1913

JAMNA PRASAD RAUT v. RAGHUNATH PRASAD.

and sale. The court below has decided that the house is not occupied by him as an agriculturist and is therefore not exempt from sale. He has come here on appeal. The question is whether or not he has produced evidence to show that he is an agriculturist and occupied the house as such. The appellant was formerly the zamindar of the village, but his interest as such has been sold and he now holds his *sir* land as an exproprietary holding. He lives in another village and holds zamindari in several villages. He has produced two witnesses who state that his cattle and implements are kept in the house in dispute. The appellant being both a zamindar and a cultivator of land, the question arises as to what is his main source of income and whether or not he is an agriculturist within the strict sense of the term and occupies the house as such. The burden of proof lay on him, and it was for him to show to the court that his main source of income was cultivation and not zamindari and that he was in the strict sense of the term an agriculturist. He produced two witnesses, and in our opinion their evidence is not sufficient to prove that his main source of income is agriculture and that he is an agriculturist within the strict sense of the term. As a matter of fact in the past he held considerable zamindari, though he has lost some of it by reason of decrees obtained against him. In this case it has not been satisfactorily proved that he is an agriculturist within the strict meaning of the term. The appeal fails and is dismissed with costs.

Appeal dismissed.

1913
March, 11.

Before Mr. Justice Sir Harry Griffin and Mr. Justice Chamier.

RAGHUNANDAN PRASAD (PLAINTIFF) *v.* SHEO PRASAD (DEFENDANT).*

Act No. XV of 1883 (*North-Western Provinces and Oudh Municipalities Act*), *section* 10—*Act* (*Local*) *No. I of* 1900 (*United Provinces Municipalities Act*), *section* 187—*Municipal Board—Election—Suit to set aside election—Jurisdiction of Civil Court—Limitation—Act No. IX of* 1908 (*Indian Limitation Act*), *schedule* 1, *article* 120.

Held that an order of the Government directing that a particular municipal election held in the year 1911 should be conducted according to certain rules passed in 1884, and not according to the rules passed *in pari materiá* in 1910, which superseded those of 1884, was *ultra vires*, and that, inasmuch as the

---

* Second Appeal No. 1012 of 1912 from a decree of H. N. Wright, District Judge of Bareilly, dated the 13th of June, 1912, confirming a decree of Baijnath Das, Officiating Subordinate Judge of Bareilly, dated the 12th of July, 1911.

rules of 1884 did not apply and the election was not held under the rules of 1910, a suit would lie in a civil court to contest the election, irrespective of anything contained in either set of rules, the period of limitation applicable to which was that prescribed by article 120 of the first schedule to the Indian Limitation Act, 1908. *Gur Charan Das* v. *Har Sarup* (1) referred to.

1913

RAGHUNANDAN PRASAD *v.* SHEO PRASAD.

IN this case the appellant and the respondent were rival candidates for a seat on the municipal board of Bareilly at an election held on the 18th of March, 1911. The respondent having been declared duly elected, the appellant, on the 24th of March, preferred a petition to the District Magistrate. On the 10th of May, that petition was rejected, and on the following day the appellant filed his present suit in the court of the Subordinate Judge of Bareilly claiming a declaration that he had been elected by a majority of the lawful votes given, and in the alternative a declaration that the election was void as having been held under rules which had been already cancelled. The suit was dismissed in appeal by the District Judge of Bareilly, on the ground that the election had been held under certain rules framed by Government in 1884, one of which barred the jurisdiction of the civil court, and that the appellant was not empowered to maintain the suit either under the rules for municipal elections framed in 1910 or under the Specific Relief Act. The plaintiff appealed to the High Court.

Dr. *Satish Chandra Banerji*, for the appellant.

The Hon'ble Pandit *Moti Lal Nehru*, for the respondent.

GRIFFIN and CHAMIER JJ:—The appellant and the respondent were rival candidates for a seat on the municipal board of Bareilly at an election held on the 18th of March, 1911. The respondent having been declared to have been duly elected, the appellant on the 24th of March, contested the validity of the election by a petition presented to the District Magistrate. On the 10th of May that petition was rejected, and on the following day the appellant brought this suit in the court of the Subordinate Judge of Bareilly claiming a declaration that he had been elected by a majority of the lawful votes given and, in the alternative, a declaration that the election was void having been held under rules which had been cancelled. This Court has already held that the suit is cognizable by a civil court, but the suit has been dismissed by an appellate order of the

(1) (1912) I.L.R. 34 All., 391.

1913

RAGHUNANDAN PRASAD v. SHEO PRASAD

District Judge on the ground that the election was held under rules made in 1884, one of which barred jurisdiction of the civil court, and the appellant was not entitled to maintain this suit under some new rules made in July, 1910, or under section 9 of the Specific Relief Act. The suit is obviously one of a civil nature, and it is unnecessary to cite authority for the proposition that it is maintainable in a civil court, unless it is barred by some Act of the Legislature or by some rule having the force of law.

Rules regarding elections of this kind in Bareilly were made in 1884 under section 10 of Act XV of 1883. Rule No. 45 provided that the validity of an election might be questioned by petition to the District Magistrate presented within fifteen days of the election. Those rules were superseded by rules made in July, 1910, under section 187 of the Municipalities Act, 1900, one of which expressly recognized the right of recourse to a 'competent court' to challenge the election. This Court has held [see *Gur Charan Das* v. *Har Sarup* (1)] that the competent court is the civil court. It is quite clear that the election now in question ought to have been held under the rules of July, 1910. The Local Government seems to have directed that this election should be held under the rules of 1884. That order does not appear to be a rule made under the Act, but appears to be merely an executive instruction to the Magistrate. The only rules of which we can take notice are the rules made under the Act. We must, therefore, hold that the election was contrary to law.

We have grave doubts whether the Government was competent to bar the jurisdiction of the civil court by means of a rule made under section 10 of the Act of 1883. The respondent relies upon clause (*g*) of section 9 read with section 10 of the Act, but that clause refers only to '*the system of representation and of election*'. It is, however, unnecessary to decide this question, for the rules made under the Act of 1883 had ceased to have any effect before the election now in question was held. It is admitted that the election was not held under the rules of July, 1910, and cannot be justified by those rules. For the above reasons we hold that at the date of the election there was no provision having the force of law which barred the maintenance of

(1) (1912) I.L.R., 34 All., 391.

the present suit. The suit was, therefore, maintainable. On the merits the appellant is entitled to a declaration that the election of the respondent was void having been held contrary to law.

1913

RAGHUNANDAN PRASAD v. SHEO PRASAD.

The only other question is whether the suit was brought within time. The period of limitation prescribed by the rules of 1884 may be disregarded, both because it applies only to a petition to be presented to the District Magistrate and because those rules had ceased to have any effect when the election was held. If the rules of 1884 are disregarded, the limitation applicable to the present suit is that prescribed by article 120 of schedule 1 to the Limitation Act, 1908, and the suit was brought within time. We express no opinion upon the question of the validity of the rule made under section 187 of the Municipalities Act, 1900, which prescribes a period of limitation for a suit to contest an election held under the rules of July, 1910.

We allow this appeal, set aside the decree of the court below, and give the appellant a declaration that the election of the respondent was invalid. The respondent must pay the appellant's costs in all three courts.

Appeal allowed.

FULL BENCH.

Before Mr. Justice Sir George Knox, Mr. Justice Tudball and Mr. Justice Chamier.

1913 March, 12.

DURGA KUNWAR (PLAINTIFF) *v.* MATU MAL AND OTHERS (DEFENDANTS)*

Hindu law—Hindu widow—Powers of alienation possessed by a Hindu widow in respect of property of her husband—Transfer of debt secured by a mortgage.

A Hindu widow in possession as such of property which had been the property of her husband in his life-time can always alienate her life interest in such property and a transfer by her of the corpus of the property without legal necessity and not for a pious purpose is not void but only voidable at the instance of the reversioners.

A Hindu widow, without legal necessity transferred a mortgage debt and the security therefor, which had been the property of her late husband, to D, who thereafter sued to recover the debt by sale of the mortgaged property. *Held* that the transferee acquired all the rights which the widow had and could exercise during her life-time in respect of the mortgage, one of these being to recover the debt. *Bijoy Gopal Mukerji* v. *Krishna Mahishi Debi* (1) referred to.

THIS was a suit for sale on a mortgage, dated the 12th of June, 1879, made by Tara Singh and Bahadur Singh in favour of

*Appeal No. 140 of 1911 under section 10 of the Letters Patent.

(1) (1907) I.L.R., 34 Calc., 329.