

(1932) 12 AHC CK 0027
In the Allahabad High Court

Sheo Kumar

APPELLANT

Vs

Bal Bhaddar Prasad

RESPONDENT

Date of Decision : 07-12-1932

Acts Referred:

Citation : AIR 1933 All 138(1)

Hon'ble Judges : Niamatullah, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Niamatullah, J.—This is a first appeal from an order in execution brought by the judgment-debtor. The point in appeal is an allegation that the property which the decree-holder desires to sell is ancestral property and therefore the sale should be by the Collector. In General Rules (Civil), Chap. 4, Rule 8, there is a definition of the words "ancestral land," and the definition lays down in para. (a) that the land must have been owned continuously in the province of Agra from 1st January 1860, by the proprietor or by the person or persons from whom such proprietor has directly or indirectly inherited such lands. It is contended that the case in question could come under the sub-heads (b), (c) or (d). Now the evidence establishes that the maternal grandfather of the father of the judgment-debtor made a gift of the property in question to the father of the judgment-debtor. It is also admitted that this gift was after the Fasli year 1280, that is, after the year 1872 or 1873. Accordingly the gift was made after 1st January 1860. The conditions therefore of I.R. 8 (a) have not been fulfilled because a gift has intervened and it has not been a case of a direct holding or a transfer by inheritance only. Some suggestion was made that the donee might have inherited from the donor; but even if that were so, the fact that instead of passing by inheritance the property in question has passed by gift renders it impossible to hold that the property is now ancestral land within the meaning of the rule in question. Accordingly we dismiss this first appeal with costs.