certificate-holder is, I think, foreign to the scope and object of Act VII of 1889. If that were so, the result might be that where an heir obtained a certificate to collect ten items of debts and subsequently transferred each item of the debt to different transferees, the ten transferees would have each to obtain ten certificates to collect the debts transferred to them, and to apply for the revocation of the certificate granted to their vendor. I do not think that it was ever intended by the Legislature that this should be so. I entirely agree with the observation made by another Bench of this Court in *Rang Lal* v. *Annu Lal*, (1) on this point. If it were necessary to decide this point in this particular case I would have been inclined to come to the conclusion that the case in 35 All., 74, was not correctly decided, and that it has in fact been overruled by the later ruling in 36 All., 21. But for the reasons given by me it is not necessary to decide this point. I think as a representative of Amar Chand alone Hari Das was entitled to take out execution and this application could not be defeated. I would dismiss the appeal with costs, but in doing so I may observe that the other points of objection raised by the judgement-debtors have not been disposed of by the court below, and nothing that we say now would prevent the court below from disposing of the said points.

BY THE COURT.—The order of the Court is that the appeal is dismissed with costs.

Appeal dismissed.

Before Mr. Justice Walsh and Mr. Justice Sundar Lal.

FAZAL AHMAD (JUDGEMENT-DEBTOR) *v.* WESAL-UD-DIN AND ANOTHER (DECREE-HOLDERS).*

1916
May, 15.

Civil Procedure Code (1908), *Order XXI, rule* 66—*Execution of decree—Ancestral property—General rules of practice for Civil Courts, chapter IV, rule* 5.

Property to which title is made out by gift is not property *inherited* within the meaning of rule 4, chapter IV, of the General Rules of Practice for the Civil Courts and such property is consequently not *ancestral*.

THE facts of this case briefly stated were as follows :—

The respondents decree-holders obtained a decree against the applicants judgement-debtors for a large amount on certain

* First Appeal No. 407 of 1915, from a decree of Rama Das, Subordinate Judge of Pilibhit, dated the 4th of October, 1915.

(1) (1913) I. L. R., 36 All., 21.

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FAZAL AHMAD v. WESAL-UD-DIN.

hypothecation bonds. In execution of the decree they applied for sale of the mortgaged property and the court fixed a date for the sale thereof. The judgement-debtors objected on the ground that the property was ancestral and could not be sold except by the Collector as ancestral property. The court below over-ruled the objection and directed that the property was to be sold.

The judgement-debtor appealed to the High Court.

Mr. *J. M. Banerji* (Babu *Preonath Banerji* with him), for the respondents, took a preliminary objection that the order of the court below was under Order XXI, rule 66, of the Code of Civil Procedure and as such it was merely an interlocutory order and consequently not appealable.

Deoki Nandan Singh v. *Bansi Singh* (1), *Sivagami* v. *Subrahmania Ayyar*, (2).

The objection was over-ruled.

Dr. *S. M Sulaiman*, for the appellants.

The property sought to be sold by auction was purchased by the grandfather of the appellants over 70 years ago, *i.e.* before 1846. It was inherited by their father who ultimately made a gift of the property to his sons, *i.e.* the present appellants. So far as the present appellants are concerned the property sought to be sold is certainly ancestral property.

The property sought to be sold comes within the words in the notification " All land being mahals or shares in or portions of mahals which have been owned by the proprietor or by persons from whom he has inherited such lands from the 1st of January, 1884. "

[SUNDAR LAL, J.—Your clients did not inherit the property]. Though the appellants got it from their father as a gift. But in reality it was indirect inheritance.

The appellants were the only heirs of their father. If the father accelerated the succession by means of a deed of gift it makes no difference in the nature of the property. It remains ancestral all the same.

Mr. *J. M. Banerji*, for the respondents, was not called upon.

(1) (1911) 14 C. L. J., 35, S.C. 10 I.C., 371. (2) (1904) I. L. R., 27 Mad., 259.

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WALSH and SUNDAR LAL, JJ. :—This is an apppeal arising out of the execution of a decree for sale of property. The decree-holder has applied for sale of a certain village. The question before the Court is whether the proceedings in execution should be in accordance with the rules relating to sale of ancestral property as defined in chapter IV, rule 5, of the General Rules of Practice for Civil Courts, or that proceedings should continue as for sale of non-ancestral property. The court below issued to the judgement-debtor a notice under rule 66 of Order XXI. According to the decree-holder the property was non-ancestral. The judgement-debtor appeared to show cause and has urged that in this particular case the property should have been held to have been ancestral land within the meaning of that term as used in rule 5 of that chapter. Under clause *(a)* of that rule all lands being mahals or shares in or portions of mahals which have been owned continuously, in the province of Agra by the proprietor from the 1st January, 1860 . . . or by the person or persons from whom such proprietor has directly or indirectly inherited such lands, are to be deemed ancestral land within the meaning of that rule. In this case the property was acquired by Ilahi Bakhsh, grandfather of the objector, in the year 1847. He gifted the property to Niaz Ahmad, who made a gift of the same to Fazal Ahmad in 1872. The rule in question applies to case where the property has been directly or indirectly *inherited* by the proprietor. The question is whether property acquired by gift can be said to be inherited. Under the ordinary law of inheritance if Ilahi Bux and Niaz Ahmad had several heirs the property would have been divided and would have come in a fractional share only to Fazal Ahmad. But it is under a gift that Fazal Ahmad has acquired the whole property and we are unable to say that property to which title is made out by gift is property *inherited* within the meaning of the rule. We think the decision of the court below is correct and we accordingly dismiss the appeal with costs.

Appeal dismissed.