

allow the appeal; set aside the decrees of the Courts below, and remand the case to the Court of first instance under section 562 of the Code of Civil Procedure for trial on the merits. The appellant will have his costs of this appeal. Other costs will follow the event.

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 BAGESHERI
 DAYAL
 v.
 PANCHOL

Appeal decreed and cause remanded.

Before Mr. Justice Richards.

CHANDRA BHAN (DEFENDANT) v. GIRWAR LAL (PLAINTIFF).*

Act (Local) No. 1 of 1900 (North-Western Provinces and Oudh Municipalities Act), section 187—Rules framed by Local Government for the regulation of Municipal elections—Procedure—Power to award costs—Suit to set aside order awarding costs—Jurisdiction.

A Magistrate trying a petition to set aside the election of a member of a Municipal Board is not empowered to award costs against the unsuccessful party, and if he does so, it is competent to the party against whom costs are awarded to sue in a Civil Court to have so much of the Magistrate's order as relates to costs set aside.

ONE Chandra Bhan was elected a member of the Municipal Board of Agra. Another candidate for election, Girwar Lal, under the rules framed by the Local Government for the regulation of elections, filed a petition praying that the election of Chandra Bhan might be set aside. An inquiry into the allegations contained in this petition was made by a Magistrate, who dismissed it and at the same time ordered that the costs to which Chandra Bhan had been put in resisting the petition should be paid by the petitioner, Girwar Lal. In pursuance of this order certain property belonging to Girwar Lal was attached by Chandra Bhan, and thereupon Girwar Lal filed a suit in a Civil Court asking the Court to set aside so much of the Magistrate's order as awarded costs, and also the attachment of the plaintiff's property. The Court of first instance (Officiating Munsif of Agra) dismissed the suit, holding that no such suit would lie in a Civil Court. The plaintiff appealed. The lower appellate Court (District Judge of Agra) reversed the decision of the

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* Second Appeal No. 585 of 1904, from a decree of W. F. Wells, Esq., District Judge, Agra, dated the 31st March, 1904, reversing a decree of Babu Ram Chandra Saksena, officiating Munsif of Agra, dated the 14th December, 1903.

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Munsif and decreed the plaintiff's claim, but without costs. Against this decree the defendant appealed to the High Court.

Babu *Jogindro Nath Chaudhri*, Mr. *M. L. Agarwala* and Maulvi *Muhammad Ishaq*, for the appellant.

Hon'ble Pandit *Madan Mohan Malaviya* (for whom *Munshi Gubzari Lal*), Dr. *Satish Chandra Banerji* and Babu *Kedar Nath*, for the respondent.

RICHARDS, J.—The facts of this case are as follows :—Hakim Girwar Lal and Chandra Bhan were candidates for municipal election at Agra. Chandra Bhan was elected. Girwar Lal under the election rules, which appear to have been sanctioned by the Local Government, filed a petition to set aside the election and an inquiry was held and the petition filed by Girwar was dismissed, but the order dismissing the petition directed that Girwar should pay Chandra Bhan the costs which he had been put to in resisting the petition which failed as already mentioned. In pursuance of this order awarding costs the property of Girwar was attached, and accordingly the present suit was brought to set aside so much of the order as awarded costs, and also the attachment of the plaintiff's property. The only possible ground upon which the validity of the order awarding costs can be supported is rule 40 of the Election Rules already referred to. Sub-rule 7 was most relied upon. This rule is as follows :—
“The rules prescribed by the Code of Civil Procedure for recording the evidence of witnesses, for procuring the attendance of witnesses and the production of documents, and for the examination of witnesses, shall, as far as they can be made applicable, apply to the trial of a petition.” In my judgment there is nothing in this sub-rule or any other part of the rules, which gave the Magistrate any power whatever to award costs to be paid by the defeated petitioner, and I consider that the order of the Magistrate to this extent was made wholly without jurisdiction. In my opinion the defendant taking possession of the property of the plaintiff could not possibly justify under the terms of such an order and he would in fact be nothing more than a trespasser. It is perhaps doubtful as to whether or not there was any necessity for the plaintiff to seek to set aside the order of the Magistrate, and whether he was not entitled to treat the order so far

as it awarded costs against him as waste paper. He, however, was clearly entitled to get rid of the attachment against his property, and I accordingly think that the order of the lower appellate Court was correct. I suggested in the course of the argument that the plaintiff should consent to his suit being dismissed without costs and that the defendant should undertake to take no steps against his property. The case was then adjourned by consent. The plaintiff was willing to adopt my suggestion, but unfortunately so far as the defendant was concerned it came to nothing. I accordingly dismiss the appeal with costs.

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Appeal dismissed.

Before Mr. Justice Banerji and Mr. Justice Richards.

GULRAJI KUNWARI (APPLICANT) v. JUGDEO PRASAD AND ANOTHER
(OPPOSITE PARTIES).*

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March 20.

*Act No. VII of 1889 (Succession Certificate Act), sections 3(2), 8 and 9—
Grant of certificate—Order to file security—Practice.*

Where a Judge, acting under section 9 of the Succession Certificate Act requires security to be furnished by a person to whom a certificate of succession is granted, the amount of the security should be specified in the order and a time should be prescribed within which the security must be furnished.

Semble that section 8 of the Act cannot be applied to the case of a fixed deposit in a bank, such not being a "security" within the meaning of section 3(2).

THE facts of this case sufficiently appear from the judgment of the Court.

Hon'ble Pandit *Sundar Lal*, Hon'ble Pandit *Madan Mohan Malaviya* and Babu *Iswar Saran* for the appellant.

Mr. *W. K. Porter* and Munshi *Gobind Prasad*, for the respondents.

BANERJI and RICHARDS, JJ.—This appeal arises out of an application made by the appellant, Musammam, Gulraji Kunwari, for a certificate under the Succession Certificate Act, in respect of debts due to her deceased husband. The debts comprised (i) a sum of Rs. 10,580 now in fixed deposit in the Gorakhpur Bank, (ii) Rs. 482-10-9 due upon decrees, and (iii) Rs. 1,560-13-0 due to the estate as debts not secured by decrees. As regards

* First Appeal No. 136 of 1905, from an order of Mr. W. Tudball, District Judge of Gorakhpur, dated the 25th of August, 1905.