

NARINDRA BAHADUR SINGH (JUDGMENT-DEBTOR) v. THE OUDH  
COMMERCIAL BANK, LIMITED (DECREE-HOLDERS.)

[On appeal from the Court of the Judicial Commissioner of Oudh.]

*Local Act No. IV of 1912, United Provinces Court of Wards Act, sections 8 and 11—Disqualified proprietor—Mortgage decree against Court of Wards—Discharge of estate from superintendence—Order by Government of India—Validity of decree.*

Where a mortgagor has been declared a disqualified proprietor under the United Provinces Court of Wards Act, 1912, and a final mortgage decree is made against the Court of Wards during its superintendence of the estate, the decree is binding upon the mortgagor after the Local Government, acting under an order of the Government of India, has discharged the estate from superintendence, in the absence of proof that the proceedings of the Court of Wards were a nullity.

APPEAL from a judgment and decree of the Court of the Judicial Commissioner of Oudh (16th December, 1918) varying a decree of the Subordinate Judge of Fyzabad (17th May, 1918.)

The respondent Bank obtained against the appellant a preliminary decree for sale under a mortgage executed in their favour by the appellant. The decree was made on the 15th of June, 1915, by the Court of the Judicial Commissioner which varied a decree made by the Subordinate Judge. On the 21st of July, 1915, the appellant was declared a disqualified proprietor under section 8, sub-section 1 (d) (iv), of the United Provinces Court of Wards Act (United Provinces Act IV of 1912), and a few days later the Court of Wards assumed superintendence of his estate. On the 21st of February, 1916, upon an application by the respondent Bank against the Court of Wards, the appellant not being a party, the preliminary decree was made final. On the 9th of October, 1915, the appellant petitioned the Local Government by memorial that the order declaring him to be a disqualified proprietor should be set aside and the estate discharged. That petition being rejected, he, on the 14th of June, 1916, addressed a memorial to the Government of India with the same object. On the 7th of September, 1916, the Bank applied for execution of the final decree, but upon an arrangement made with the Court of Wards the sale proceedings were stayed upon conditions.

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On the 16th of May, 1916, the local Government made an order releasing the estate subject to the payment of Rs. 57,000 which was made in July. On the 3rd of July, 1917, the Bank revived its application, when the appellant (who was given notice) raised objections of which those material to this appeal were that the final decree was not binding upon him as it was made against the Court of Wards which had no jurisdiction to act or appear for him.

The Subordinate Judge dismissed the objections and made a decree allowing the sale to proceed. Upon an appeal to the Court of the Judicial Commissioner the decree was affirmed subject to an alteration in the interest claimed under the arrangement by which the execution was stayed.

Both courts refused to receive in evidence a letter purporting to be from the Secretary to the Government of India to the appellant and dated the 27th of February, 1918.

That letter, after stating that a copy of the letter addressed by the Government to the Local Government could not be sent as it was confidential, said:

"At the same time they consider it right to remove as far as possible any obstacles which the action of the Government may have placed in the way of your projected appeal to the Privy Council. I am, therefore, to inform you that your estate was released at the instance of the Government of India because they were unable to agree that the circumstances justified the local Government in declaring you under s. 8 (1) (d) (iv) of the United Provinces Court of Wards Act, IV of 1912, to be disqualified to manage your own property, and thus requiring the Court of Wards to assume the superintendence of the estate under s. 12 of the Act. I am to add that if you intend to apply to the Privy Council for special leave to appeal, the Government of India will have no objection to your using this letter in support of your application in any way that you may think advisable."

The learned Judges in the appellate court pointed out that the letter was not proved in evidence; they said that in any case it was irrelevant since under s. 11 of the Local Act IV of 1912, they were precluded from discussing the validity of the declaration by the Local Government.

On this appeal—

*Upjohn, K. C.*, and *Parikh* for the appellant:—

The final mortgage decree was not binding upon the appellant. The original order declaring the appellant a disqualified proprietor

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was nullified by the order of the Government of India. The Court of Wards consequently had no jurisdiction to assume superintendence of the estate, or to act on behalf of the appellant. It is not necessary upon this appeal to consider what was the real effect of the order of the Government of India, because the courts below have refused to entertain that question. If necessary, the matter should be remitted in order that that question may be tried.

*De Gruyther, K. C.*, and *Dube* for the respondents were not called upon.

1921, May 9th.—The judgment of their Lordships was delivered by Viscount HALDANE:—

The question on this appeal is whether the respondents can enforce a decree made a good while ago in a suit for sale of certain mortgaged properties. The preliminary decree was made on the 15th of June, 1915, on appeal to the Court of the Judicial Commissioner from a decree, dated the 31st of October, 1912, of the Subordinate Judge of Lucknow. A few days later, on the 21st of July, 1915, the Court of Wards purported to declare the mortgagor a disqualified proprietor, and assumed superintendence of his estate under the United Provinces Court of Wards Act (Act IV of 1912). On a date which is variously stated, but appears to have been the 21st of February, 1916, the decree was made final. On the 14th of June, 1916, the mortgagor applied for the estate to be released, and on the 12th of September, 1917, the estate was released from the superintendence of the Court of Wards under the direction of the Local Government, which had been set in motion and in some way directed to bring that about by the Central Government of India.

The appellant is now resisting the execution of the decree, because, he says, the decree absolute is not binding on him, inasmuch as the Court of Wards had no jurisdiction to represent him in the proceedings.

The contention of the respondents and the view taken by the Court below is that the action of the Court of Wards, while its superintendence continued to exist, was operative, and that it cannot be treated as having been a nullity; it was good until

set aside by the Local Government, acting on the directions of the Central Government of India.

Their Lordships' attention has been drawn to certain sections of the United Provinces Court of Wards Act, IV of 1912, to the effect that no declaration made by the Local Government under section 8 or by the Court of Wards under section 10 is to be questioned in any civil court, and there are analogous provisions to those providing for other cases which cover the kind of proceedings which are before their Lordships.

The material facts are these: As has been said, the preliminary decree for sale was obtained on the 31st of October, 1912, the mortgage having been executed a long time previously, in 1894. The decree stood in substance, although it was modified on appeal, and then there were rather complicated questions raised as to interest which were the subject of proceedings, and they are in form before their Lordships. But as to that the matter was disposed of in the course of the petition that was presented to the Board for a stay of execution. The result is that the question with regard to the interest is not now before their Lordships; the only question that is before them being whether the Court of Wards validly represented the appellant in the substantial proceedings in regard to the decree itself.

On the 21st of July, 1915, the Court of Wards assumed superintendence of the estate of the appellant. The Bank then applied for a decree absolute for sale against the Court of Wards, representing the appellant, and it was made on the 21st of February, 1916. Then there were arrangements made between the Court of Wards and the Bank for the postponement of the execution of the terms of the decree with which their Lordships are not concerned, and there were certain questions as to whether there should be an appeal to the Privy Council from the decision in India as to the validity of the decree for sale, but the Court of Wards was unwilling to appeal to His Majesty in Council, and ultimately no appeal was brought. Then by an order of the Local Government made on the 16th of May, 1917, under the order of the Government of India, the estate of the appellant was directed to be released upon payment by him of the sum of Rs. 57,000. On the 29th of June, 1917, the mortgagor paid that

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sum and on the 12th of September, 1917, his estate was, as already stated, released from the superintendence of the Court of Wards. On the 3rd of July, 1917, the Bank made a second application for the execution of the final decree of the 21st of February, 1916, by which it was declared that the mortgaged properties were to be sold, and the only question before their Lordships is whether the decree absolute is one that was binding on the appellant, inasmuch as it was made against the Court of Wards, which, it is now said, had no jurisdiction to act. Their Lordships have not before them the terms of the order made by the Government of India, nor the correspondence which took place between the Central Government and the Local Government. For reasons of State, these documents are not produced and their production cannot be compelled but there is no reason to infer that they would make the matter in any way different from what it *prima facie* appears to be. The Local Government put the Court of Wards in charge of the appellant's estate and *prima facie* that was within their powers. It continued to be under their control until the Local Government released it. It is not to be presumed, unless it is clearly proved by the appellant, that the release operated retrospectively, so as to invalidate all the multitudinous acts which must have been done while the Court of Wards was in superintendence. Their Lordships are, therefore, unable to take any view different from that taken by the court below. In the court below reference was made to the terms of the United Provinces Court of Wards Act of 1912, and particularly to sections 8, 11 and 12, and to chapter VII, which contains sections 53 to 60, all of which point to what is a stringent provision that no one is to investigate the motives or review the discretion of the governing body which is being dealt with, or to question what it has done in the courts.

Without proof that the proceedings of the Court of Wards were a nullity, their Lordships are not in a position to look into the matters which have been sought to be discussed before them. It is enough to say that their Lordships agree with the judgment of the court below, and they will therefore humbly advise His Majesty that this appeal be dismissed with costs.

*Appeal dismissed.*

Solicitor for appellant :—*E. Dalgado.*

Solicitors for respondents :—*T. L. Wilson and Co.*