

Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramda Charan Banerji.

1914
April, 8.

LAL SINGH AND OTHERS (PLAINTIFFS) v. THE COLLECTOR
OF ETAH (DEFENDANT).*

*Act (Local) No. III of 1899 (United Provinces Court of Wards Act), section 48—
Notice of suit—“Property of any ward” —Property attached in execution
of a decree held by a ward.*

Held that the term “property of any ward” as used in section 48 of the United Provinces Court of Wards Act, 1899, does not include property attached in execution of a decree held by a ward. No notice is, therefore, required of a suit brought by a person claiming title to such property for a declaration of his title.

THE facts of this case were as follows :—

The property of Raja Surajpal Singh was placed under the superintendence of the Court of Wards. This property included a simple money decree obtained by the ancestor of the ward against the father of the plaintiffs. The Court of Wards put the decree in execution and attached certain property which the appellants claimed to be their separate property, with which the judgement-debtor had nothing to do. Their objection having been over-ruled by the executing court, they brought this suit for a declaration that the property in question belonged to them and was not liable to attachment and sale. The Court of Wards, among other pleas, defended the suit on the ground that notice under section 48 of the United Provinces Court of Wards Act (III of 1899, U. P.) had not been given. The courts below dismissed the suit upon that ground alone.

The plaintiffs appealed.

Dr. Satish Chandra Banerji, for the appellants :—

Section 48 of the Court of Wards Act does not apply, inasmuch as the property to which the suit relates is the village attached, and that confessedly is not the property of the ward. That section bars only those suits which relate to the person or the property of the ward. The decree no doubt is the property of the ward, but the plaintiff does not impeach that decree. The decree is a perfectly good decree against the judgement-debtor and may be executed against his property. The present

*Second Appeal No. 223 of 1913 from a decree of A. Sabonadiere, District Judge of Aligarh, dated the 13th of November, 1912, confirming a decree of Kunwar Sen, Assistant District Judge of Aligarh, dated the 26th of June, 1912.

1914

LAL SINGH
v.
THE
COLLECTOR
OF ETAAH.

suit is one merely for a declaration of the plaintiff's right to certain property, which the decree-holder ward does not claim to be his but alleges to be that of his judgement-debtor, who, however, is not protected by the Court of Wards Act.

Mr. A. E. Ryves, for the respondents :—

The suit indirectly relates to the property of the ward. The whole property of the ward, whether movable or immovable, is under the superintendence of the Court of Wards. Referred to section 15 of the Court of Wards Act. The suit is, therefore, barred by the provisions of section 48, inasmuch as the execution of the decree will be affected by its result.

Dr. Satish Chandra Banerji, was not heard in reply.

RICHARDS, C. J., and BANERJI, J.—This appeal arises out of the following circumstances. The Court of Wards as representing the estate of the minor Raja Surajpal Singh were putting into execution a decree which admittedly is the property of the ward. In execution certain property was attached. The appellants objected to the attachment, but their objection was overruled. Whereupon the present suit was brought for a declaration that the property was not liable to attachment in execution of the decree. The court of first instance dismissed the claim on the ground that no notice was given as provided by section 48 of the Court of Wards Act (No. III of 1899) which was then in force. The lower appellate court confirmed the decree of the court of first instance. Section 48 is as follows :—“ No suit relating to the person or property of any ward shall be instituted in any Civil Court until the expiration of two months after notice in writing has been delivered to or left at the office of the Collector in charge of the estate, stating the name and place of abode of the intending plaintiff, the cause of action, and the relief which he claims ; and the plaint shall contain a statement that such notice has been so delivered or left.” It is admitted that no such notice was served in this case. It is contended on behalf of the appellants that, inasmuch as the suit did not relate to the person or property of the ward, notice was unnecessary. It seems to us that this contention is sound. In the present suit the validity of the decree which belongs to the ward is not challenged. The property which is sought to be sold in execution of the decreè

admittedly does not belong to the ward. Under these circumstances in our opinion the present suit does not relate either to the person or the property of the ward, and we think that a notice was therefore unnecessary. We allow the appeal, set aside the decree of both the courts below, and remand the case to the court of first instance through the lower appellate court with directions to re-admit it under its original number on the file and proceed to determine the same according to law. Costs here and hitherto will be costs in the cause.

Appeal decreed and cause remanded.

Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.

MAQBUL HUSAIN (DEFENDANT) v. GHIAFUR-UN-NISSA (PLAINTIFF) *
*Muhammadian law—Gift—Revocation—Substantial alteration of subject-matter
 —Partition*

Held that a Revenue Court partition of villages, the subject of a deed of gift, does not amount to such a substantial alteration of the subject-matter in the hands of the donee as would under the Muhammadian law render the gift irrevocable by the donor.

THE facts of this case were as follows :—

The plaintiff executed a deed of gift in favour of the defendant, who was her husband's nephew, of the whole of her property on the 15th of September, 1908. She sued for revocation of this deed of gift on the ground that she was induced to execute it by the defendant, who was her mukhtar-a'am, and that he had not paid her any maintenance allowance as provided for by the deed. In her deposition she denied execution of the deed. The defendant pleaded that the suit was not maintainable at all, and even if it was, the plaintiff was not entitled to revocation of so much of the gift as related to property on which he had spent his own money by getting it partitioned and so improving it. He further alleged that the gift being a pious act of the donor was irrevocable under the Muhammadian law by which the parties were governed.

The court of first instance dismissed the suit; but the lower appellate court finding all the issues against the defendant, reversed the decree. The defendant appealed.

* Second Appeal No. 553 of 1913, from a decree of C. E. Guiterman, Second Additional Judge of Aligarh, dated the 25th of March, 1913, reversing a decree of Banke Behari Lal, Subordinate Judge of Aligarh, dated the 15th of March, 1912.

1914

LAL SINGH
 v.
 THE
 COLLECTOR
 OF ETAH.

1914
 April, 8