

(1917) 11 AHC CK 0011

Allahabad High Court

Case No: None

Durga Prasad and Another

APPELLANT

Vs

Shambhu

RESPONDENT

Date of Decision: Nov. 20, 1917**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 60, 60(f)

Citation: AIR 1918 All 380 : 43 Ind. Cas. 650**Hon'ble Judges:** Tudball, J**Bench:** Single Bench

Judgement

Tudball, J.

This is an execution second appeal. The facts are simple. A simple money decree was obtained by the appellant against the respondent. In execution of that decree he has applied for the attachment and sale of what is commonly known as birt jijmani. The Court of first instance allowed the application. The lower Appellate Court has disallowed the application, holding that such a right is not attachable and cannot be sold in execution of a decree. The decree holder appeals. On his behalf it is urged, and for the purposes of this decision it may be assumed to be correct, that in the eyes of Hindu Law hirt rijmam is Immovable property, Attention has been called to the decisions in Sukh Lal v. Bishambhar 37 Ind. Cas 661 : 15 A.L.J. 41 : 39 A. 196 Raghuo Pandey v. Kassy Parey 10 C. 73 : 5 Ind Dec. 51 : 13 C.L.R. 263 : 8 Ind. Jur. 197 Krishnabhat v. Kapabhat 6 B.H.C.R.A.C. 137 Balvantrav v. Purshotam Sidheshvar 9 B.H.C.R 99. In all these cases, which are cases of voluntary transfers of hirt jijmani or birt mahabrahmani, it was held that this right was Immovable property in the eyes of the Hindu Law, though it is not properly tinder any other system of law. This argument does not dispose of the case. As I have said above, it may be assumed to be quite correct. On behalf of the judgment-debtor it is pointed out that it has been held by this Court and also by the Bombay High Court in more than one case that this right is really a right of personal service and as such it is property which cannot

be attached and sold in view of the provisions of Section 60, Clause (f), of the Civil Procedure Code, which corresponds with Section 266 of the former Code. In this Court it was held in *Durga Prasad v. Genda* (1889) A.W.N. 169 that *birtmahabramani* was a right of personal service of the character mentioned in Section 266 (f) of the CPC and as such was not liable to attachment or sale. There is no decision to the contrary either of this Court, or any other Court, as far as I am aware and my attention has not been called to any such contrary decision. The Bombay decisions are to be found in *Ganesh Ram Chandra Dat v. Shankar Ramchandra* 10 B. 395 : 5 Ind. Dec. 651 *Govind Lakshman Joshi v. Ramkrishna Hari Joshi* 12 B 366 : 6 Ind. Dec. 728 *Rajaram v. Ganesh* 23 B. 131 : 12 Ind. Dec. 87. These were all cases of what is called in the Bombay Presidency "*watti*", which is a right similar to the one which is in dispute in the present case. The judgment of Mr. Justice Ranade discusses numerous decisions on the point, showing that at no time has a compulsory sale of right of this description ever been allowed, and the reasons for this, In each of these Cases it is distinctly held, and I must say I agree with the finding, that this right is a right of personal service and nothing more and nothing less. The Hindu Law may have classified it as Immovable property. That does not affect Section 60 of the Civil Procedure Code, which in clear terms lays down a list of certain properties which are not liable to attachment or sale and in that list there is Clause (f) "any right of personal service" In my opinion the decision of the Court below was quite correct The property which the appellant was seeking to attach is property which is exempt by the law from attachment and sale. The appeal, therefore, fails and is dismissed with costs, including fees on the higher scale.