
(1911) 06 AHC CK 0008
In the Allahabad High Court
Case No : Civil Revision No. 13 of 1910

Muazzam Ali Shah and Another

APPELLANT

Vs

Chunni Lal

RESPONDENT

Date of Decision : 19-06-1911

Acts Referred:

Citation : (1911) 06 AHC CK 0008

Final Decision : Allowed

Judgement

Sir George Knox and Karamat Husain, JJ.—One Lala Chunni Lal, who is respondent, has obtained a decree against one Syed Muazzam Ali Shah. The decree is for money due upon a contract entered into by the said Syed Muazzam Ali Shah after he had become a ward of the court. The decree-holder having obtained the decree has tried to execute it by attachment and sale of the judgment-debtor's movable property in a certain kothi in the Meerut Cantonment, Objection was taken apparently to the effect that u/s 19 of the Court of Wards Act (Act III of 1899), the decree-holder should apply for a certificate from the Collector that the claim was notified u/s 16.

2. The Munsif of Meerut held that it was too late to take this objection, but the learned Munsif appears to have overlooked the fact that the suit and proceedings in execution are a fraud upon the Court. u/s 49 of Act III of 1899 this suit should have been brought in the name of the Collector in charge of the property and not otherwise. As soon as it was brought to the notice of the Court that the judgment-debtor was a ward of court, the Court should have of its own motion then and there made the Collector a party and waited for such defence as the Collector might put forward. The learned counsel for the decree-holder suggest that the property which he was seeking to attach was property not under the superintendence of the Court of Wards. It is difficult to conceive the existence of such property; but in any case, looking to the terms of sections 32 and 49 of Act III of 1899, we have no hesitation in saying that the order of the court below was in error. It is set aside, and the application is allowed with costs in both courts.