

to concur in the view there expressed by White, J. Had it amounted to a decision of the Bench, we should have thought it necessary to refer the present case to a Full Bench, but as it does not do so, we are bound to act on our own view of the law.

For several reasons we think "deposit" cannot have been used to mean "trust." In the first place, so to hold appears to be giving a wholly new meaning to the word, for which there is no sanction in popular usage or in the ordinary terminology of the law, or in the context in which the word occurs. In the second place, the case of trust is elsewhere provided for in the Limitation Act. Thirdly, to apply Art. 60 to express trusts might lead to great confusion, and might curtail very seriously the beneficial effects of s. 10 of the Act.

We think, therefore, that the suit is not barred by limitation, and that the decree of the lower Appellate Court must be set aside and that of the Subordinate Judge affirmed with costs in all the Courts.

J. V. W.

Appeal allowed.

Before Mr. Justice Pigot and Mr. Justice Gordon.

IN THE MATTER OF THE APPLICATION OF PORESH NATH CHATTERJEE v. SECRETARY OF STATE FOR INDIA IN COUNCIL (REPRESENTED BY THE COLLECTOR OF 24-PERGUNNAHS) AND OTHERS.*

1888
August 3.

Appeal—Additional Judge—District Judge—Land Acquisition Act (X of 1870), s. 39—Civil Procedure Code (Act XIV of 1882), s. 647.

An Additional Judge appointed to hear cases under the Land Acquisition Act, 1870, is a District Judge within the meaning of s. 39 of the Act. Under s. 647 of the Civil Procedure Code an appeal from the decision of an Additional Judge so appointed lies to the High Court.

THIS was an appeal to the High Court from the order of the Additional Judge of the 24-Pergunnahs, hearing cases under the Land Acquisition Act, 1870, dated the 6th March 1888, refusing to set aside his order of the 1st March made *ex parte*.

Baboo *Horendra Nath Mukerji* for the appellant.

* Appeal from Order No. 209 of 1888, against the order of R. F. Rampini, Esq., Additional Judge of 24-Pergunnahs, dated the 6th of March 1888.

1888
ISHUR
CHUNDER
BEADURI
v.
JIBUN
KUMARI
BIBI.

1888

Baboo Unnoda Prosad Banerji and Moulvie Seraj-ul-Islam

for the respondents.

POBESH
NATH
CHATTERJEE
o.
SECRETARY
OF STATE
FOR INDIA IN
COUNCIL.

Moulvie *Seraj-ul-Islam* took a preliminary objection that an appeal did not lie to the High Court. He contended that an Additional Judge was not a District Judge within the meaning of s. 39 of the Land Acquisition Act, 1870; and that, therefore, an appeal did not lie to the High Court, but to the District Judge. He further contended that the only section of the Civil Procedure which gave a right of appeal against an order rejecting an application to set aside an *ex parte* order or decree was s. 588, cl. 9; but that this section was not applicable to proceedings under the Land Acquisition Act, inasmuch as the sections of the Civil Procedure Code applicable to such proceedings were specified in s. 36 of the Land Acquisition Act and s. 588 was not included in it.

Baboo Horendra Nath Mukerji was not called upon to argue this point.

The judgment of the Court (PIGOT and GORDON, JJ.) was as follows:—

As to the preliminary objection taken, we hold that an Additional Judge appointed to sit to hear cases under the Land Acquisition Act is a District Judge within the meaning of s. 39, and we think that, having regard to the provisions of s. 647, Code of Civil Procedure, an appeal lies to this Court.

As to the appeal itself, we think that there is no ground on which it can be sustained, and we therefore dismiss the appeal with costs to the respondent, who appears, other than the Secretary of State. We give no costs to the Secretary of State, who appeared, but stated that he had no interest in the matter.

C. D. P.

Appeal dismissed.