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BADBI
NABAIN
SINGH
v.
HARNAM
KUNWAR.

of the Court of the Judicial Commissioner and the decree of the Subordinate Judge should be set aside; and that the appellant should be held entitled to possession of Mahal Tujpur with any accretions thereto and to an account and payment of mesne profits. The respondents will pay the costs of the appellant in both courts and his costs of this appeal.

Appeal allowed.

Solicitor for appellant:—*Douglas Grant.*

Solicitors for respondent:—*T. L. Wilson & Co.*

APPELLATE CIVIL.

Before Mr. Justice Piggott and Mr. Justice Walsh.

LACHMI PRASAD (APPLICANT) v. BALDEO DUBE AND OTHERS—
(OPPOSITE PARTIES).*

Act No. VIII of 1890 (Guardians and Wards Act), sections 29, 30, 47 and 48—Appeal.

No appeal lies from an order passed under section 30 of the Guardians and Wards Act, 1890.

THE facts of this case were briefly these:—

One Gopi Dube died possessed of some landed property, including some *sir* land. He left behind him certain minor heirs, who inherited the property subject to certain incumbrances. Their names were entered in the revenue papers, and their father, Mahabir Misir, was appointed guardian of their persons and property by the District Judge.

On the 26th of August, 1919, Mahabir Misir applied to the District Judge for permission under section 29 of Act VIII of 1890 to sell the property for Rs. 2,400 in order to clear off the debts due from the estate. On the 1st of November, 1919, while this application was still pending, one Baldeo Dube, one of the creditors, appeared before the District Judge and offered to pay Rs. 2,500 as sale consideration for the property.

On the 10th of December, 1919, the District Judge passed an order in favour of Baldeo Dube that the property ~~be sold to~~ him for Rs. 2,500.

Subsequently, Mahabir Misir, in contravention of the court's order of the 10th of December, 1919, gave a perpetual lease of the

* First Appeal No. 79 of 1921, from an order of Baijnath Das, District Judge of Ghazipur, dated the 14th of January, 1921.

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his lands to Lachmi Prasad, the present appellant, and executed a sale-deed in favour of one Dwarka.

Upon this, the respondent, Baldeo Dube, applied to the District Judge for cancellation of the lease and the sale-deed.

The District Judge cancelled the lease by his order, dated the 14th of January, 1921.

From this order Lachmi Prasad preferred this appeal.

Munshi *Kamalakanta Varma*, for the respondents, took a preliminary objection that no appeal lay in this case. He submitted that, according to section 48 of Act VIII of 1890, an order made under the Act was final and could not be contested by suit or otherwise, save as provided by section 47 of the Act, or by revision. Section 47 of the Act enumerated specifically the orders under the Act from which an appeal could lie to the High Court. The section made no mention of an order passed under section 30 of the Act, under which section the order appealed from must be taken to have been passed, and there was no ground for revision. Hence the order of the District Judge was final and it could not be interfered with.

Babu *Piari Lal Banerji*, for the appellant, replied.

PIGGOTT and WALSH, JJ. :— We are satisfied that no appeal lies in this case, and we are not disposed to interfere in revision. The appeal is dismissed with costs.

Appeal dismissed.

Before Mr. Justice Ryves and Mr. Justice Gohul Prasad.

GUJRATI (PLAINTIFF) v. SITAI MISIR AND OTHERS (DEPENDANTS).*

Civil Procedure Code (1908), order XXII, rule 9(2)—*Abatement of appeal—Necessity for formal order declaring appeal to have abated—Application to set aside order of abatement.*

The abatement of a suit or appeal does not take place automatically, but it is necessary that there should be an order of the Court declaring the suit or appeal to have abated, and an application to set aside such an order will lie under order XXII, rule 9(2), of the Code of Civil Procedure. *Secretary of State for India v Jawahir Lal* (1) followed. *Lachmi Narain v. Muhammad Yusuf* (2) overruled.

THIS was an application purporting to be one to set aside the abatement of an appeal. The facts of the case appear from the various orders below.

* Application in Second Appeal No 991 of 1920.

(1) (1914) I. L. R., 36 All., 235.

(2) (1920) I. L. R., 42 All., 540.

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