

(1916) 05 AHC CK 0004
In the Allahabad High Court

Wesal-Ud-Din and Another

APPELLANT

Vs

Fazal Ahmad

RESPONDENT

Date of Decision : 15-05-1916

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 66

Citation : (1916) ILR (All) 481

Hon'ble Judges : Walsh, J;Sunder Lal, J

Bench : Division Bench

Judgement

Walsh and Lindsay, JJ.—This is an appeal arising out of the execution of a decree for sale of property. The decree-holder has applied for sale of a certain village. The question before the Court is whether the proceedings in execution should be in accordance with the rules relating to sale of ancestral property as defined in chapter IV, Rule 5, of the General Rules of Practice for Civil Courts, or that proceedings should continue as for sale of non-ancestral property. The court below issued to the judgement-debtor a notice under Rule 66 of Order XXI. According to the decree-holder the property was non-ancestral. The judgement-debtor appeared to show cause and has urged that in this particular case the property should have been held to have been ancestral land within the meaning of that term as used in Rule 5 of that chapter. Under Clause (a) of that rule all lands being mahals or shares in or portions of mahals which have been owned continuously, in the province of Agra by the proprietor from the 1st January, 1860 or by the person or persons from whom such proprietor has directly or indirectly inherited such lands, are to be deemed ancestral land within the meaning of that rule. In this case the property was acquired by Ilahi Bikhsh, grandfather of the objector, in the year 1847. He gifted the property to Niaz Ahmad, who made a gift of the same to Fazal Ahmad in 1872. The rule in question applies to case where the property has been directly or indirectly inherited by the proprietor. The question is whether property acquired by gift can be said to be inherited. Under the ordinary law of inheritance if Ilahi Bux and Niaz Ahmad had several heirs the property would have been divided and would

have come in a fractional share only to Fazal Ahmad. But it is under a gift that Fazal Ahmad has acquired the whole property and we are unable to say that property to which title is made out by gift is property inherited within the meaning of the rule. We think the decision of the court below is correct and we accordingly dismiss the appeal with costs.