

Privy Council Appeal No. 64 of 1934.

Allahabad Appeal No. 36 of 1933.

Lala Atma Ram - - - - - *Appellant*

v.

Lala Beni Prasad and Others - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT ALLAHABAD.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 23RD JULY, 1935.

Present at the Hearing :

LORD MACMILLAN,

SIR JOHN WALLIS.

SIR SHADI LAL.

[*Delivered by* SIR JOHN WALLIS.]

This is an appeal from the judgment of the High Court at Allahabad in the exercise of its powers of revision under section 115 of the Code of Civil Procedure, and raises questions as to the High Court's interpretation of the section, and as to the claim of a next reversioner to carry on at his own expense a suit which had been filed by the Collector under the local Court of Wards Act as representing two widows for possession of the suit properties which were alleged to form part of the estate of their deceased husband, in consequence of the Collector having applied to withdraw the suit. The suit had been instituted by the Collector of Saharanpur under section 55 of the United Provinces Court of Wards Act on behalf of Jaimala Kuer and Chando Kuer, who were the surviving widows of Janeshwar Das and are hereinafter referred to as the widows, to recover certain properties in possession of three of the defendants which were alleged to be part of the estate of their deceased husband.

The case made in the plaint was that the plaint properties had belonged to Dip Chand who died in 1907 and that on the death of his widow, Dhanni Kuer, who died on the 20th January, 1920, Janeshwar the husband of the widows and his brother Budri Das, who were Dip Chand's nearest reversioners, became entitled to succeed to the suit properties. Dip Chand had been adopted into their family, and it was alleged that his natural father Mukand Lal, who was his guardian had taken advantage of his minority and the minority of his widow, to put his other sons Atma Ram

and Abhai Nardan, the 1st and 2nd defendants, in possession of the suit properties. The suit was brought on behalf of the widows of Janeshwar one of the reversioners, safeguarding the rights of Phalwanti Kuer, the widow of Badri Das the other reversioner who was impleaded as the 3rd defendant.

The plaint was filed by the Collector on the 20th January, 1932, and on the 19th April he applied that the case should be struck off as the Board of Revenue, which was the Court of Wards, had sanctioned the withdrawal of the suit. On the same day the widows put in an application to be substituted as plaintiffs. On the 9th May, in compliance with the Court's order, the Collector filed through the Government Pleader his objection to the widows' application on the ground that they were debarred from suing under section 55 of the Court of Wards Act, that the Collector as plaintiff had an absolute power of withdrawal under Order XXIII, Rule 1, and that the widows were not proper or necessary parties under Order I, Rule 10. On the same day the widows joined with Beni Prasad, who claimed to be the nearest reversioner of their husband Janeshwar and his brother Badri, and entitled to succeed to their estates on the death of their widows, in filing a fresh application that they might be joined as plaintiffs and the conduct of the suit given to any one of them. This application was supported by a lengthy affidavit to which their Lordships do not propose to refer, seeing that the Collector was not served with a copy and had no opportunity of answering it, as the Subordinate Judge at once proceeded to hear arguments on all these applications and reserved judgment which he delivered two days later.

The Subordinate Judge held that the Collector under Order XXIII, Rule 1, was entitled to withdraw the suit, and as section 55 of the Court of Wards Act prevented the widows, who were wards of the Court, suing in their own names, they could not be substituted as plaintiffs. He also rejected the application of Beni Prasad, the next reversioner, as he was not a party to the suit, and it was not shown that there had been any arrangement creating a devolution of interest in his favour during the pending of the suit under Order XXII, Rule 10. He accordingly rejected the application of the widows and of Beni Prasad, and passed a decree dismissing the suit which, if allowed to stand might under the Code have finally barred the widows' claim without any adjudication on the merits, as no leave to file a fresh suit was applied for or given.

The widows then applied to the High Court to revise the judgment of the Subordinate Judge under section 115 of the Code of Civil Procedure. Beni Prasad, whom they impleaded as 6th respondent, was afterwards transposed as an applicant for revision along with the widows. It was

alleged in the application that in refusing to make the applicants parties to the suit and to substitute them as plaintiffs, the Subordinate Judge had failed to exercise a jurisdiction vested in him by law (clause (b)), and had acted illegally or with material irregularity in the exercise of his jurisdiction (clause (c)).

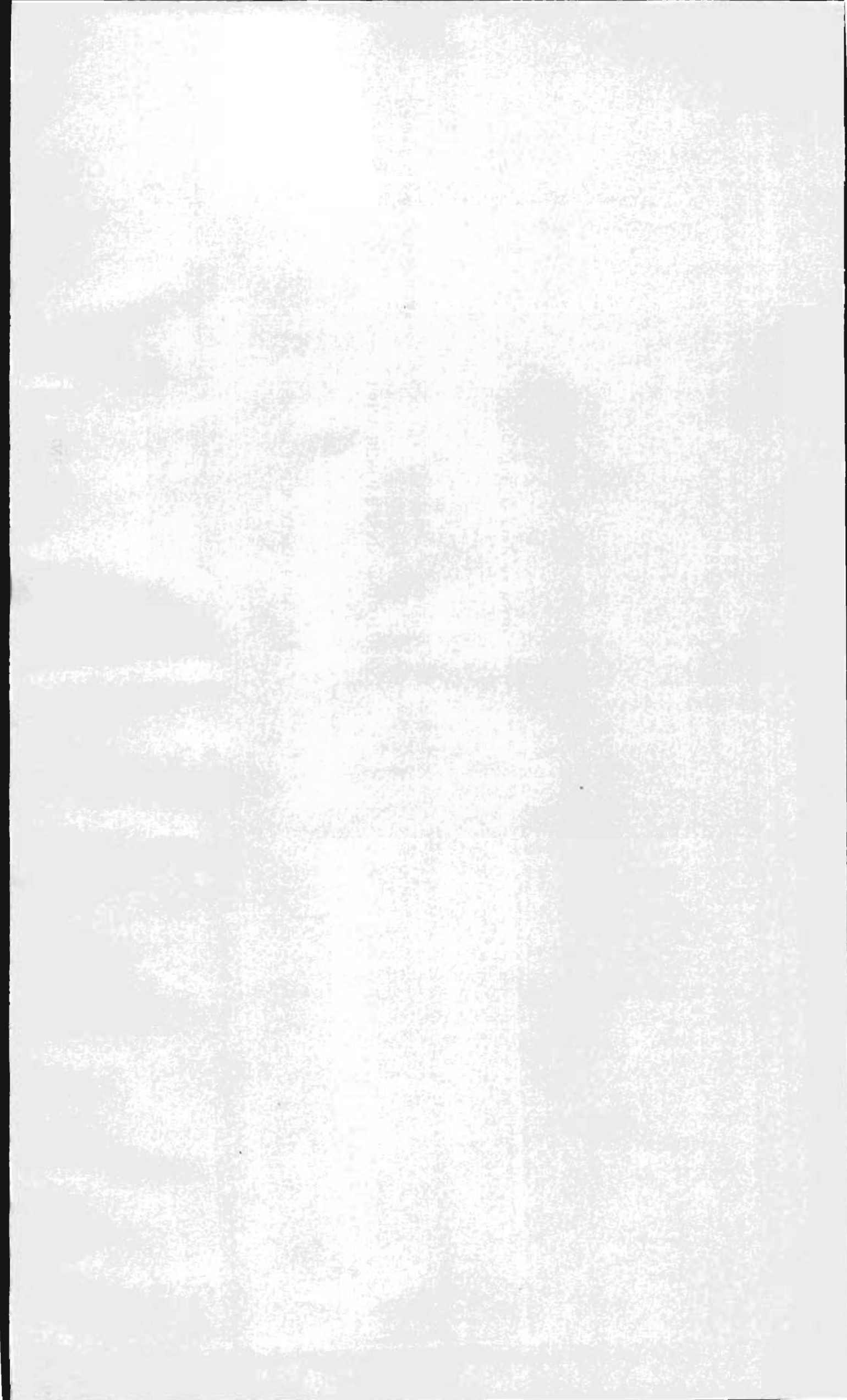
For the reasons stated in their judgment the High Court dismissed the application of the widows. The widows have not appealed against this decision and their Lordships are accordingly not called upon to review it nor do they express any opinion as to the soundness of the grounds upon which it proceeded. As regards Beni Prasad's application the High Court held that it had not received a proper hearing or consideration in the Court below, and that the Subordinate Judge had totally misapprehended the nature of his application and dealt with it summarily. They accordingly held that they had jurisdiction to entertain his application. Their Lordships are of opinion that the High Court rightly so held inasmuch as the Subordinate Judge in disposing as he did of Beni Prasad's application acted with material irregularity.

On the merits of Beni Prasad's application, the learned Judges rightly pointed out that the suit filed on behalf of the widows by the Collector was a representative one in which Beni Prasad as nearest reversioner was interested, and that a decree properly obtained against the widows would be binding on him as next reversioner. This was expressly ruled by this Board in *Chaudhri Risal Singh v. Balwant Singh* 45 I.A. 168. On the other hand if the suit succeeded his right as the next reversioner of the plaintiffs' husband would be established. In these circumstances, in their Lordships' opinion, Beni Prasad had a right *ex debito justitiæ* to be added as a plaintiff, and given an opportunity of continuing the suit if so advised. Their Lordships accordingly find themselves in agreement with the result of the judgment of the High Court on the merits of Beni Prasad's application.

It has next to be considered what was the proper order for the High Court to make in this representative suit when, owing to the incapacity for the time being of the widows to maintain it and the withdrawal of the Collector from the position of plaintiff representing them, the next reversioner was to be made a plaintiff. What the High Court did was, without reversing the decree of the lower Court dismissing the suit, to order that Beni Prasad should be made a plaintiff in the suit and the suit be tried as between Beni Prasad on the one hand and the original defendants on the other. But Beni Prasad could not be made a party to a suit which, having been dismissed, no longer existed. To make the judgment of the High Court effective it is necessary that the decree of the Subordinate Judge dismissing the suit should be recalled. Beni Prasad having been made

a party as plaintiff, the Collector may then be dismissed from the suit, which will proceed at the instance of Beni Prasad. The widows are no longer under the supervision of the Court of Wards and as they can now act for themselves, it will be for them, if they are so advised, to renew their application to have themselves added as plaintiffs to the suit, and the Court will no doubt give due consideration to any such application by them. The dismissal of their application while they were under wardship will not prejudice their application to be made plaintiffs now that their wardship has come to an end.

In these circumstances their Lordships will humbly advise His Majesty that the decree of the High Court be varied so as to read as follows :—“ It is ordered that the decree of the Subordinate Judge of Saharanpur dismissing the suit be recalled, that Beni Prasad be added as a plaintiff in the suit, that the Collector of Saharanpur be dismissed from the suit, that the application of Mussumat Jaimala Kuer and Mussumat Chando Kuer as originally presented be dismissed without prejudice to their applying anew to be made parties as plaintiffs to the suit along with Beni Prasad now that they are no longer under wardship.” The order as to costs in the High Court will stand but the appellant will pay the costs of the respondents in the present appeal.



In the Privy Council

LALA ATMA RAM

v.

LALA BENI PRASAD AND OTHERS

DELIVERED BY SIR JOHN WALLIS

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