

## APPELLATE CIVIL.

*Before Sir Shadi Lal Chief Justice, and Mr. Justice Fforde.*

1923

SALIG RAM AND OTHERS (DEFENDANTS)—Appellants

Feb. 9.

*versus*

BARKAT ALI, ETC. (PLAINTIFFS) } Respondents.  
M<sup>st</sup>. KARM BIBI, ETC. (DEFENDANTS) }

Civil Appeal No 80 of 1920.

*Punjab Pre-emption Act I of 1913, section 3 (5) (a)—Sale by guardian on behalf of his ward with the leave of the Court—whether exempt from the law of pre-emption—Guardians and Wards Act, VIII of 1890, section 29.*

*Held*, that a sale by a guardian of the property of his ward which requires and has received the sanction of the Court under the provisions of section 29 of the Guardians and Wards Act, is not a "sale in execution of an order of a Civil Court" within the meaning of section 3 (5) (a) of the Punjab Pre-emption Act, and is consequently not exempt from the law of pre-emption.

*Second appeal from the decree of Khan Bahadu Sheikh Amir Ali, District Judge, Gujranwala, dated the 7th October 1919, affirming that of Aga Muhammad Ibrahim, Munsif, 1st class, Gujrat, dated the 31st May 1919, and decreeing the plaintiffs' claim.*

SHUJA-UD-DAN, for Appellants.

NEMO, for Respondents.

The judgment of the Court was delivered by—

FFORDE J.—The only question we have to determine in this appeal is whether the sale in respect of which the right to pre-emption is sought to be exercised, comes within the exceptions in section 3 (5) (a) of the Punjab Pre-emption Act of 1913. It is there provided that 'sale' shall not include, *inter alia*, a sale in execution of an order of a Civil Court. The sale in the present case was of certain property owned by a minor and therefore required the sanction of the Court.

The guardian of the minor accordingly applied to the Court, under section 29 of the Guardians and Wards Act (Act No VIII of 1890) for leave to execute a sale deed which had already been drawn up and approved of by the parties. Leave was granted and the conveyance was duly executed and registered.

The appellant contends that this transaction comes within the definition of a sale in execution of an order of a Civil Court. We cannot accept this contention.

The sale in the present case was an ordinary private transaction and only required the sanction of the Court because one of the parties to it was under disability. Section 29 of the Guardians and Wards Act prohibits the sale by a guardian of the property of a ward without permission of the Court. The Court under this section makes no order for sale, but merely authorises a transaction which would otherwise not be binding upon the minor. The sale is in fact a transaction *inter parties* approved of by the Court. The Court having approved of the contemplated sale has no further say in the matter.

We are accordingly of opinion that section 3 (5) (a) of the Pre-emption Act has no application to the case before us and we dismiss the appeal.

C. H. O.

*Appeal dismissed.*

### CIVIL REFERENCE.

*Before Mr. Justice Martinson.*

GIAN SINGH-BAHADUR SINGH—Petitioner,

*versus*

THE CROWN—Respondent.

Civil Reference No. 20 of 1922.

1923

Feb. 10.

*Excess Profits Duty Act, X of 1919, section 18, rules—meaning of the words "proceedings for the recovery of any sum" in sub-rule (3) of rule 24.*

Sub-rule (3) of rule 24 of the rules made by the Governor-General in Council under section 18 (1) and (2) of the Excess Profits Duty Act, X of 1919, provides that save in accordance with the provisions of sub-rule (1) of rule 11 no proceedings for the recovery of any sum payable under the Act or these rules shall be commenced after the 31st March 1921. The question before the High Court was whether "proceedings for the recovery of any sum" refer to proceedings taken after default has been made in payment or whether such proceedings begin when a notice of demand has been served on the assessee.