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*Rahman v. Shahanand Das (1) and Sajjadi Begam v. Dilawar Husain (2).*

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We can therefore see no ground for interference and dismiss the application with costs.

*Application dismissed.*

## APPELLATE CIVIL

*Before Mr. Justice E. M. Nanavutty*

1933  
February, 13

NAQI AHMAD, SATYID (JUDGMENT-DEBTOR-OBJECTOR-APPELLANT) v. SHEO SHANKAR LAL ALIAS JHABBU LAL AND ANOTHER (DECREE-HOLDERS-RESPONDENTS)\*

*Interpretation of statutes—Enactment affecting procedure, if to be given effect to at once—Government notification that with effect from a particular date execution of decrees in cases in which a civil court has ordered sale of any agricultural land is to be transferred to Collector—Order of sale passed by civil court before that date, whether affected by the notification affecting change in procedure.*

*Held*, that any enactment affecting procedure must be given effect to at once inasmuch as no one has a vested right in any particular form of procedure.

Where, therefore, a Government notification is made that with effect from a particular date the execution of decrees in cases in which a civil court has ordered any agricultural land situated in the United Provinces of Agra and Oudh or any interest in such land to be sold, shall be transferred to the Collector, the notification applies to a case where an order for sale has been passed by a civil court before the date entered in the notification but the sale is to take place after that date. *Republic of Costa Rica v. Erlanger (3)*, *Warner v. Murdoch (4)*, *Wright v. Hale (5)*, *Fatch Chand v. Muhammad Bakhsh (6)*, *Gokul Prasad v. Ali Bakhsh (7)*, *Delhi Cloth and General Mills Co. v. Income-tax Commissioner of Delhi (8)*, and *Colonial Sugar Refining Co. v. Irving (9)*, relied on.

\*Execution of decree Appeal No. 24 of 1932, against the order of Pandit Bish Nath Hukku, Additional Subordinate Judge of Hardoi, dated the 13 th of April, 1932.

(1) (1925) Pat., 153.

(3) (1876) L. R., 3 Ch. D. 69.

(5) (1860) 6 H. and N., 227.

(7) (1910) 13 O. C., 152.

(2) (1918) I. L. R., 40 All., 579.

(4) (1877) L. R., 4 Ch. D. 752.

(6) (1894) I. L. R., 16 All., 259.

(8) (1927) 4 O. W. N., 1053.

(9) (1905) I. R., A. C., 369.

Mr. *M. H. Kidwai*, for the appellant.

Mr. *Hyder Husain*, for the respondents.

NANAVUTTY, J.:—This is an execution of decree appeal filed by the judgment-debtor Saiyid Naqi Ahmad against an order of the learned Additional Subordinate Judge of Hardoi, dated the 13th of April, 1932, dismissing his objection and rejecting his prayer to have the execution proceedings transferred to the Collector in virtue of the application of notification No. 576/IA—93, dated the 26th of March, 1932, published in Part I at page 257 of the *Gazette of the United Provinces*.

The facts out of which this appeal has arisen are briefly as follows :

The decree-holders Lala Sheo Shankar Lal and Durga Prasad obtained a decree for sale against the judgment-debtor on the 8th of January, 1931, under a compromise, and applied for execution of the sale on the 6th of August, 1931. The property sought to be sold was found to be self-acquired property, and it was ordered by the court executing the decree that the decree would not be transferred to the Collector but the sale would be conducted by the Collector under the directions of the civil court. The judgment-debtor applied to the court for adjournment of the sale which had been fixed for the 20th of January, 1932. This prayer was granted with the consent of the decree-holders and the sale was fixed for the 20th of February, 1932. The sale could not take place on that date and it was ordered that after issue of fresh proclamation the sale should take place on the 20th of April, 1932. On the 26th of March, 1932, Government notification No. 576/IA—93 was published. It runs as follows :

“No. 576/IA—93.—In supersession of notification No. 1887/I—238, dated the 7th of October, 1911, and in exercise of the powers conferred by section 68 of the Code of Civil Procedure, 1908, the

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Governor in Council is pleased to declare that, with effect from the 1st of April, 1932, the execution of decrees in cases in which a civil court has ordered any agricultural land situated in the United Provinces of Agra and Oudh or any interest in such land to be sold, shall be transferred to the Collector."

*Nanacatty, J*

The judgment-debtor thereupon prayed that the execution proceedings should be transferred to the Collector of the district of Hardoi in compliance with this notification. The learned Additional Subordinate Judge dismissed his objection with costs and directed that the execution proceedings should continue in his court, because in his opinion, as the order directing the sale of the judgment-debtor's property was passed before the 1st of April, 1932, the notification cited by the judgment-debtor did not debar him from proceeding with the execution proceedings in his own court.

The learned counsel for the appellant judgment-debtor has strenuously argued before me that the interpretation put upon the Government notification of the 26th of March, 1932, by the lower court is wrong and that after the passing of that notification the lower court had no jurisdiction to proceed with the execution proceedings pending in his court; it was also contended before me that the notification in question related only to a change in procedure and applied to all pending proceedings in execution of decrees, irrespective of the fact whether a finding as to the property being ancestral or not had already been arrived at or not. It was conceded before me by the learned counsel for the respondents that the land sought to be sold is agricultural land and no fresh inquiry as to the nature of the property under the new notification was required to be held to determine whether the zamindari property, which was to be sold was agricultural land or not. It was, however, contended for by the learned counsel for the respondents decree-holders that the Government

notification in question did not affect the right of the civil court to proceed with the execution proceedings in the present suit, as the order directing the sale to be made was passed before the 1st of April, 1932.

In my opinion the contention advanced on behalf of the appellant judgment-debtor appears to be correct. In *Republic of Costa Rica v. Erlanger* (1) MELLISH, L. J., held that "no one has any vested interest in the course of procedure." In *Warner v. Murdoch* (2) JAMES, L. J., held that "no one has a vested right in any particular form of procedure." In *Wright v. Hale* (3) POLLOCK, C.B., said: "There is a considerable difference between new enactments which affect vested rights and those which merely affect the procedure in Courts of Justice, such as those relating to the service of proceedings, or what evidence must be produced to prove particular facts." Later on the same learned Judge observed: "When an Act alters the proceedings which are to prevail in the administration of justice, and there is no provision that it shall not apply to suits then pending, I think it does apply to such action." In the same case CHANNELL, B., said: "In dealing with Acts of Parliament which have the effect of taking away rights of action, we ought not to construe them as having a retrospective operation, unless it appears clearly that such was the intention of the Legislature." In the same case WILDE, B., said: "I am prepared to decide this case upon principle. The rule applicable to cases of this sort is that when a new enactment deals with rights of action, unless it is so expressed in the Act, an existing right of action is not taken away. But where the enactment deals with procedure only, unless the contrary is expressed, the enactment applies to all actions whether commenced before or after the passing of the Act. That this is the true principle sufficiently

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(1) (1876) L. R., 3 Ch. D. 69.

(2) (1877) L. R., 4 Ch. D., 752.

(3) (1860) 6 H. and N., 227.

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appears from the cases that have been referred to on both sides.”

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Applying these principles to the present case I have no hesitation in holding that the execution proceedings should have been immediately transferred by the learned Subordinate Judge from his court to that of the Collector of Hardoi, as required by the Gazette notification No. 576/IA—93 of the 26th of March, 1932. These principles were given effect to by a Full Bench of the Allahabad High Court in *Fatch Chand v. Muhammad Bakhsh* (1).

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Similarly in *Gokul Prasad v. Ali Bakhsh* (2), it was held that on the principle that a litigant has got no vested right in procedure the question of amendment arising subsequent to the passing of the new Civil Procedure Code would be governed by it.

In *Delhi Cloth & General Mills Co. v. Income-tax Commissioner of Delhi* (3) their Lordships of the Privy Council made the following observation :

“The principle which their Lordships must apply in dealing with this matter has been authoritatively enunciated by the Board in *Colonial Sugar Refining Co. v. Irving* (4), where it is in effect laid down that, while provisions of a statute dealing merely with matters of procedure may properly, unless that construction be textually inadmissible, have retrospective effect attributed to them, provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment. Their Lordships can have no doubt that provisions which, if applied retrospectively, would deprive of their existing finality orders, which, when the statute came into force, were final, are provisions which touch existing rights.”

(1) (1894) I. L. R., 16 All., 259.  
(3) (1927) 4 O. W. N., 1053.

(2) (1910) 13 O. C., 152.  
(4) (1905) L. R., A. C., 369.

It is thus clear that any enactment affecting procedure must be given effect to at once, and the learned Additional Subordinate Judge appears to have been in error in holding that the notification only applied to those cases of execution of decrees in which till the 1st of April, 1932, neither an enquiry into the nature of the property was held nor its sale had been ordered.

For the reasons given above I allow this appeal with costs, set aside the order of the lower court, and direct that the execution proceedings pending in the court of the Additional Subordinate Judge of Hardoi be transferred to the court of the Collector of Hardoi.

*Appeal allowed.*

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*Nanavutty, J.*

## APPELLATE CIVIL

*Before Mr. Justice E. M. Nanavutty*

SURAJ BAKHSH SINGH, RAJA BAHADUR (PLAINTIFF-APPELLANT) *v.* BHUGGA AND ANOTHER (DEFENDANTS-RESPONDENTS)\*

1933  
*March, 6*

*Landlord and tenant—Abadi—Wajib-ul-arz providing that tenants had no right to transfer their houses and compounds—Tenants, whether had transferable rights in their house and compound—Usufructuary mortgage by tenants of their house and ahata appurtenant to it, validity of—Easements Act (V of 1882), as amended by Act (XII of 1891), section 62—Licensee—Tenants' position with respect to their houses, whether that of licensees.*

Where the words in a *wajib-ul-arz* were: "*Riaya ko bila ijazat malikan deh makan jadid banane ka ikhtiyar nahin rahta wa ta abad rahne gaon ke makan ba kabze rahta hai. Bar wakht nikal jane unke gaon se makan ba kabze malikan deh ajata hai. Kisi bashinde ko ikhtiar intikal niz utha le jane amla makan ka dusre gaon men hasil nahin rahta, va dena arazi uftada ka waste tamir makan ke riaya ko va banwa dena makan riaya ka munhasir ba razamandi jumla malikan deh rahega,*" held, that the tenants of the village had no transferable rights in their houses and the *ahatas* appurtenant to them. They

\*Second Civil Appeal No. 13 of 1932 against the decree of Shaikh Muhammad Baqar, Additional Subordinate Judge of Sitapur, dated the 27th of November, 1931, upholding the decree of Babu Gopal Chandra Sinha, Munsif, Sitapur, dated the 31st of July, 1931.