has been upheld. Following those decisions, I would dismiss this appeal with costs."

It will, therefore, appear that the observations of the learned Judge, that the transfer of a right to mesne profits is not hit by section 6(e) of the Transfer of Property Act, are merely obiter. In this situation, I am not prepared to accept Atma Ram's argument, based on the decision in *P. Venkatarama Aiyar's* Case. The learned counsel has also brought to my notice the decisions in *Jat Mal* v. *Hukam Mal Tani Mal and others* (13); *Seth Lachmi Narayan* v. *Dharamchand* (14); *Vatakkethala Thottungal Chakku's son Mathu* v. *Achu and others* (15); *Bharat Singh* v. *Binda Charan and others* (16); and *Subh Ram and others* v. *Ram Kishan and others* (17); in support of his contention. None of these cases has a direct hearing and are clearly distinguishable. In this view of the matter, I see no reason to differ from the decision of the lower appellate Court.

For the reasons recorded above, this appeal fails and is dismissed. But as there is no representation from the respondents, there will be no order as to costs. In view of the importance of the question involved. I certify this case as a fit one for apeal under Clause 10 of the Letters Patent.

R. N. M.

APPELLATE CIVIL

Before Daya Krishan Mahajan, J.

GURDIAL KAUR AND OTHERS,—*Appellants*

versus

MIHAN SINGH AND OTHERS,—*Respondents*

S.A.O. No. 31 of 1966.

May 9, 1967

Code of Civil Procedure (Act V of 1908)—Order XXI Rule 90—Sale in execution of a decree which is a nullity—Whether can be set aside even if the objections to the sale are barred by time.

(13) A.I.R. 1930 Lahore 820.
(14) A.I.R. 1926 Nagpur 396.
(15) A.I.R. 1934 Mad. 461.
(16) A.I.R. 1918 Oudh. 374.
(17) A.I.R. 1943 Lahore 265.

Held, that a decree, which is a nullity, is no decree at all in law and no sale can take place in execution thereof. The judgment-debtor can simply ignore such a decree and recover the property at any time, if it has gone out of his possession, of course within the statutory period of 12 years. It is no consequence that the objections to the auction sale were barred by time.

Second Appeal from the decree of the Court of Shri Banwari Lal, Additional District Judge, Faridkot, dated the 25th April, 1966, *reversing that of Shri Rameshwar Lal Gupta, Sub-Judge, 1st Class (B), Faridkot, dated 22nd May,* 1965, *setting aside the order passed by the executing court on the objection petitions and sending back the cases to it for deciding afresh the objection petition in the light of his observations.*

TIRATH SINGH MUNJRAL, ADVOCATE, for the Appellants.
KEDAR NATH TEWARI, ADVOCATE, for the Respondents.

JUDGMENT

MAHAJAN, J.—This appeal is against the order of remand passed by the learned Additional District Judge, Faridkot.

The contention of the learned counsel for the appellant is that the remand is not justified because:—

(1) The objections to the sale raised by the respondent were barred by time and hence not maintainable. The sale in pursuance of the award under the Co-operative Societies Registration Act was effected on the 19th of February, 1960 and was confirmed on the 23rd of March, 1960. The objections were filed on the 20th of June, 1960/18th of August, 1961. The same are barred by limitation. In support of this contention, reliance is placed on a Full Bench decision of the Lahore High Court in *Gauri* vs. *Ude and others* (1) and particularly on the observations—

"that the judgment-debtor cannot ignore the auction sale on the ground that the Court had no jurisdiction to sell the property because the Court would have jurisdiction to sell unless and until the facts showing that the property is exempt from attachment or sale are alleged and proved by the judgment-debtor."
and

(1) A.I.R. 1942 Lahore 153 (F.B.).

(2) that the sale was to the decree holder, who, in turn, sold it to the third party, who are the present appellants; and, therefore, the sale is immune from attack on the principle enunciated by their Lordships of the Supreme Court in *Janak Raj* v. *Gurdial Singh and another* (2).

These contentions lose sight of the fact that the only objection raised and pressed by Mr. Tewari, who represents the judgment-debtor, is that the award, which is tantamount to a decree, was a nullity. Mr. Tewari maintains that if there is no decree at all in law, no sale can take place. He can simply ignore such a decree and recover the property at any time if it has gone out of his possession, of course within the statutory period of twelve years.

After hearing the learned counsel for the parties, I am of the view that the contention of Mr. Tewari is sound. The first contention of Mr. Munjral, learned counsel for the auction-purchaser, that the objections to the sale are barred by time, cannot be accepted because of the allegation that the decree, in pursuance of which the sale was made, is a nullity. The remand is directed to determine the question whether the decree is a nullity. I fail to see how, in case the Court finds, that the decree in pursuance of which the sale took place is a nullity, the sale can stay. The Full Bench decision in *Gauri's case* has no relevance in this situation. The Full Bench decision in *Gauri's case* does not lay down that the sale will be a good sale even if it has taken place in pursuance of a decree which is a nullity. In Gauri' case, the decree that was passed, was a valid decree. The only objection raised to the sale held in its pursuance was as to the saleability of the property in execution of that decree. Thus the decision in *Gauri's* case has no parallel so far as the present case is concerned.

The second contention of Mr. Munjral based on the Supreme Court decision in *Janak Raj's case* is also without any substance. Their Lordships of the Supreme Court were not dealing with a case where the decree itself was without jurisdiction. What happened in that case was that there was a valid decree, in pursuance of which the sale took place. On appeal, that decree was vacated. On these facts, it was observed by their Lordships of the Supreme Court that the sale which was made at a time when there was a valid and

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(2) A.I.R. 1967 S.C. 608.

subsisting decree would not lose its force because the decree was, later on, vacated in appeal. This case again has no parallel with the facts of the present case. It was not urged before their Lordships that the decree, which was vacated, was without jurisdiction or a nullity. As a matter of fact, has been repeatedly held by their Lordships of the Supreme Court that a decree or an order, which is a nullity, need not be vacated; and it can be ignored.

In this view of the matter, I see no ground to interfere with the order of the lower appellate Court. The appeal accordingly fails and is dismissed. The parties are directed to appear in the trial Court on the 29th of May, 1967. The costs will be costs in the cause.

B.R.T.

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

K. C. GUPTA AND OTHERS,—*Petitioners*

versus

UNION OF INDIA AND OTHERS,—*Respondents*

Civil Writ No. 2986 of 1965.

May 9, 1967

States Reorganisation Act (XXXVII of 1956)—Ss. 115, 116 and 129—The Punjab Services Integration Rules framed by State Government—Whether ultra vires S. 129—Central Government deciding matters under Ss. 115 and 116—Whether acts judicially—Decision of Central Government—Whether can be challenged in a writ petition.

Held, that section 129 of the States Reorganisation Act, 1956 confers exclusive powers on the Central Government to frame rules under the Act, but this does not take away from the States their normal authority to make rules regarding their services. The Punjab Services Integration Rules were made by the Punjab Government after the 1st of November, 1956, when the erstwhile Pepsu employees had already become subject to the control of the new state of Punjab. The Integration Rules were not made under the States Reorganisation Act, but under proviso to Article 309 of the Constitution. These rules were also framed in consultation with the Central Government and had the approval of that Government. They were not framed by the State Government in exercise of