

PRIVY COUNCIL

Lal Rajindra Narain Singh alias Lallu Sahib

Vs.

Mt. Sundar Bibi

Privy Council Appeal No. 48 of 1924
(Lords Shaw Carson, J Sir John Edge and Mr. Ameer Ali JJ.)

19.02.1925

JUDGMENT

LORD SHAW J.

1. The Board is of opinion that the conclusion reached by the High Court by their judgment of 2nd May, 1921, was correct. It is to be regretted that the High Court did not itself, in the exercise of its powers, appoint a receiver of this property which the judgment-creditor seeks to attach and bring to sale.
2. Their Lordships do not agree with the High Court on the subject of the actual legal position of the right of maintenance conferred upon the judgment-debtor. That right of maintenance arose under a compromise which was made between the judgment debtor and his brother. The compromise agreement is not produced, but its terms are said by the parties to be recorded in a decree pronounced by the Subordinate Judge of Jaunpur on 20th May, 1915. The substance of this agreement is that the judgment-debtor one of the two brother parties to the compromise was declared to have a right of maintenance in certain villages enumerated, the right being conferred expressly "without power to transfer."
3. In the present case the Subordinate Judge in his judgment of 10th August, 1920, correctly limits the issue between the parties to this maintenance question.
4. No other point was brought before the Board. Speaking of the plaintiff, the Judge says :- "He now wants to execute that decree against the property in 16 villages, which the judgment-debtor has got from his younger brother, Raja Lal *Bahadur Singh*, for his maintenance. His prayer is that this right of maintenance be proceeded against and a receiver appointed to realize rents and profits of the above-named 16 villages and the

decretal amount be paid out of the said realization as far as possible. To this the judgment debtor objects on the ground that the right of maintenance is not attachable under Section 60 of the Civil Procedure Code."

5. Their Lordships are of opinion that the right of maintenance is in point of law not attachable and not saleable. They think that Section 60 of the Civil Procedure Code, Head N, precludes an application for that purpose.

6. The proper remedy lies, in a fitting case in the appointment of a receiver for realizing the rents and profits of the property paying out of the same a sufficient and adequate sum for the maintenance of the judgment-debtor and his family, and applying the balance, if any, to the liquidation of the judgment-creditor's debt. The High Court point out in their judgment "the appropriate remedy is what is known as equitable execution or indirect execution, namely, by the appointment of a receiver who takes the place of the debtor and acts as an officer subject to the directions of the Execution Court in collecting and disbursing the debtor's income in accordance with the directions of the Execution Court towards the discharge of the claim of the decree-holder." These views appear to the Board to be sound.

7. Their Lordships think that the judgment of the High Court should be modified in the sense described, and that the case should be remitted to the High Court to make the appointment of the receiver on the terms just quoted.

8. In the circumstances their Lordships think that there should be no costs of this appeal ; and they will humbly advise His Majesty accordingly.

Decree modified.