

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Banerji.

AHMAD GHAUS KHAN (JUDGMENT-DEBTOR) v. LALTA PRASAD

AND ANOTHER (DECREE HOLDERS).*

1906
April 24.

Civil Procedure Code, section 320—Execution of decree—Property to be sold ancestral in part only—Transfer to Collector—(Local Government) Notification No. 671 of August 31st, 1880.

Held that where the Civil Court is satisfied that the land which is ordered to be sold or any portion of it is ancestral, it should transfer the decree for execution to the Collector so far as regards ancestral land only.

THE respondents in this case held a decree for sale under section 88 of the Transfer of Property Act, 1882, against the appellant and another. They applied in pursuance of an order absolute under section 89 of the Act for sale of certain zamindari shares in the district of Pilibhit. An order for sale was granted by the Subordinate Judge of Bareilly—the court which passed the decree—and the shares were advertised for sale, when the judgment-debtor, Ahmad Ghaus Khan, raised an objection that the property advertised for sale was ancestral within the meaning of section 320 of the Code of Civil Procedure. The court executing the decree held an inquiry into this allegation, and, after calling for a report from the Collector, found that only a portion of the property in question was ancestral, but held that this did not prevent execution proceeding in the usual way as to the non-ancestral property. Against this order Ahmad Ghaus Khan appealed to the High Court.

Messrs. *Abdul Majid* and *Muhammad Ishaq Khan*, for the appellant.

The Hon'ble Pandit *Sundar Lal* and Dr. *Satish Chandra Banerji*, for the respondents.

STANLEY, C.J. and BANERJI, J.—The contention of the learned counsel for the appellant in this appeal is that where land ordered by a Civil Court to be sold is found to be comprised of not merely non-ancestral, but also ancestral land, it is the duty of the Civil Court to transfer the execution of the decree not merely in respect of the ancestral land, but in respect also of the non-ancestral property to the Collector. He relies upon the language of clause 1 of Notification No. 671, dated the 31st of August 1880, as amended by subsequent notifications: This notification

* First Appeal No. 14 of 1906, from a decree of Pandit Pitambar Joshi, Subordinate Judge of Bareilly, dated the 16th of December, 1905.

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was issued in pursuance of the power conferred by section 320 of the Code of Civil Procedure upon the Local Government to declare that throughout the North-Western Provinces the execution of all decrees for the recovery of money in cases in which the Civil Court has ordered any ancestral land or interest in such land to be sold shall be transferred to the Collector. Paragraph 1, which has been relied upon, runs in the following terms :—

“Every Civil Court on passing orders for the sale of any land in pursuance or execution of a decree shall ascertain from the judgment-debtor whether it is ancestral land as above defined, and after hearing any objection made by the decree-holder shall, if satisfied that the land or any portion of it is ancestral land, deal with the decree affecting it as directed in these rules.” We are asked to hold that under this provision where land directed to be sold comprises any ancestral land, the Court is bound to transfer the decree for execution in respect of all the property affected by the decree to the Collector for execution. We think this is not the true meaning of the provision in question. The true interpretation of the rule is, as we think, that if the Civil Court is satisfied that the land, which is ordered to be sold, or any portion of it is ancestral land, it shall deal with the decree affecting the land so far as it is ancestral land as directed in the rules, that is, it shall transfer the decree for execution to the Collector so far as regards ancestral land only. We therefore think that there is no substance in this appeal and dismiss it with costs.

Appeal dismissed.