

(1914) 04 AHC CK 0026
In the Allahabad High Court

Lal Singh and Others

APPELLANT

Vs

The Collector of Etah

RESPONDENT

Date of Decision : 08-04-1914

Acts Referred:

Citation : (1914) ILR (All) 331 : 25 Ind. Cas. 398

Hon'ble Judges : Henry Richards, C.J.; Pramada Charan Banerji, J

Bench : Division Bench

Judgement

Henry Richards, C.J. and Pramada Charan Banerji, J.—This appeal arises out of the following circumstances. The Court of Wards as representing the estate of the minor Raja Surajpal Singh were putting into execution a decree which admittedly is the property of the ward. In execution certain property was attached. The appellants objected to the attachment, but their objection was overruled. Whereupon the present suit was brought for a declaration that the property was not liable to attachment in execution of the decree. The court of first instance dismissed the claim on the ground that no, notice was given as provided by Section 48 of the Court of Wards Act (No. III of 1899) which was then in force. The lower appellate court confirmed the decree of the court of first instance. Section 48 is as follows: "No suit relating to the person or property of any ward shall be instituted in any Civil Court until the expiration of two months after notice in writing has been delivered to or left at the office of the Collector in charge of the estate, stating the name and place of abode of the intending plaintiff, the cause of action, and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left." It is admitted that no such notice was served in this case. It is contended on behalf of the appellants that, inasmuch as the suit did not relate to the person or property of the ward, notice was unnecessary. It seems to us that this contention is sound. In the present suit the validity of the decree which belongs to the ward is not challenged. The property which is sought to be sold in execution of the decree admittedly does not belong to the ward. Under these circumstances in our opinion the present suit does not relate either to the person or the property of

the ward, and we think that a notice was therefore unnecessary. We allow the appeal, set aside the decree of both the courts below, and remand the case to the court of first instance through the lower appellate court with directions to re-admit it under its original number on the file and proceed to determine the same according to law. Costs here and hitherto will be costs in the cause.