

Nawab Major Mohammad Akbar Khan - - - - *Appellant*

*v.*

The Court of Wards and others - - - - *Respondents*

FROM

THE COURT OF THE JUDICIAL COMMISSIONER OF THE NORTH-  
WEST FRONTIER PROVINCE.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 13TH DECEMBER, 1933.

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*Present at the Hearing :*

LORD THANKERTON.

LORD ALNESS.

SIR LANCELOT SANDERSON.

[*Delivered by* LORD THANKERTON.]

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In the present suit the appellant claims pre-emption of certain agricultural land, which forms part of the estate of Khan Fateh Mohammed Khan of Mardan, which has been under the management of the Court of Wards since 1927. The appeal is taken from the decree of the Court of the Judicial Commissioner, North-West Frontier Province, dated the 13th January, 1931, affirming a decree of the District Judge, Peshawar, dated the 22nd April, 1930, which dismissed the appellant's suit.

The appellant's claim of pre-emption was based on a registered sale deed of the lands in suit dated the 15th January, 1929, executed by the Manager, Court of Wards of the estate of Fateh Mohammed Khan, in favour of the second and third respondents as vendees, who, along with the first respondent, were impleaded as defendants in the suit. The appellant claimed to have a right of pre-emption on the grounds stated in the plaint. On

behalf of the Court of Wards it was stated in reply to the plaint that the sale had been cancelled by the Revenue Commissioner, and, on the 1st April, 1930, a preliminary issue was settled by the District Judge, vizt., "In view of the cancellation of the sale by the Revenue Commissioner, can the suit still lie?" Both the lower Courts have held that the cancellation was valid and effective and that the suit does not lie.

The only issue in the appeal is whether the lower Courts were right in so finding.

The offer to purchase the lands in suit was made to the Court of Wards by the second respondent, who is a non-agriculturist and a moneylender, and certain statutory sanctions were necessary to a valid sale. Under the Punjab Court of Wards Act (Act II of 1903), Section 4 (1), as applied to the North-West Frontier Province by Regulation V of 1904, Section 2, the Revenue Commissioner is the Court of Wards for the Province. By a Rule (Notification No. 1708, Rule 13), made under Section 54 of the Court of Wards Act, no portion of the beneficial interest of the ward is to be alienated without the sanction of the Court of Wards. In the second place, under Section 3 (2) of the Punjab Alienation of Land Act (Act XIII of 1900), which applies to the North-West Frontier Province, the proposed alienation of land could not "take effect as such unless and until sanction is given thereto by a Deputy Commissioner." Lastly, under Section 19 (viii) of Revenue Circular No. 39, dated the 12th September, 1912, no Deputy Commissioner is to give his sanction to an alienation to a moneylender on his own authority, but is to send the file to the Revenue Commissioner and "ask his permission to give sanction." This is clearly a matter of Departmental administration.

On the 30th December, 1928, the Deputy Commissioner, Peshawar, wrote to the Revenue Commissioner, North-West Frontier Province, Peshawar, recommending the proposed sale to the second respondent and asking for his sanction to the sale under Section 19 (viii) of Revenue Circular No. 39, and also under Notification No. 1708, Clause 13. This latter sanction was required from the Revenue Commissioner in his capacity as Court of Wards. It will be noted that the third respondent, though included in the sale-deed as a vendee, was not mentioned in that letter, but no point has been made in respect of that fact.

On the 7th January, 1929, the Revenue Commissioner wrote to the Deputy Commissioner sanctioning the sale, and on the 14th January, 1929, the Deputy Commissioner made an order sanctioning the sale by registered sale-deed. On the 15th January, 1929, the sale-deed was executed and registered. The present appellant appealed against the orders dated the 14th January, 1929, and the 7th January, 1929, sanctioning the sale by a registered deed dated the 15th January, 1929, in respect of the lands in suit, and claimed "reversal of the above order by sanctioning a fresh sale in favour of the appellant," on the ground of insufficient

notification. By order dated the 2nd May, 1929, the Revenue Commissioner found that the sale was sufficiently notified and dismissed the appeal.

On the 25th July, 1929, the present appellant presented an application for review of the Revenue Commissioner's orders dated the 7th January, 1929, and the 2nd May, 1929. The relief asked for was that "the orders, dated 2nd May, 1929, and 7th January, 1929, according sanction to this sale may kindly be reviewed and the sanction to the sale be withdrawn and the land be ordered to be sold to the petitioner or another agriculturist." At the same time a similar application was presented by Sarfaraz Khan, brother of the ward, and the two applications were heard and disposed of together by the Revenue Commissioner, who, by order dated the 23rd February, 1930, reviewed the orders of the 2nd May, 1929, and the 7th January, 1929, and cancelled the sale.

The appellant had instituted the present suit on the 13th January, 1930, some weeks before the issue of the Revenue Commissioner's order of the 23rd February, 1930. Sarfaraz Khan had also instituted a similar suit, which was dealt with along with the present suit and in which similar decrees were pronounced, but Sarfaraz Khan has not appealed from the decree of the Court of the Judicial Commissioner.

The appellant challenged the validity of the Revenue Commissioner's order of the 23rd February, 1930, on two grounds. His first contention was that the land in suit was within the limits of Mardan notified area, and that the Notification of the 8th January, 1925, exempting municipalities in the North-West Frontier Province from the operation of the provisions of the Punjab Alienation of Land Act, 1900, applied to the said notified area, with the consequence that the Revenue Commissioner had no jurisdiction under that Act to make either the order of the 2nd May, 1929, or the order of the 23rd February, 1930. Their Lordships have no difficulty in rejecting this contention, for the reasons stated by the Court of the Judicial Commissioner.

The second contention of the appellant, which has been stated for the first time at the hearing before this Board, challenged the competency of the order of the 23rd February, 1930, on the ground that the order of the 2nd May, 1929, was a review by the Revenue Commissioner of the Revenue Commissioner's order of the 7th January, 1929, and that any further review was incompetent.

In their Lordships' opinion, this contention proceeds on an erroneous view of the orders of the 7th January, 1929, and the 2nd May, 1929. In the first place, it seems clear that any question of appeal or review arises only in respect of proceedings under the alienation of Land Act, and not in respect of the Revenue Commissioner's sanction as Court of Wards. The provisions of

the Punjab Land Revenue Act (Act XVII of 1887) as to appeal and review are made applicable to proceedings of Revenue-officers under the Alienation of Land Act by Section 19 of the latter Act. Under Section 13 (b) of the Land Revenue Act an appeal will lie from the order of the Deputy Collector to the Revenue Commissioner within the time prescribed by Section 14. The power of review is conferred by Section 15, which, so far as material, provides as follows :—

15.—(1) A Revenue-officer may, either of his own motion or on the application of any party interested, review, and on so reviewing modify, reverse or confirm any order passed by himself or any of his predecessors in office :

Provided as follows :—

(b) An application for review of an order shall not be entertained unless it is made within ninety days from the passing of the order, or unless the applicant satisfies the Revenue-officer that he had sufficient cause for not making the application within that period.

The appellant maintained that the Revenue Commissioner's order of the 2nd May, 1929, reviewed the order of his predecessor dated the 7th January, 1929, and that thereby the power of review was exhausted, so that it was incompetent for the Revenue Commissioner to review these orders of his two predecessors by his order of the 23rd February, 1930.

As already indicated, this contention proceeds on an erroneous view of the Revenue Commissioner's sanction to the sale given on the 7th January, 1929. This sanction was two-fold.

In the first place, it gave the statutory sanction by the Court of Wards under Notification No. 1708, Clause 13. In the second place, it gave the Revenue Commissioner's administrative permission under Section 19 (viii) of Revenue Circular No. 39 to the Deputy Commissioner to give his statutory sanction to the sale under Section 3 (2) of the Alienation of Land Act. The right of appeal or review under the Land Revenue Act only affected the order made by the Deputy Commissioner on the 14th January, 1929—after he had obtained the permission of the Revenue Commissioner—giving his sanction to the sale under Section 3 (2) of the Alienation of Land Act. Quite correctly, the application of the present appellant, on which the Revenue Commissioner's order of the 2nd May, 1929, was made, took the form of an appeal against the Deputy Commissioner's order of the 14th January, 1929, though he also included the order of the 7th January, 1929.

In that view, the present appellant's application for review dated the 25th July, 1929, and the order made thereon dated the 23rd February, 1930, were perfectly competent. Although the application was made more than ninety days after the date of the order of which review was sought, it must be assumed that the Revenue Commissioner, before entertaining it, was satisfied that there was sufficient cause for the delay. In the course of the last-mentioned order the Revenue Commissioner states the position

correctly when he states, "Petitioners in both cases apply for review of my predecessor's order dated 2nd May last, dismissing an appeal presented against the order of Deputy Commissioner, Peshawar, sanctioning the sale by a registered deed, dated 14th January, 1929, of 42 *Kanals* 3 *Marlas* of agricultural land, the property of an agriculturist, to the respondents—non-agriculturists and moneylenders. The sanction given by the Deputy Commissioner was only accorded on receipt of permission from the Revenue Commissioner given in his letter, dated 7th January, 1929, and petitioners, therefore, seek a review of the order of sanction given by the Revenue Commissioner also." Their Lordships would only add that it may not have been technically necessary to seek review of the Revenue Commissioner's permission given under Revenue Circular No. 39.

Their Lordships therefore agree with the answer given by both the lower Courts to the preliminary issue. They will humbly advise His Majesty that the decree of the Court of the Judicial Commissioner dated the 13th January, 1931, should be affirmed, and the appeal should be dismissed with costs to the respondents who appeared.

In the Privy Council.

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NAWAB MAJOR MOHAMMAD AKBAR KHAN

o.

THE COURT OF WARDS AND OTHERS.

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DELIVERED BY LORD THANKERTON.

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