

Privy Council Appeal No. 90 of 1914.

Oudh Appeal No. 21 of 1913.

Raja Debi Bakhsh Singh - - - - *Appellant,*

v.

Shadi Lal and others - - - - *Respondents*

FROM

THE COURT OF THE JUDICIAL COMMISSIONER OF OUDH.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 14TH MARCH, 1916.

Present at the Hearing:

LORD SHAW.

SIR JOHN EDGE.

SIR LAWRENCE JENKINS.

[*Delivered by LORD SHAW.*]

By Section 162 of the Oudh Land Revenue Act, No. 17, of 1876, certain persons are declared to be disqualified from managing their estates. Among the enumeration of those persons are the following: Under sub-section (g), "Persons declared by the Chief Commissioner on their own application to be disqualified from managing their estates." The Talukdar of Mallanpur was one of those persons. On his application, his estates were assumed by the Court of Wards, and they remained under the management of that Court from the year 1886 until the year 1898.

During that period the Raja borrowed certain sums of money; and on the 12th August, 1904, his creditors sued and obtained a personal decree against him in the Court of first instance. There were certain judicial proceedings which occurred subsequent to the decree; and it may be of interest to note that, the debt incurred having been originally a sum of Rs. 4,000, execution is now sought to be obtained against the property put under the management of the Court of Wards for a sum which, at a date somewhat anterior to the present deliverance, amounted to Rs. 21,526, the interest having been running for a certain course of years at the rate of 18 per cent. per annum.

The question in this case, and the sole question, is whether a decree obtained for such sums can be put in execution against the property, which was, at the date of the contraction of the debt, under the management of the Court of Wards.

The sections of the Oudh Land Revenue Act, to which reference has been made, are Sections 173 and 174. Section 173 is in these terms: "Persons whose property is under the superintendence of the Court of Wards shall not be competent to create, without the sanction of the Court, any charge upon or interest in such property, or any part thereof." Section 174 says: "No such property shall be liable to be taken in execution of a decree made in respect of any contract entered into by any such person while his property is under such superintendence." Their Lordships think that it falls to be observed that the object of these sections was the protection of the property against either transactions entered into by the person under tutelage by way of direct transactions of sale or of mortgage, and also the protection of the property against the consequences of any execution in respect of contracts entered into by a person under such tutelage. Section 174 deals with the latter situation.

The Courts below have permitted execution against the property to be granted in respect of this debt—a debt incurred by a person under tutelage. The question is whether that decision is sound in law. There have been various decisions in the Courts in India, notably in Allahabad, which appear fully to support the appeal. But there is one dictum which is founded upon by the Court below which seems to have ruled the minds of the learned Judges in constraining them to give effect to the execution against the property in respect of this debt. The dictum is contained in the case of *Rameshar Bakhsh Singh v. Dhanpal Das* (14 Oudh Cases, 6). It was quite unnecessary, in the view that their Lordships take for the decision of the case, which depended, as it was viewed by the Court who decided it, merely upon the construction of a certain decree. That dictum was to the following effect: "It is quite clear that, under the old Act"—and the reference is either to this Act or an Act in similar terms—"a creditor could obtain a decree upon a bond given by a ward while his property was under superintendence, and execute that decree against the property of the ward after the property was released from superintendence."

Their Lordships are clearly of opinion that this dictum was an unsound proposition in law. They think that, the object of the Act being the protection of the property, a person subject to the Court of Wards would in no sense be protected if this dictum were to be affirmed. What has been done in the present case seems to their Lordships to be a total violation, not only of the spirit of the Statute, but of the express provision of Section 174. The phrase in that section, "while his property is under such superintendence," is, in their Lordships' opinion, a phrase annexed to and elucidative of the verbal expression "contract

entered into by any such person." Section 174 is meant to protect property against the execution of a decree made in respect of "any contract entered into" during a certain period of time, namely, while the property is under such superintendence. If such a contract, incurring of debt, or transaction occurred during that time, the law of Oudh is plain under Section 174, to the effect that the property is protected against execution in respect of any decree following upon that transaction, that debt, or that contract.

There is nothing further in the case, and their Lordships will humbly advise His Majesty that this appeal should be allowed with costs.

In the Privy Council.

RAJA DEBI BAKHSH SINGH

v.

SHADI LAL AND OTHERS.

DELIVERED BY LORD SHAW.

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