purpose of putting his *chauki* in order to carry on his profession it is unnecessary for us to enter into the question as regards the rights possessed by him in this respect as against the Government Nazul, but we are inclined to agree with the learned Additional Subordinate Judge that such a right of occupation of specific portions of the river bank as described by various numbers given in the application for execution is quite distinct from their personal right of receiving offerings and as such is not exempt from attachment or sale in execution of the decree. Similarly the physical articles namely *chaukis* or the wooden platforms placed on the *ghat* are also properties which are liable to attachment and sale.

Hasan and Srivastava, JJ.

For the above reasons we agree with the learned Additional Subordinate Judge and dismiss this appeal with costs.

Appeal dismissed.

APPELLATE CIVIL.

Before Mr. Justice Wazir Hasan and Mr. Justice Bisheshwar Nath Srivastava.

MOHAMMAD USMAN KHAN (JUDGMENT-DEBTOR-APPELLANT) *v.* BANKEY LAL (DECREE-HOLDER-RESPONDENT.)*

1929 *July*, 22.

Oudh Civil Rules, rule 190(*b*)—*Oudh Estates Act* (*I of* 1869) *as amended, sections* 4*A and* 14.—*Execution of decree —Attachment of village bequeathed to judgment-debtor by his grandfather, the original taluqdar—Attached village, if to be treated as ancestral land—"Ancestral land," definition of—"Estate" under the Oudh Estates Act, meaning of.*

Where the judgment-debtor held the village in suit under a will of his grandfather who was a taluqdar, he being a possible heir of his grandfather was one of the persons mentioned in clause 2 of section 13A of the Oudh Estates Act

*Execution of Decree Appeal No. 8 of 1929, against the order of M. Humayun Mirza, Subordinate Judge of Lucknow, dated the 5th of January, 1919.

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and therefore held the village in question subject to the same conditions and to the same rules of succession as the testator, under section 14 of the Amended Oudh Estates Act and the village was therefore "ancestral land" within the definition of the term as given in clause (*b*) of rule 190 of the Oudh Civil Rules. *Amir Mirza Beg* v. *Udit Pershad* (1), relied on. *Asghari Khanam* v. *Raj Bibi* (2), distinguished and dissented from.

So long as the property continues to be governed by the provisions of the Oudh Estates Act it must be considered to form an estate or a part of an estate as defined in the Oudh Estates Act, but it cannot be considered to be such estate or a part of an estate when it ceases to be governed by that Act.

Mr. *D. K. Seth*, for the appellant.

Mr. *Makund Behari Lal*, for the respondent.

HASAN and SRIVASTAVA, JJ. :—This is an execution of decree appeal by the judgment-debtor. The point involved in the appeal is a very short one, namely, whether the 16 annas share in village Ataria, which has been attached and put up for sale in execution of a decree, is an ancestral property or not. The learned Subordinate Judge of Lucknow relying on clause (*a*) of rule 190 of the Oudh Civil Rules has held that the property must be considered to be the self-acquired and not the ancestral property of the judgment-debtor. The contention urged on behalf of the judgment-debtor in this appeal is that the village in question forms part of an estate as defined in the Oudh Estates Act, 1869, and is therefore "ancestral land" within the definition of the term as given in clause (*b*) of rule 190 of the Oudh Civil Rules. The parties are agreed that the village in question is a part of taluqa Kasmandikhurd, which belonged to Muhammad Ahmad Khan, grandfather of the judgment-debtor, who was the original taluqdar, and had come in the possession of the judgment-debtor under a

(1) (1925) 2 O.W.N., 816. (2) (1913) 16 O.C., 277.

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will executed by his grandfather in his favour about 30 years ago. The name of Muhammad Ahmad Khan is entered against Nos. 10 and 7 of lists 1 and 3 respectively, prepared under section 8 of the Oudh Estates Act.

The learned Counsel for the judgment-debtor argues that the village having admittedly once been a part of an estate as defined in the Oudh Estates Act, it must be considered to be ancestral property irrespective of the question whether in the hands of the judgment-debtor it continues to be governed by the Oudh Estates Act or not. The learned Counsel for the decree-holder maintains, on the other hand, that clause (*b*) of rule 190 can apply only when an estate or a part of an estate is in the hands of the original taluqdar.

Hasan and Srivastava, JJ.

We think that both parties have pitched their contentions too high and that the correct position lies somewhere midway between the two. In our opinion, so long as the property continues to be governed by the provisions of the Oudh Estates Act it must be considered to form an estate or a part of an estate as defined in the Oudh Estates Act, but it cannot be considered to be such estate or a part of an estate when it ceases to be governed by that Act. The parties are agreed before us that the judgment-debtor appellant was not the immediate heir of his grandfather, but there can be no doubt that he was a possible heir. Sections 14 and 15 of the amended Oudh Estates Act have been given retrospective effect. The judgment-debtor is clearly "a person who might, in the absence of other heirs, have succeeded to such estate or portion under the provisions of the Oudh Estates Act" and is, therefore, one of the persons mentioned in clause (2) of section 13(A) of the Oudh Estates Act. It follows that he holds the village in question which had been bequeathed to him by his grandfather, subject to the same conditions and to the

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same rules of succession as the testator, under section 14 of the amended Oudh Estates Act. The same view was taken by Mr. LINDSAY (now Sir BENJAMIN LINDSAY) and Pandit KANHAIYA LAL in execution of decree appeal No. 16 of 1915. It was a case relating to property held by one of the younger sons of the same Muhammad Ahmad Khan. In the course of their judgment in that case they remarked that "the father of the judgment-debtor, Muhammad Ahmad Khan, was a taluqdar, whose name appears in lists I and III prepared under the Oudh Estates Act . . . . We are also told that the village now in dispute forms part of the estate granted by the *sanad*. It seems to us therefore that having regard to the definition of the "ancestral land" in the paragraph of the Oudh Civil Digest, just referred to, this property does constitute ancestral land for the purposes of execution of the decree." It may be mentioned that clause (*b*) of rule 190 of the Oudh Civil Rules is word for word the same as clause (*b*) of paragraph 179 of the Oudh Civil Digest, above referred to. The view taken by us is also in consonance with the decision of the late Court of the Judicial Commissioner of Oudh to which one of us was a party reported in *Ameer Mirza Beg* v. *Udit Pershad* (1). In that case the property was not held to be ancestral because the case did not fall within section 14 but was one governed by the provisions of section 15 of the Oudh Estates Act. The learned Counsel for the respondent has relied upon the decision reported in *Asghari Khanam* v. *Raj Bibi* (2). It is a case relating to a certain property which at one time formed part of the Maniarpur estate. It is obvious from the facts of the case and the history relating to the Maniarpur estate that the property in the hands of Musammat Asghari Khanam, the judgment-debtor, was subject to the provisions of section 15 and

(1)(1925) 2 O.W.N., 816. (2) (1913) 16 O.C., 277.

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not section 14 of the Oudh Estates Act. The reference made in the judgment to sections 14 and 32A of the Oudh Estates Act seems to us, if we may respectfully say so, to be based on some misapprehension of facts and confusion of ideas. If the learned Judges meant to hold that property governed by section 14 of the Oudh Estates Act cannot be considered as ancestral property as defined in the rules, we must respectfully dissent from that view. We may also point out that if the construction placed upon the decision by the learned Counsel for the respondent is correct, then the decision is also directly in conflict with the later decision of Messrs. LINDSAY and KANHAIYA LAL in the unreported case to which reference has been made above. It might also be pointed out that section 32A of the Oudh Estates Act which gives the taluqdars the power to declare any non-taluqdari property owned by them as subject to the Act has no application to the case of property governed by section 14.

Hasan and Srivastava, JJ.

For the above reasons we are of opinion that the village Ataria which is under sale is not the self-acquired but the ancestral property of the judgment-debtor, and falls within the terms of clause (*b*) of rule 190 of the Oudh Civil Rules. We, therefore, allow this appeal with costs and setting aside the order of the lower court declare the property in suit to be ancestral property.

Appeal allowed.