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THE DEPUTY COMMISSIONER, LUCKNOW v. BALDEO BEHARI.

Board, Bara Banki v. *Rajab Ali* (1) and *Mahadeo Prasad* v. *Jamila Khaton* (2). It has also been considered by the High Court at Allahabad in *Sheo Ram* v. *Sone Lal* (3). These decisions have decided the point in the same way in which we propose to answer this reference and our answer is that the appeal of the objectors pending before the learned District Magistrate of Lucknow is a competent appeal and should be heard and decided according to law. The Municipal Board will pay the costs of this reference to the objectors.

APPELLATE CIVIL.

Before Mr. Justice Bisheshwar Nath Srivastava and Mr. Justice B. S. Kisch.

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April, 14.

ADYA DAT RAM (JUDGMENT-DEBTOR-APPELLANT) *v.* LALA GOPAL DAS (DECREE-HOLDER-RESPONDENT).*

Execution of decree—Ancestral land, what is—Taluqdar bequeathing to his grandson share in certain estate villages—Share put to sale in execution of a decree against grandson—Share sold, whether ancestral land liable to sale by Collector alone—Jurisdiction of civil courts to sell such share in execution of decree—Acquiescence or consent of parties, whether can confer jurisdiction on civil court to sell ancestral land—Oudh Civil Rules, rule 190, *clause* (*b*).

Where a Taluqdar bequeathed to his grandson a share in certain villages which formed part of an estate as defined in the Oudh Estates Act and it was put to sale by the decree-holder in execution of his decree, *held*, that the judgment-debtor being a grandson who was within the category of possible heirs contemplated by clause (2) of section 13A held the share bequeathed to him subject to the same conditions and rules of succession as the testator and section 14 and not

*Execution of Decree Appeal No. 1 of 1931, against the order of Pandit Kishan Lal Kaul, Subordinate Judge of Fyzabad, dated the 19th of December, 1930.

(1) (1926) 3 O.W.N., 511. (2) (1930) 7 O.W.N., 396.
(3) (1929) A.I.R., All., 912.

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section 15 applied to the bequest and the share was ancestral land within the definition contained in clause (*b*) of rule 190 of the Oudh Civil Rules. The civil court had, therefore, no jurisdiction to proceed with the execution, and the execution of the decree must be transferred to the Collector. *Muhammad Usman Khan* v. *Bankey Lal* (1), relied on. *Ameer Mirza Beg* v. *Udit Pershad* (2) distinguished.

It is a well settled rule that any acquiescence or consent of parties cannot confer jurisdiction. Where, therefore, in a proceeding arising out of a previous objection raised by the judgment-debtor, civil court decided that the property was not ancestral even if the judgment-debtor acquiesced in that order it cannot invest the civil court with jurisdiction to sell ancestral property which is possessed exclusively by the Collector.

Messrs. *K. P. Misra* and *Ram Bharose Lal*, for the appellant.

Mr. *P. N. Chaudhri*, for the respondent.

SRIVASTAVA and KISCH, JJ. :—This is the judgment-debtor's appeal against the decision, dated the 19th of December, 1930, of the Subordinate Judge, Fyzabad, dismissing certain objections raised by him in the course of execution proceedings. One of these objections was that the property sought to be sold by the decree-holder-respondent was ancestral within the meaning of paragraph 190 of the Oudh Civil Rules and the execution of the decree must therefore be transferred to the Collector.

The learned Subordinate Judge relying on *Ameer Mirza Beg* v. *Udit Pershad* (2) held that the interest of the judgment-debtor by reason of section 15 of the Oudh Estates Act I of 1869 has ceased to be an estate within the meaning of that Act, and cannot therefore be regarded as ancestral land within the definition contained in Rule 190 of the Oudh Civil Rules. We are of opinion that the opinion of the learned Subordinate Judge is not correct.

(1) (1929) 6 O.W.N., 759. (2) (1925) 2 O.W.N., 816.

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Rai Sri Ram Bahadur, the grandfather of the judgment-debtor was admittedly the heir of a Taluqdar and the estate held by him as such was subject to the provisions of Act I of 1869. He acquired considerable property including the six villages put to sale by the decree-holder-respondent. The Government Notification contained in the *United Provinces Gazette*, dated the 27th of July, 1911 at page 1301 shows that he made a declaration under section 32A of Act I of 1869 that the lands and villages detailed in the schedule forming part of the Notification shall form part of his estate for the purpose of Act I of 1869 as amended by Act III of 1910. The villages in dispute are entered at Nos. 4, 12, 13, 14, 15 and 16 of the schedule forming part of the Notification. Thus there can be no doubt that the villages in question must be treated as part of his estate for the purpose of the Oudh Estates Act I of 1869. On the 21st of May, 1911, Rai Sri Ram Bahadur executed a will, a certified copy of which is on the record. Under paragraph 6 of this will he bequeathed these villages to his eldest son Sitapat Ram for his life without any power of transfer. He further provided that after the death of Sitapat Ram, Adya Dat Ram, Vidya Dat Ram and Shanta Dat Ram, the three sons of Sitapat Ram, would be entitled to the aforementioned villages in equal shares, and that Adya Dat Ram will not have any power of transfer and will only remain in possession for his life of his share. The learned Subordinate Judge has given no reasons for holding that the share possessed by Adya Dat Ram in the villages in dispute since the death of his father was governed by section 15 of the Oudh Estates Act. Section 15 applies to persons who had not at the time when the bequest took effect belonged to any of the classes specified in section 14. If we turn back to section 14, we find that it applies to transfers or bequests made to two classes of persons, namely, (*a*) to another taluqdar

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or grantee or his heir or legatee, or (*b*) to any of the persons mentioned in clauses (1) and (2) of section 13A. Clause (2) of section 13A is to the following effect :—

> "To a person who might, in the absence of other heirs, have succeeded to such estate, portion or interest under the provisions of this Act applicable to such estate, had the person so bequeathing died intestate as to his estate at the time when the bequest took effect."

Adya Dat Ram, judgment-debtor, is admittedly one of the sons of Sitapat Ram, who was the eldest son of Rai Sri Ram Bahadur. Thus he was a grandson who, though not the immediate heir, was certainly within the category of possible heirs contemplated by clause (2) of section 13A. It seems therefore to be clear beyond doubt that section 14 and not section 15 applies to the bequest in favour of Adya Dat Ram. The case is fully covered by the decision of a Bench of this Court in *Muhammad Usman Khan* v. *Bankey Lal* (1) to which one of us was party. In this case also certain property had been bequeathed by a Taluqdar to one of his grandsons. The question arose whether the property in the hands of the grandson could be regarded as ancestral property within the meaning of clause (*b*) of Rule 190 of the Oudh Civil Rules. We might usefully reproduce some of the observations made in that case :—

> "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 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-

(1) (1929) 6 O.W.N., 759.

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 same rules of succession as the testator, under section 14 of the amended Oudh Estates Act."

The case of *Ameer Mirza Beg* v. *Udit Pershad* (1) relied upon by the lower court is quite distinguishable inasmuch as the property which was sought to be sold in that case was governed by section 15 of the Act and had therefore ceased to be subject to the provisions of the Oudh Estates Act.

The learned Counsel for the decree-holder respondent contended that the plea about the property being ancestral was barred by the principle of *res judicata*. His argument was that on the 11th of November, 1927, the learned Subordinate Judge had, in a proceeding arising out of a previous objection raised by the judgment-debtor, decided that the property was not ancestral. The learned Counsel for the judgment-debtor sought to meet this contention by pointing out that subsequently the parties had made a compromise

(1) (1925) 2 O.W.N., 816.

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and therefore it was not possible for the judgment-debtor to file any appeal against the said order, and consequently it could not have the force of *res judicata*. Apart from the compromise it is quite clear that the question involved is one of jurisdiction. It is not denied that the civil court has no jurisdiction to sell ancestral property. The execution of decree in the case of ancestral lands must, under the provisions of the Code of Civil Procedure read with rule 189 of the Oudh Civil Rules, be transferred to the Collector. It is a well settled rule that any acquiescence or consent of parties cannot confer jurisdiction. Even if the judgment-debtor acquiesced in the wrong order of the Subordinate Judge it cannot invest the civil court with jurisdiction to sell ancestral property which is possessed exclusively by the Collector. As we are satisfied that the property in question forms part of an estate as defined in the Oudh Estates Act, it must be held to be ancestral land within the definition contained in clause (*b*) of rule 190 of the Oudh Civil Rules. The learned Subordinate Judge had therefore no jurisdiction to proceed with the execution, and the execution of the decree must be transferred to the Collector.

Srivastava and Kisch, JJ.

We accordingly allow the appeal and set aside the order of the lower court. We make no order as to costs of the appeal.

Appeal allowed.