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DEPUTY
COMMISSIONER,
LUCKNOW
v.
MRS. M. D.
AIKMAN

Counsel for the Deputy Commissioner and Counsel for Mrs. Aikman that the value of these shares may be taken at Rs.26 per share. We accordingly hold that the value of these shares is at Rs.26 per share.

Hasan, C.J.
and
Nanavutty,
J.

APPELLATE CIVIL

Before Sir Syed Wazir Hasan, Knight, Chief Judge and
Mr. Justice E. M. Nanavutty

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December 4

BABU SURENDRA NARAIN SINGH AND ANOTHER (OBJECTORS-APPELLANTS) v. RAJA LAL BAHADUR SINGH (DECREE-HOLDER-RESPONDENT)*

Oudh Rent Act (XXII of 1886), section 151—Execution of decree—Decree for arrears of rent—Decretal amount not realizable from movable property—Immovable property, whether can be sold—Suit for possession of immovable property between two brothers compromised—Compromise providing that property be held for life by one brother and then to go to second brother, if he survived—Second brother, if got a vested or contingent interest—Second brother's interest, whether could be sold in execution of a decree for arrears of rent.

Held, that under section 151 of the Oudh Rent Act, the executing court cannot sell the immovable property of the judgment-debtor unless it is proved to its satisfaction that the decretal amount cannot be realized from the movable property of the judgment-debtor.

Where under a compromise arrived at in a suit for possession of certain immovable properties between two brothers a life interest was granted in favour of one brother and the remainderman's estate in its entirety and absolutely was conferred on the other brother, if he survived the first, *held*, that the second brother took a vested and not a contingent interest in the property so settled and it was therefore liable to attachment and sale in execution of a decree obtained against him subsequent to the compromise. *K. T. Ganapathy Pillay v. Alamaloo* (1), distinguished. *Rai Sundar Bibi v. Lal Indar Narain Singh* (2).

*Execution of Decree Appeal No. 65 of 1932, against the order of Pandit Raghubar Dayal Shukla, District Judge of Rae Bareilly, dated the 30th of August, 1932, upholding the order of Mirza Sharfuddin Ahmad, Assistant Collector, 1st class, Partabgarh, dated the 21st of March, 1932.

(1) (1929) A.L.J., 1075.

(2) (1925) I.L.R., 47 All., 496.

Raja Lal Bahadur Singh v. Babu Rajendra Narain Singh (1), *Raghunath Prasad Singh v. The Deputy Commissioner of Partabgarh*, (2), and *Lal Ram Singh v. The Deputy Commissioner of Partabgarh* (3), relied on.

Mr. *Radha Krishna Srivastava*, for the appellants.

Mr. *M. Wasim*, for the respondent.

HASAN, C.J. and NANAVUTTY, J.:—These are two execution of decree appeals filed by the judgment-debtors against an order of the learned District Judge of Rae Bareilly upholding the order and decree passed by the Assistant Collector of Partabgarh.

These appeals arise out of proceedings in execution of a decree for arrears of rent dated the 16th of December, 1925, which the decree-holder Raja Lal Bahadur Singh obtained against the judgment-debtors appellants for a sum of Rs.7,657 odd from the Court of the Assistant Collector of district Jaunpur. In execution of this decree Raja Lal Bahadur Singh, the decree-holder, sought to attach and sell the rights which the heirs of the original judgment-debtor Babu Rajendra Narain Singh had acquired in the villages of Parhat and Karaundha in the district of Partabgarh. Rajendra Narain Singh died on the 24th of May, 1929 and the appellants are his two sons. They objected to the execution of the decree against them on the grounds that the decree was passed against their deceased father and that they were not responsible for the payment of the decretal money inasmuch as they were not the representatives of their father so far as these decrees were concerned, and that the property sought to be sold in execution had not come to them as an inheritance from their father but that they had only a future interest in it which would accrue to them on the death of Raja Lal Bahadur Singh, the present decree-holder. The learned Assistant Collector of Partabgarh dismissed the objections of the judgment-debtors and ordered that the property proposed to be sold in execution should be attached and sold. In

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(3) (1923) L.R., 50 I.A., 265.

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appeal the learned District Judge upheld the findings of the Assistant Collector and dismissed the appeals with costs.

In second appeal two questions have been argued before us. In the first place it was argued that in view of the provisions of section 151 of the Oudh Rent Act no application for process against immovable property was maintainable unless satisfaction of the decree could not be obtained by attachment and sale of the movable property of the judgment-debtor. The provisions of section 151 of the Oudh Rent Act run as follows:

“If the decree is for money a process in execution shall not issue against the immovable property of the judgment-debtor, other than for attachment of that property, unless satisfaction of the decree cannot be obtained against his movable property.”

It is clear from the terms of section 151 quoted above that the decree-holder can attach the immovable property of the judgment-debtor in execution of a money decree but that he cannot put it to sale unless and until he has satisfied the Court that the amount of the decree sought to be executed cannot be realised from the movable property of the judgment-debtor. The learned counsel for the plaintiff admits that at present the immovable property of the judgment-debtors has only been attached but has not yet been put up for sale. We would therefore direct the attention of the presiding officer of the Court executing the decree to the provisions of section 151 of the Oudh Rent Act which lay down that the executing Court cannot sell the immovable property of the judgment-debtor unless it is proved to its satisfaction that the decretal amount cannot be realised from the movable property of the judgment-debtor.

The second point urged before us by the learned counsel for the appellant is that the eldest son of Babu Rajendra Narain Singh, the original judgment-debtor, got the estate not as the heir of his father but under the terms of the grant conferred on him by the compromise

under which the decree in favour of the decree-holder-respondent was passed. Paragraph 3 of the compromise of the 20th of May, 1915, runs as follows:

“In the event of Babu Rajendra Narain Singh surviving Babu Lal Bahadur Singh he (that is to say Rajendra Narain Singh) will be the permanent owner with powers of transfer and of transmitting inheritance of the whole of this property . . . In the event of Babu Rajendra Narain Singh not so surviving, his male descendant according to the rule of lineal primogeniture will be entitled to the said property with powers of transfer and heritability subject to the conditions stated in paragraph 4 of the compromise. The other male descendants of Babu Rajendra Narain Singh will be entitled to maintenance. The plaintiff (that is to say Babu Rajendra Narain Singh) or his male descendant who shall be the owner of the estate according to the terms of this compromise will be entitled to obtain possession of these properties by means of execution of this decree.”

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The terms of this compromise were interpreted by the Allahabad High Court in the case of *Rai Sundar Bibi v. Lal Indar Narain Singh* (1), and it was held that where in a compromise of a suit between two brothers for the possession of immovable property it was provided that certain property should be held by one brother for his life and afterwards should go to his second brother if he survived the first, on a true construction of section 19 of the Transfer of Property Act, the second brother took a vested and not a contingent interest in the property so settled and it was therefore susceptible of being attached and sold in execution of a decree obtained against him subsequent to the compromise. The same conclusion was arrived at by this Court in *Raja Lal Bahadur Singh v. Babu Rajendra Narain Singh* (2) decided on 21st November, 1928 To that decision one of us

(1) (1925) I.L.R., 47 All., 496. (2) (1928) I.L.R., 9 Luck., 173.

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was a party. In that case it was held that in the properties described in Schedule A in which a life interest was admittedly granted by the terms of the compromise in favour of Babu Lal Bahadur Singh, the remainder-man's estate in its entirety and absolutely was simultaneously conferred by the terms of the same compromise on Babu Rajendra Narain Singh, and that this was a vested interest. That decision has not been appealed against and is now final and binding upon the parties to the present appeal. In this appeal also it was urged on behalf of the appellants that the first male descendant of Babu Rajendra Narain Singh according to the rule of lineal primogeniture took the estate directly under the grant and not as the heir of his father. This contention was repelled by the Bench of this Court that decided the appeal above mentioned and the following observations were made in respect of that contention :

"Having regard to the language of paragraph 3 of the compromise we are unable to give effect to this argument. Babu Rajendra Narain Singh 'will be the permanent owner with powers of transfer and transmitting inheritance' . . . clearly discloses the intention of granting an absolute estate of inheritance to Babu Rajendra Narain Singh subject of course to the prior life estate in favour of Babu Lal Bahadur Singh. The clause also prescribes a special line of descent but whether that is valid or not is a question with which we are not concerned in the present case."

We are not prepared to come to a different conclusion to that arrived at by this Court in the former Execution of Decree Appeal (No. 34 of 1928). We are unable to accept the contention of the learned counsel for the appellant that the words "Babu Rajendra Narain Singh will be the permanent owner with powers of transfer and of transmitting inheritance" which occur in paragraph 3 of the compromise conveyed a vested interest which was liable to be defeated in case of Babu Rajendra

Narain Singh did not survive Lal Bahadur Singh and that such a defeasible interest could not safely be sold before the contingency on which its feasibility depended had happened without serious injury to the party so affected. In our opinion no question of defeasability or of vested rights being defeated arises upon the plain construction of the words used in paragraph 3 of the compromise which was the basis of the decree passed in favour of the decree-holder. In *Raghunath Prasad Singh v. The Deputy Commissioner of Partabgarh* (1), their Lordships of the Privy Council held that the words in the will of the Raja of Partabgarh "that the estate shall vest in Pratab", and that he shall be the testator's "heir and successor", were clear dispositive words creating an absolute estate of inheritance in Pratab, and that the various clauses referred to in the will which were to come into operation after Pratab had so inherited the estate must be regarded as an attempt to impose repugnant conditions upon the estate so created in favour of Pratab and were therefore void. Similarly in *Lal Ram Singh and others v. The Deputy Commissioner of Partabgarh* (2), their Lordships of the Privy Council held that the words "heirs and representatives" occurring in the will which was sought to be interpreted were to be treated as words of limitation and not of purchase, that is to say they were merely intended to express the absolute estate which it was proposed to give to one Lachhman as distinguished from the life estate which had preceded and that the later words in the sentence might be regarded as an idle attempt to derogate from the grant previously made and therefore to be rejected or as words of discretion only, stating the legal incidents which the grantor conceived to belong to the estate which he had granted. The ruling of their Lordships reported in *K. T. Ganapathy Pillay v. Alamaloo* (3) which was cited by the learned counsel for the appellant has no applicability to the facts and circumstances of the present case.

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The decision in that case was founded upon the particular facts of that case and no general principle of law useful for the purposes of the present appeal can be discovered from a perusal of that judgment.

We hold therefore that there is no force in the objections of the judgment-debtors appellants and that those objections were rightly dismissed by both the lower courts. The appeals therefore fail and are accordingly dismissed with costs.

Appeal dismissed.

APPELLATE CIVIL

*Before Sir Syed Wazir Hasan, Knight, Chief Judge and
Mr. Justice Bisheshwar Nath Srivastava*

1933
December 4

CHINKAN PANDE AND ANOTHER (DEFENDANTS-APPELLANTS) v.
MAHANT DURGA BHARTHI AND ANOTHER (PLAINTIFFS-
RESPONDENTS)*

Limitation Act (IX of 1908), section 10—Suit by Mahant of an asthan to recover possession of land transferred by his predecessor to defendant by way of shankalap—Section 10 of the Limitation Act, applicability of.

Where a suit is brought by the Mahant of an *asthan* for the recovery of possession of certain land which had been transferred to the defendant by his predecessor by way of *shankalap* by a registered document, *held*, that even assuming that the land in suit was property appertaining to the *asthan*, it cannot be said that it had become vested in trust for any specific purpose and therefore section 10 of the Limitation Act did not apply to the case. *Vidya Varuthi Thirtha v. Balusami Ayyar* (1), relied on.

Messrs. *Mahmud Beg, Mohammad Ayub and Akhtar Husain*, for the appellants.

Messrs. *A. P. Sen and S. C. Dass*, for the respondents.

HASAN, C.J. and SRIVASTAVA, J.:—This is the defendants' appeal from the decree of the Subordinate Judge of Gonda, dated the 12th of May, 1932.

In the village of Jagannathpur, pargana Bodhapair, there lies an area of 105 bighas 6 kham which, on the

*First Civil Appeal No. 54 of 1932, against the decree of M. Mahmud Hasan Khan, Subordinate Judge of Gonda, dated the 12th of May, 1932.

(1) (1921) L.R., 48 I.A., 302.