

Privy Council Appeal No. 59 of 1920.
Oudh Appeal No. 4 of 1919.

Narindra Bahadur Singh - - - - - *Appellant*

v.

The Oudh Commercial Bank, Limited, Fyzabad - - - - - *Respondents*

FROM

THE COURT OF THE JUDICIAL COMMISSIONER OF OUDH.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 9TH MAY, 1921.

Present at the Hearing :

VISCOUNT HALDANE.

LORD ATKINSON.

SIR JOHN EDGE.

[*Delivered by* VISCOUNT HALDANE.]

The question on this appeal is whether the respondents can enforce a decree made a good while ago in a suit for sale of certain mortgaged properties. The preliminary decree was made on the 15th June, 1915, on appeal to the Court of the Judicial Commissioner from a decree dated the 31st October, 1912, of the Subordinate Judge of Lucknow. A few days later, on the 21st July, 1915, the Court of Wards purported to declare the mortgagor a disqualified proprietor, and assumed superintendence of his estate under the United Provinces Court of Wards Act (Act 4 of 1912). On a date which is variously stated, but appears to have been the 21st February, 1916, the decree was made final. On the 14th June, 1916, the mortgagor applied for the estate to be released and on the 12th September, 1917, the estate was released from the superintendence of the Court of Wards under the direction of the Local Government, which had been set in motion and in some way directed to bring that about by the Central Government of India.

The appellant is now resisting the execution of the decree, because, he says, the decree absolute is not binding on him,

inasmuch as the Court of Wards had no jurisdiction to represent him in the proceedings.

The contention of the respondents and the view taken by the Court below is that the action of the Court of Wards while its superintendence continued to exist was operative, and that it cannot be treated as having been a nullity ; it was good until set aside by the Local Government, acting on the directions of the Central Government of India.

Their Lordships' attention has been drawn to certain sections of the United Provinces Court of Wards Act IV of 1912, to the effect that no declaration made by the Local Government under Section 8 or by the Court of Wards under Section 10 is to be questioned in any Civil court, and there are analogous provisions to those providing for other cases which cover the kind of proceedings which are before their Lordships.

The material facts are these : As has been said, the preliminary decree for sale was obtained on the 31st October, 1912, the mortgage having been executed a long time previously, in 1894. The decree stood in substance, although it was modified on appeal, and then there were rather complicated questions raised as to interest which were the subject of proceedings, and they are in form before their Lordships. But as to that the matter was disposed of in the course of the petition that was presented to the Board for a stay of execution. The result is that the question with regard to the interest is not now before their Lordships ; the only question that is before them being whether the Court of Wards validly represented the appellant in the substantial proceedings in regard to the decree itself.

On the 21st July, 1915, the Court of Wards assumed superintendence of the estate of the appellant. The Bank then applied for a decree absolute for sale against the Court of Wards, representing the appellant, and it was made on the 21st February, 1916. Then there were arrangements made between the Court of Wards and the Bank for the postponement of the execution of the terms of the decree with which their Lordships are not concerned, and there were certain questions as to whether there should be an appeal to the Privy Council from the decision in India as to the validity of the decree for sale, but the Court of Wards was unwilling to appeal to His Majesty in Council, and ultimately no appeal was brought. Then by an order of the Local Government made on the 16th May, 1917, under the order of the Government of India, the estate of the appellant was directed to be released upon payment by him of the sum of Rs. 57,000. On the 29th June, 1917, the mortgagor paid that sum and on the 12th September, 1917, his estate was, as already stated, released from the superintendence of the Court of Wards. On the 3rd July, 1917, the Bank made a second application for the execution of the final decree of the 21st February, 1916, by which it was declared that the mortgaged properties were to be sold, and the only question before their Lordships is whether the decree absolute is one that was binding on the appellant, inasmuch

as it was made against the Court of Wards, which it is now said had no jurisdiction to act. Their Lordships have not before them the terms of the order made by the Government of India, nor the correspondence which took place between the Central Government and the Local Government. For reasons of State, these documents are not produced and their production cannot be compelled, but there is no reason to infer that they would make the matter in any way different from what it *prima facie* appears to be. The Local Government put the Court of Wards in charge of the appellant's estate and *prima facie* that was within their powers. It continued to be under their control until the Local Government released it. It is not to be presumed, unless it is clearly proved by the appellant, that the release operated retrospectively, so as to invalidate all the multitudinous acts which must have been done while the Court of Wards was in superintendence. Their Lordships are, therefore, unable to take any view different from that taken by the Court below. In the Court below reference was made to the terms of the United Provinces Court of Wards Act of 1912, and particularly to Sections 8, 11 and 12, and to Chapter VII, which contains Sections 53 to 60, all of which point to what is a stringent provision that no one is to investigate the motives or review the discretion of the governing body which is being dealt with, or to question what it has done in the Courts.

Without proof that the proceedings of the Court of Wards were a nullity, their Lordships are not in a position to look into the matters which have been sought to be discussed before them. It is enough to say that their Lordships agree with the judgment of the Court below, and they will therefore humbly advise His Majesty that this appeal be dismissed with costs.

In the Privy Council.

NARINDRA BAHADUR SINGH

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THE OUDH COMMERCIAL BANK, LIMITED,
FYZABAD.

DELIVERED BY VISCOUNT HALDANE.

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