

many cases, be somewhat difficult to arrive at the true capitalized value to the landlord of this chance of enhancement, but it will be for the landlord who sets up such a claim to make it out and show what the true value is. I do not think the landlord can be entitled to anything more, nor have I heard it suggested that he can be. After thus providing for the claims of the landlord the balance ought to be paid to the tenant. Applying then these principles to the case before us, I do not think that the landlord has any cause for complaint. He has received Rs. 300 out of Rs. 600. His rent is Rs. 10 : the Court has valued this at 15 years' purchase, which gives a capitalized sum of Rs. 150. It is not clear for what the remaining Rs. 150 has been given to him; if for the chance of enhancement of rent it is a handsome award, for it proceeds upon the footing of an enhancement of another Rs. 10 rent per annum at 15 years' purchase, although upon this question the landlord went into no evidence before the Collector. But assuming that the landlord is entitled to 20 years' purchase of his rent, that would give him Rs. 200. Even then he has been awarded a further sum of Rs. 100 as representing the capitalized value of his chance of an enhanced rent, which at 20 years' purchase would mean an enhanced rent of Rs. 5 per annum. From [149] either point of view then, the landlord has received his full share of the compensation money. The appeal fails and must be dismissed with costs.

BANERJEE, J.—I am of the same opinion.

HARRINGTON, J.—I concur.

Appeal Dismissed.

28 C. 149.

Before Sir Francis W. Maclean, K.C.I.E., Chief Justice, Mr. Justice Banerjee and Mr. Justice Stevens.

UMA CHARAN DAS (*Opposite party*) v. MUKTAKESHI DASI
(*Applicant*).* [16th July, 1900.]

Appeal—Probate and Administration (Act V of 1881), ss. 51, 86 and 90—Order granting permission to dispose of immoveable property.

An appeal lies to the High Court against an order passed by a District Judge or District Delegate granting permission to an executor or administrator to dispose of immoveable property under s. 90 of the Probate and Administration Act (V of 1881).

ONE Muktakeshi Dasi applied to the District Judge of 24-Pergunnahs to obtain letters of administration in regard to the property of her deceased husband. The District Judge on the 22nd September 1897* made the following order:—

“Kedar Nath examined. Letters of administration granted. Bond with one surety in Rs. 800. Notice will be given to Uma Charan Das, sister's son of the deceased husband of the petitioner, when any application is made for permission to sell or mortgage any part or whole of the property belonging to the estate as applied for to day by the said Uma Charan Das.”

THEN an application for permission to sell certain immoveable property belonging to the estate of the deceased husband of the administratrix was made and permission was granted on the 21st January 1898, but without any notice to Uma Charan Das. Thereupon Uma Charan put in an application for the revocation of the order granting permission, but that application was rejected on the 28th February 1898. Uma Charan

* Appeal from Order No. 201 of 1899, against the order of F. F. Handley, Esq., District Judge of 24-Pergunnahs, dated the 17th of April 1899.

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filed an appeal to the High Court against the orders passed on the 21st January 1898, and [150] 23th February 1898. At the hearing of the said appeal a preliminary objection was taken on behalf of the respondent that no second appeal lay to the High Court. There was a difference of opinion between Mr. Justice BANERJEE and Mr. Justice RAMPINI, the former was of opinion that a second appeal lay to the High Court, whilst the latter expressed a contrary view. But inasmuch as the order, dated the 21st January 1898, was passed without any notice to Uma Charan, the Court interfered under s. 622 of the Civil Procedure Code, and remanded the case for re-hearing after giving notice to Uma Charan. The District Judge of 24-Pergunnahs, Mr. F. F. Handley, after notice had been given to Uma Charan, having re-heard the case, confirmed his previous judgment, and gave permission to the administratrix to dispose of certain immoveable property belonging to the estate of her deceased husband, on the ground that the widow was entitled to do so to pay off the debt which was incurred by her for her maintenance.

Against this order Uma Charan preferred an appeal to the High Court.

Babu Sarat Chundra Dutt, for the appellant.

Babu Dasarathi Sanyal, for the respondent, took a preliminary objection, that no appeal lay to the High Court. The order was one passed under s. 90 of the Probate and Administration Act, which is in ch. VI of the Act. S. 86, which provides for appeals is in ch. V, which says that every order made by a District Judge or District Delegate by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court. The word "hereby" indicates that it speaks of the powers conferred in ch. V.

1900, JULY 16. The judgments of the High Court (MACLEAN, C. J., BANERJEE and STEVENS, JJ.) were (so far as material for the point reported) as follows:—

MACLEAN, C. J.—This appeal must succeed. A preliminary objection has been taken that an appeal does not lie to this Court from an order of the District Judge in a case such as the present. I am unable to accept that view. S. 86 of the Probate and Administration Act says that every order made by a District Judge or District Delegate by virtue of the powers thereby [151] conferred upon him shall be subject to appeal to the High Court. The order now appealed against is an order made by the District Judge, but it is said that an appeal does not lie because the expression "hereby," only applies to powers conferred under the chapter which contains the section, and this argument rests upon the position in which the section is placed in the Act itself. I am unable to accept that view: there is nothing in the Act to narrow the meaning of the expression "hereby" which to my mind means "by the whole Act" and not merely by the chapter in which the section appears. An appeal, therefore, lies. * * * * * The appeal must be allowed with costs in both Courts.

BANERJEE, J.—I am of the same opinion. I only wish to add a few words with reference to the preliminary objection taken that no appeal lies against the order in question. The provision in the Probate and Administration Act in regard to appeals is s. 86, which provides that "every order made by a District Judge or District Delegate by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court," &c. It is true that the order appealed against is an order

granting the respondent permission to dispose of immoveable property, and the section of the Act which speaks of such permission is s. 90, which is contained in ch. VI of the Act which follows ch. V in which s. 86 occurs. But s. 90 does not say anything about the power of the District Judge to grant permission to dispose of immoveable property, and the power which the District Judge has to grant such permission must be that conferred upon him by s. 51, which precedes s. 86 and which provides that the District Judge shall have jurisdiction in granting and revoking probate and letters of administration in all cases within his district. The power to grant permission to an administrator to dispose of immoveable property must be considered as ancillary to the power vested in the District Judge in granting letters of administration.

STEVENS, J.—I also think that an appeal lies in this case and that the appeal on the merits should be allowed.

Appeal allowed.

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28 C. 152.

[152] *Before Sir Francis W. Maclean, K.C.I.E., Chief Justice and Mr. Justice Banerjee.*

NARAIN CHANDRA BORAL (*Claimant*) v. THE SECRETARY OF STATE FOR INDIA IN COUNCIL (*Opposite Party*).^{*} [9th August, 1900.]

Land Acquisition Act (I of 1894), s. 8, cl. (b) and 23—Person interested—Lessee of a tank with right of fishery whether entitled to compensation.

For the purposes of the Land Acquisition Act, a lessee of a tank is in the same position as a yearly tenant of agricultural land. He is a "person interested" within the meaning of s. 23 of that Act, and is entitled to compensation.

THIS appeal arose out of a reference made by the Land Acquisition Deputy Collector of 24-Pergunnahs, under s. 18 of the Land Acquisition Act. The claimant, who is a fisherman by profession, held two tanks at a yearly rent of Rs. 125 under one Kedar Nath Koondoo Chowdhry and others. The said tanks were acquired by Government, and the Land Acquisition Deputy Collector awarded Rs. 34-8 as the price of the fish and compensation. The claimant objected to the amount, and hence the reference was made. The District Judge on the objection of the Government held that the claimant being only a yearly tenant of the tanks was not a "person interested" within the meaning of s. 23 of the Land Acquisition Act, and, therefore, he was not entitled to any compensation. The material portion of his judgment was as follows:—

"The price of fish does not fall within the perview of any of the clauses of s. 23. It might come under cl. (4), but the claimant has no land taken possession of by the Collector. The definition of 'person interested' does not apply to the claimant, who has not even an easement affecting the land acquired. Jalkar, no doubt, is an easement and immoveable property, but a fishery right differs from the fish captured in the exercise of that right. Then 'fish' is not included in the definition of 'land' contained in the Act, s. 3, cl. (a)."

Against this judgment the claimant appealed to the High Court.

Babu *Jyoti Prosad Sarbadhicary*, for the appellant.

Babu *Sirish Chandra Chowdhry*, for the respondent.

^{*} Appeal from Original Decree No. 407 of 1898, against the decree of C. P. Casperg, Esq., District Judge of 24-Pergunnahs, dated the 3rd of September 1898.