

1926

BALLABH  
DAS  
v.  
MURAT  
NARAIN  
SINGH.

BY THE COURT.—The appeal is allowed. The decrees of the courts below are set aside and the objection of the judgement-debtors is dismissed with costs in all courts. The execution will proceed.

*Appeal allowed.*

1926

February,  
5.

*Before Mr. Justice Kanhaiya Lal and Mr. Justice Boys.*

JANGHI LAL (DECREE-HOLDER) v. MATA BADAL SINGH  
AND OTHERS (JUDGEMENT-DEBTORS).\*

*Act (Local) No. II of 1903 (Bundelkhand Land Alienation Act), section 16—Civil Procedure Code, section 68—Execution of decree.*

The fact that land which is subject to the provisions of the Bundelkhand Land Alienation Act, 1903, happens to be ancestral land will not enable a court to apply section 68 of the Code of Civil Procedure and transfer the execution of a decree affecting it to the Collector for the purpose of his dealing with it in the manner provided by schedule III of the Code. *Hanuman Prasad Narain Singh v. Harakh Narain (I)*, referred to.

THE facts of this case were as follows :—

The decree-holder appellant obtained a decree for money against certain members of an agricultural tribe, holding landed property in tahsil Karchhana of the Allahabad district, to which the Bundelkhand Land Alienation Act (Act II of 1903) is applicable. In 1920 he applied for the attachment and sale of the said landed property and got an attachment made; but before he could proceed with the sale of that property, an objection was made by the judgement-debtors that the property was not saleable under section 16 of the Act. That objection was allowed

\* Second Appeal No. 1802 of 1924, from a decree of D. C. Hunter, District Judge of Allahabad, dated the 29th of May, 1924, confirming a decree of Triloki Nath, Judge of the Court of Small Causes, exercising the powers of a Subordinate Judge of Allahabad, dated the 24th of March, 1925.

and the decree-holder was directed to proceed with the execution of the decree in some other way. A fresh application for execution was made by the decree-holder in which he asked for the attachment of the same and some other landed property again and further prayed that after it was attached the decree may be transferred to the Collector of Allahabad for the purpose of farming out the property on lease or making some other arrangements for the recovery of the decretal money. He admitted that the property was not liable to sale under section 16 of the Bundelkhand Land Alienation Act; but he contended that section 68 of the Code of Civil Procedure would apply to the case and that the execution of the decree could be transferred to the Collector because the property in question was ancestral land, for the purpose of dealing with it in the manner provided by Schedule III of the Code of Civil Procedure. The property specified was attached; but the judgement-debtors appeared and objected to its sale; and the court executing the decree upheld that objection and held that, both in view of the order passed in the previous execution proceeding and the operation of the provisions of section 16 of the Bundelkhand Land Alienation Act, it could not direct the sale of the property or transfer the execution of the decree to the Collector under section 68 of the Code. That order was upheld by the lower appellate court.

The decree-holder appealed to the High Court.

Dr. *Kailas Nath Katju*, for the appellant.

Munshi *Harnandan Prasad* for the respondent.

The judgement of the Court (KANHAIYA LAL and Boys, JJ.), after setting out the facts as above, thus continued:—

The Bundelkhand Land Alienation Act was passed with the object of restricting the alienation of

1926

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 LAL  
 v.  
 MATA  
 BADAL  
 SINGH.

1926

JANGI  
LAL  
v.  
MATA  
BADAL  
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agricultural land by the members of an agricultural tribe or the sale thereof in execution of a decree; and no permanent alienations or mortgages or leases of agricultural land were permitted except in accordance with the terms and conditions laid down in that Act. Section 16 provided that "no land belonging to a member of an agricultural tribe shall be sold in execution of any decree or order of any civil or revenue court made after the commencement of this Act." If the land was not liable to be sold in execution of any decree, it was not open to the court executing the decree to pass an order for its sale; and if no order for sale could be passed, section 68 of the Code of Civil Procedure would be inapplicable. In *Hanuman Prasad, Narain Singh v. Harakh Narain* (1) it was held that where a member of an agricultural tribe, holding agricultural land to which the above Act was applicable, was adjudicated an insolvent, such land could not vest in the receiver because the property was not saleable.

It is urged before us that there was nothing in law to prevent a court from attaching the property; and if it could attach the property, it could also direct its sale and then transfer the proceedings to the Collector for realizing the decretal money otherwise than by a sale of the property attached. But if a sale is forbidden, an order for sale cannot be passed. In fact, no order for sale was passed in this case. The decision of the court below is therefore correct and cannot be disturbed. The appeal is dismissed with costs.

*Appeal dismissed.*

(1) (1919) I.L.R., 42 All., 142.