

**Musi Imran Vs. Collector of Bijnore**

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**Court :** Allahabad

**Decided On :** Jan-16-1934

**Reported in :** AIR1934All434

**Appellant :** Musi Imran

**Respondent :** Collector of Bijnore

**Judgement :**

Sulaiman, C.J.

1. This is a defendant's appeal arising out of a suit for recovery of an amount due to the lunatic Syed Ale Imran from the defendant Syed Muse Imran. The defendant was appointed manager of the estate of the lunatic and held possession from the 3rd March 1920 till the 29th of August when he was discharged or dismissed from the management. The Court of Wards appears to have taken over superintendence of the estate of the lunatic under Section 8 Sub-section (1) Clause (d)(2) of the Court of Wards Act. According to the plaintiff, the Collector, who was in charge of the estate on behalf of the Court of Wards, did not discover till the 7th May 1925 that the defendant manager had allowed a decree for money against himself to be realised by attachment of the rent of Barlowgang Post Office belonging to the lunatic. There can be no question that the defendant was liable to refund this amount to the lunatic. The only plea that was taken in the written statement was that the claim was barred by time. It does not, however, appear that the plea was taken seriously and it does not seem to have been pressed either in the trial Court or in the lower appellate Court, for there is no reference to it in either of the judgments.

2. In second appeal for the first time the learned Counsel for the defendant takes the plea that the claim was barred by time. Now, if time began to run against the lunatic from the 29th of August 1920 when the defendant was discharged, then the three years would certainly have expired before the institution of the present suit. But it is admitted that the lunatic is still under a disability, and it must therefore, be held that he is protected under Section 6 of the Indian Limitation Act. The mere fact, that there was a guardian on his behalf who could have sued earlier, would not deprive him of the protection given by that section the learned Counsel has to concede that if the lunatic were to become sane and were sued, he would have three years after regaining his sanity to institute the suit. In these circumstances, it is difficult to see how he can argue that the claim on the present date is barred by time. There might have been something to be said for the defendant if the estate of the lunatic had become vested in the Court of Wards and the Court of Wards were suing in its own capacity as plaintiff. But this is not the case here. Under Section 12 of the Court of Wards Act the Court of Wards merely assumes superintendence of the property of any proprietor, the estate does not vest in the Court of Wards. No doubt Section 55 of the

Act provides that the Collector in charge of the property should sue and be sued but that is a mere matter of procedure and does not affect the law of limitation. The suit in effect is a suit brought by the Ward through the Collector in charge of the Court of Wards, and the claim is to recover the money due to the lunatic from the defendant. In these circumstances, the claim cannot be barred by time. We dismiss the appeal with costs. The plaintiff has filed a cross-objection as regards the costs of the first Court. The first Court has dismissed the claim but at the same time directed that the parties should bear their own costs. On appeal the District Judge decreed the claim for about Rs. 650 but dismissed the rest of the claim. He, however, ordered that the parties should get rateable costs from each other in both Courts.

3. In the cross-objection it is urged that the lower appellate Court should not have allowed the defendant any credit for the costs incurred by him in the first Court, because he had not preferred any appeal or cross-objection from the order of the first Court not allowing him his costs. The question of costs is a matter of discretion for the Courts and unless the Court has acted in infringement of some definite rule of principle we would not interfere in second appeal. It is urged that inasmuch as there was no appeal or cross-objection filed in the lower appellate Court, the Court had no jurisdiction to make the parties receive rateable costs. This objection has no force. The claim of the plaintiff having been dismissed, the defendant might not have thought it worth his while to file an appeal on the question of cost or even file a cross-objection. But when the lower appellate Court was going to grant the plaintiff a decree for a sum which had been disallowed by the Court of first instance, it was open to the defendant to support the decree of dismissal as regards that amount under Order 41, Rule 22, Civil P.C. and urge that the claim of the plaintiff should not be decreed in full, that a deduction should be made from it and equal to the amount of the costs which he had incurred in the first Court and which he had been wrongly allowed. It was, therefore open to the lower appellate Court to give the defendant credit for the costs incurred by him in the first Court so long as they did not exceed the amount which it was going to decree to the plaintiff. We therefore, do not think it proper to interfere with the discretion of the lower appellate Court. We accordingly dismiss the cross-objection also with costs.