

With the above expression of our opinion we return the case to the Commissioner. The assessee was not represented before us, there will, therefore, be no order as to the costs of this reference.

N. F. E.

1927

JESA RAM

v.

COMMISSIONER
OF INCOME-TAX.

REVISIONAL CIVIL.

Before Mr. Justice Addison.

COURT OF WARDS, ESTATE *Sodhi*
RICHPAL SINGH (JUDGMENT-DEBTOR) Petitioner

versus

DEVI DAS (DECREE-HOLDER) Respondent.

1927

Feb. 1.

Civil Revision No 92 of 1927.

*Punjab Court of Wards Act, II of 1903, section 31 (2)—
Sale of Ward's property in execution of decree—without
certificate—ultra vires.*

Where the estate of a judgment-debtor comes under the management of the Court of Wards under sections 9 and 10 of Punjab Act II of 1903, and a decree is outstanding against the Ward at that time, execution of it cannot be proceeded with until the decree-holder files a certificate under section 31 (2), that the claim has been notified in accordance with section 26, and execution proceedings taken in the absence of such a certificate are *ultra vires*.

Application for revision of the order of Sheikh Ali Muhammad, Senior Subordinate Judge, Ferozepore, dated the 25th August 1926, rejecting the application setting forth objections as being time-barred, etc.

CARDEN-NOAD, for Petitioner.

MULK RAJ, for Respondent.

JUDGMENT.

ADDISON J.—The estate of *Sodhi* Richpal Singh came under the management of the Court of Wards

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under sections 9 and 10 of Act II of 1903 on the 18th March 1926. At that time there was an outstanding decree for Rs. 15,000 with costs against the ward. The decree-holder had, on the 13th December 1925, *i.e.*, prior to the estate coming under the Court of Wards, applied for execution and a certain house was attached. Though it is alleged to be a very valuable property, it was knocked down to the decree-holder for Rs. 400 at the auction sale which took place on the 6th July 1926, *i.e.*, long after the estate had come under the Court of Wards. On the 9th August 1926, *i.e.*, 33 days after the date of the auction sale, the Manager of the Court of Wards appeared before the executing Court and presented an application that all the proceedings were void as the estate was in the charge of the Court of Wards and it was necessary for the decree-holder to inform the Deputy Commissioner before he could proceed to execute his decree. The executing Court on the 25th August 1926 treated this as an application objecting to the sale and held it to be time-barred as it had been presented more than thirty days after the sale. Consequently the executing Court confirmed the sale on the above date. Against this order this application for revision has been preferred.

It is obvious that there was no objection to the sale but a general objection by the Manager of the Court of Wards that the executing Court has no jurisdiction to go on. This being the case, this is not so much an appeal as a revision against the order of the executing Court, dated the 25th of August 1926, on the ground that it acted without jurisdiction in going on with the execution proceedings when it had been brought to its knowledge that such proceedings were barred under Act II of 1903.

It was admitted before me that under the provisions of Chapter 6 of Punjab Act II of 1903 it was necessary for the decree-holder after the 18th March 1926 to obtain a certificate from the Deputy Commissioner before he could proceed any further with his execution. It is true that it is stated in section 31 (1) that the Deputy Commissioner should not disallow any claim based upon a decree, but from section 31 (2) it follows that, after the 18th March 1926 all suits and all proceedings in execution of any decree against the ward should have been stayed until the plaintiff or decree-holder filed a certificate that the claim had been notified in accordance with section 26. In the present case the Deputy Commissioner was never approached and no certificate was ever obtained. It follows that all the proceedings after the 18th March 1926 were without jurisdiction.

It was argued on behalf of the respondent that proceedings could now be stayed by me in order to allow him to obtain the necessary certificate. This is, however, impossible as the proceedings have ended. Though the Deputy Commissioner may be compelled under section 31 (1) of the Act to allow a claim based upon a decree, still the application for the certificate would have put him on his guard and allowed him to make arrangements for paying off the decree or coming to a settlement with the decree-holder. He had no such opportunity in the present case. There is no doubt that the executing Court had no jurisdiction to go on with the execution after the 18th March 1926. I, therefore, accept this petition and set aside all the proceedings of the lower Court regarding the sale of the house in question. I, however, maintain the attachment upon the house in question. But further proceedings for the sale of the house cannot

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be taken until the decree-holder files a certificate under section 31 (2) of Punjab Act II of 1903. The petitioner will have his costs here.

A. N. C.

Revision accepted.

CIVIL REFERENCE.

Before Mr. Justice Zafar Ali and Mr. Justice Jai Lal.

GANESH DAS, Petitioner,

versus

THE COMMISSIONER OF INCOME-TAX,

Respondent.

Civil Reference No. 24 of 1926.

Indian Income-tax Act, XI of 1922, section 34—Income assessed in hands of wrong person—whether “escaped” assessment—Limitation.

Where the income was assessed within limitation but in the hands of an assessee to whom it was subsequently found not to belong—

Held, that as the income had for the purposes of section 34 of the Act escaped assessment so far as the person who received it was concerned, whatever might be the reason for the Income-tax Officer's failure, that income could neither be re-assessed under section 34, nor could action be taken under section 35, after the expiry of the period of limitation prescribed.

Case referred by M. L. Darling, Esquire, Commissioner of Income-tax, Lahore, with his letter No. 505-J. M., dated the 3rd/4th June 1926, for the orders of the High Court.

FAKIR CHAND and BADRI DAS, for Petitioner.

JAGAN NATH, AGGARWAL, for Respondent.

The Order of the Court was delivered by :—

ZAFAR ALI J.—This is a reference under section 66 (1) of the Income-tax Act. The learned Income-