

(1928) 12 AHC CK 0008

Allahabad High Court

Case No: None

Gomti

APPELLANT

Vs

Kanhaiya Lal and
AnotherRESPONDENT

Date of Decision: Dec. 14, 1928**Citation:** AIR 1929 All 115**Hon'ble Judges:** Mukerji, J**Bench:** Division Bench

Judgement

Mukerji, J.

This is an application by one Mt. Gomti for stay of execution of a certain decree under the following circumstances:

2. Kanhaiya Lal and another hold a decree against Mt. Gomti's husband Maoon. In execution of the simple money decree a building was attached and Mt. Gomti laid claim to that building as her own property. Her objection in the execution department having succeeded the decree-holders, Kanhaiya Lal and another, instituted a suit against Mt. Gomti to obtain a declaration that the property was attachable in execution of the decree against Mt. Gomti's husband. The litigation thus started by Kanhaiya Lal and another against Mt. Gomti has come up to this stage that Kanhaiya Lal has been successful in the Court below and Mt. Gomti has filed a second appeal. Mt. Gomti's second appeal has been admitted by two learned Judges of this Court. This signifies that she has at least an arguable case. Mt. Gomti now wants that the property which she claims to be her own should not be sold in execution of the decree against her husband till the second appeal has been decided.

3. Mt. Gomti under the previous law had this remedy that she could apply for a temporary injunction under Order 39, Rule 1(a)(unamended) and the civil Court could grant her such an injunction. If there was any case in which an injunction should be granted, this was pre-eminently that case. Mt. Gomti has, however, been deprived of the remedy which

the law allowed to her previously, on account of an amendment brought about by the Rules Committee and approved of by this Court. Mt. Gomti must now see that what she claims to be her house is to be sold up. If she is successful in second appeal, she will be thrown into another litigation with the auction-purchaser to recover the house if the auction-purchaser takes it into his head to obtain delivery of possession over the house, after the purchase. The auction-purchaser will naturally require his money's worth and try to obtain possession of the house. This is a state of things Which can now only be deplored but cannot be remedied. I have no alternative but to reject the application. I order accordingly.