another person’s property under pretext of acting under section 44 of Act 3 of 1899, a person aggrieved could sue the Court of Wards for recovery of his property. It is true that section 48 of the present Court of Wards Act (4 of 1912), gives the Court of Wards a statutory capacity as a person to sue under section 88 of the present Civil Procedure Code, but the mere fact that no such statutory capacity to sue or to be sued was conferred upon the Court of Wards by the old Court of Wards Act, 3 of 1899, does not in any way oust the jurisdiction of the civil Courts to take proceedings upon a plaint filed by a person holding

(1) A.I.R. 1931 Oudh. 177 at p. 197.

as a stake-holder under the provisions of section 470 of the old Civil Procedure Code, Act 14 of 1882.”

In section 2(40) of the Punjab General Clauses Act, 1898, the word ‘person’ is defined to include a company or association or body of individuals whether incorporated or not.

From what I have said above, it is plain that the substitution of the words ‘who claims no interest therein other than for charges or costs’ for the words ‘whose only interest therein is that of a mere stake-holder’ occurring in section 470 of the Code of 1882, does not affect the application of *Mohammad Azim Khan and others v. Raja Sayid Mohammad Saadat Ali Khan and others* (1) to the facts of the present case.

But it is said that section 48 of the Act by necessary implication bars interpleader suit except when such suit comes within that section.

Section 48 of the Act gives power to the Court of Wards to institute interpleader suit against several claimants when on the death of any person of whose property the Court of Wards has assumed jurisdiction the succession to his property is disputed. In my judgment, that provision was made out of abundant caution to prevent an argument being advanced that on the reading of section 48 of the Act the Court of Wards was precluded from instituting an interpleader suit against several claimants in the circumstances stated in that section.

For the foregoing reasons, I would allow Regular First Appeal No. 41 of 1952, and set aside the judgment and the decree passed by the Court of first instance on the 18th of December 1951.

In the result, I remand civil suit No. 27 of 1951, with directions to the Court of first instance

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to readmit the suit under its original number in the register of civil suits and proceed to determine the suit.

Having regard to the circumstances of the case, I leave the parties to bear their own costs throughout.

Harnam Singh, J.
 Dulat, J.

Parties are directed to appear in the Court of first instance on the 9th November 1953.

DULAT, J. I agree.

REVISIONAL CIVIL

Before Kapur, J.

RAM CHANDER,—*Petitioner*

versus

KIDAR NATH AND OTHERS,—*Respondents*

Civil Revision No. 250 of 1953

1953
 Oct. 23rd.

The East Punjab Urban Rent Restriction Act (III of 1949)—Sections 13 and 14—“Re-erection” in Section 13(3) (a)(iii) meaning of—Section 14 whether bars a second application under section 13(3)(a)(iii), when the means of the landlord have changed or his circumstances have improved—Constitution of India, Article 227—Scope of ...

Held, that re-erection in section 13 (3) (a) (iii) of the Punjab Urban Rent Restriction Act does not contemplate re-erection which is the result of the building being in a dilapidated condition or requiring re-erection on that ground but what it contemplates is that the landlord can apply for an order directing the possession to be delivered to him if he requires it for re-erection or replacement of the building or erection of other buildings. It is not the state of the building which is the test of re-erection, but it is the desire of the landlord to re-build.

Held, that a landlord may make an application for ejection on the ground that he bona fide needs the property for the purpose of re-construction and he may not be able to prove that he bona fide did need it. That does not prevent on a subsequent occasion when his means have improved or circumstances have changed to be able to make another application. Merely because he was not able to satisfy the Judge two years ago that he required the premises for re-erection is not a ground that he cannot do so