

(1913) 11 AHC CK 0015
In the Allahabad High Court

Fatmatul Kubra

APPELLANT

Vs

Achchi Begam
Naziruddin and Others Vs Azhar Husain

RESPONDENT

Date of Decision : 19-11-1913

Acts Referred:

Citation : AIR 1914 All 339

Hon'ble Judges : Tudball, J; Muhammad Rafiq, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Tudball and Muhammad Rafiq, JJ.—The facts of this case, so far as it is necessary to state them for deciding this appeal, are as follows: A decree-holder in execution of her decree attached a grove or garden in mauza Udaipur in the Bareilly district in which stands a house. The area of the grove is some ten bighaa pacca. The court sold the property through the agency of the Court Amin under Clause (3) of Rule 8 of chapter IV of the General Rules for the Civil Courts. Among other objections, one objection taken is, that the land in question is ancestral land and could only be sold by the Collector after transfer of the execution of the decree to his court, u/s 68 of the Code of Civil Procedure, and that, therefore, the proceeding of the court below is entirety -without jurisdiction. On the issue remitted to the court below, that court held that the land in question is ancestral land, but it has expressed its opinion that in spite of that it is a grove or garden such as is contemplated in Clause (3) of Rule 8 of chapter IV of the General Rules mentioned above. "Ancestral" lands for the purposes of these rules are "all lands being mahals or shares in mahals or portions of mahals which have been owned continuously by the proprietor from the 1st of January, 1860, etc." The court below has held that this property has been in the family of the judgment-debtor for well over fifty years. It has also held that it is a portion of a mahal. The patwari's evidence also shows that it is part of mahal safed in mauza Udaipur and 13 assessed to revenue. It is, therefore, clear to us that the property is ancestral land within the definition

given in the rules.

2. It is urged, however, on behalf of the auction-purchaser that the gardens, groves and lands occupied by houses all fall within Clause (3) of Rule 8, whether they are ancestral or non-ancestral. With this we find it impossible to agree. Lands which are ancestral also include gardens or groves. This is clear from a consideration of Rule 8, Clause (2), which lays down that non-ancestral land shall be sold by the Collector, who is to be appointed by the court for this purpose, but specially exempts "gardens, groves or lands occupied by houses or appurtenant thereto." An examination of Clause (1) shows that in respect of ancestral lands there is no such exception. All ancestral lands have to be sold in accordance with Rule 1. Non-ancestral lands have to be sold in the manner laid down in Rule 2, except gardens, groves or lands occupied by houses or appurtenant thereto. These latter have to be sold in the manner laid down in Clause (3) of the rules. If there had been any intention to exempt ancestral lands, the exemption would have been clearly stated in Clause (1), as it has been clearly stated in Clause (2), in respect of non-ancestral lands. In our opinion the sale by the court below through the Amiu, of the land in question was entirely without jurisdiction, and under the law it was necessary for the court to transfer the decree under-Section 68 of the CPC to the Collector, who then alone would have jurisdiction to execute the decree and put the property to sale. In this view, it is unnecessary to go into any other point in the appeal. We allow the appeal, set aside the sale and direct the record to be returned to the court below with instructions to proceed with the execution of the decree, according to law. The appellant will have her costs of the appeal.