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the ward but for the good of the estate. Frequently the court of wards assumes superintendence to protect the estate against an extravagant, thriftless or incompetent ward and the court of wards has to have always in mind not the immediate advantage to the ward but the ultimate benefit to the estate. That being so, it is not strange that the statute empowers the court to sell property in circumstances in which the ward could not sell and yet makes it impossible for any reversioner to question the sale. As the court of wards is acting for the benefit of all there is nothing strange in the fact that the statute does not permit persons entitled after the ward to question its acts.

In the result, therefore, we hold that the learned Judge was right in disposing of this case without considering any evidence beyond the notifications contained in the various copies of the Gazette and in our view he rightly held that the sale in question was valid and could not be challenged by the plaintiff as the nearest reversioner. The result therefore is that this appeal is dismissed with costs.

Before Sir Shah Muhammad Sulaiman, Chief Justice, and Mr. Justice Bennet

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November, 30

JAGRUP SINGH (DEFENDANT) *v.* RAM GATI (PLAINTIFF)*

Civil Procedure Code, order XXXIV, rule 6—Application for personal decree against mortgagor for unsatisfied balance—Limitation—Limitation Act (IX of 1908), article 181— Terminus â quo.

In computing the limitation, under article 181 of the Limitation Act, for a mortgagee decree-holder's application for a personal decree under order XXXIV, rule 6 of the Civil Procedure Code, the time of three years should begin to run from the date when the appellate court finally decides that the sale, which fetched an insufficient amount, should be confirmed.

It can not be said that as soon as the first court confirms the auction sale of the mortgaged property it is definitely ascertained that the sale proceeds are insufficient to pay the

*First Appeal No. 165 of 1935, from an order of Tej Narain Mulla, District Judge of Allahabad, dated the 26th of March, 1935.

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whole of the decretal amount. It is only when the appellate court finally decides that the sale should stand, and all uncertainties about the possibility of a fresh sale are removed, that it is definitely ascertained that the sale proceeds are insufficient, and the right to apply for a decree under order XXXIV, rule 6 accrues, and the period of three years under article 181 of the Limitation Act begins to run.

Mr. *Baleshwari Prasad*, for the appellant.

Mr. *Ambika Prasad*, for the respondent.

SULAIMAN, C.J., and BENNET, J.:—This is a defendant's appeal from an order of remand passed by the District Judge. A preliminary decree for sale had been passed under order XXXIV, rule 4, directing the sale of certain mortgaged properties. The final decree was passed on the 16th of March, 1929. The mortgaged properties were sold at auction on the 30th of January, 1930, for a smaller amount than the mortgage debt. On the 8th of March, 1930, the sale was confirmed, the objections filed by the judgment-debtor having been overruled. An appeal was preferred and was disposed of on the 13th of January, 1933, under which the order of confirmation was affirmed.

The mortgage deed in question had been executed on the 21st of July, 1914, and the mortgage money was payable in six years. The suit was brought in 1923, that is to say, well within six years of the period fixed for payment. The plaintiff was, therefore, entitled to a personal decree as there was a registered deed. On the 11th of July, 1934, he applied for a personal decree under order XXXIV, rule 6, to which many objections were raised. They have been decided against the judgment-debtor.

A new point is now taken for the first time in this appeal that the application of the decree-holder under order XXXIV, rule 6 was by itself barred by time because it was not made within three years of the order confirming the sale. No doubt the application cannot be treated as an application for the execution of a decree

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and is therefore governed by article 181 of the Limitation Act. The question, however, is from what time the period of limitation should begin to run. Under order XXXIV, rule 6, where the net proceeds of any sale held under that order are found insufficient to pay the amount due to the plaintiff, the court, on application made by the plaintiff if the balance is legally recoverable from the defendant, can pass a decree for such balance. Now it was first ascertained by the trial court when the sale was confirmed that the amount of sale proceeds was not sufficient to pay the amount due to the plaintiff, but that order was appealed from and the appellate court might have come to a contrary conclusion if it had set aside that order. It would have directed a fresh sale to be held which might have fetched a larger amount. It cannot, therefore, be said that it was definitely ascertained as soon as the first court confirmed the sale that the sale proceeds were insufficient to pay the whole amount. It is far more reasonable to hold that it was only when the appellate court finally decided that the sale should stand that it was ascertained definitely that the amount realised was insufficient to pay the decretal amount.

The learned advocate for the appellant relies on certain remarks made by the Calcutta High Court in *Krishna Bandhu Ghatak* v. *Panchkari Saha* (1). At page 743 the learned Judges remarked that "Once the right accrues, time begins to run and the uncertainty, caused by an appeal or other proceedings taken, need not by itself be held sufficient to suspend the operation of the statute or to entitle the plaintiff to get a deduction." On the other hand, the view taken by the Madras High Court in *Rajambal* v. *Thangam* (2) is that time should begin to run from the date when the appellate court finally decides that the sale should be confirmed.

The view taken by the Madras High Court appeals to us and we think it far more reasonable to hold that so

(1) (1930) I.L.R., 58 Cal., 741. (2) A.I.R., 1935 Mad., 640.

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long as there is not absolute finality, it should not be held that it has been definitely ascertained that the amount realised is insufficient to pay the decretal amount. It is only when the appellate court finally decides the matter, and all uncertainties are removed, that the right to apply accrues. It is not disputed that the present application was made within three years. We accordingly think that there is no force in this appeal. We, therefore, dismiss this appeal.

REVISIONAL CIVIL

Before Mr. Justice Niamat-ullah

1936
December, 14

AMBA SHANKAR (PLAINTIFF) *v.* SEOTI (DEFENDANT)*

Civil Procedure Code, order XXXIII, rule 12—*Pauper suit dismissed—Regular appeal with court fee—Order by appellate court to pay court fee and costs of Government incurred in trial court—"Rejection" of memorandum of appeal for non-payment—"Decree"—Civil Procedure Code, order VII, rule* 11(*c*) *read with section* 107—*Civil Procedure Code, section* 115.

A pauper suit was dismissed on the merits, and the plaintiff applied for leave to appeal as a pauper, but this was refused. He then paid the court fee necessary for the appeal, and it was admitted. Afterwards, on application by the Government, the appellate court ordered the appellant to pay the court fee due from him in the trial court and the costs incurred by Government in that court; and, on non-compliance, rejected the appeal. A revision was filed against that order:

Held, that it is not the function of the appellate court to give effect to the right of the Government, conferred by order XXXIII, rule 12 of the Civil Procedure Code, to recover the court fee where a pauper suit has been dismissed on the merits; Government should proceed in the trial court for this purpose. An order passed by the appellate court, after admission of the appeal, calling upon the appellant to pay the court fee which became due under that rule, and rejecting the appeal on non-compliance, is without jurisdiction and liable to be set aside in revision.

*Civil Revision No. 165 of 1936.