

(1969) 04 CAL CK 0017

Calcutta High Court

Case No: Appeal from Appellate Order No. 156 of 1961

Hemangini Dasi

APPELLANT

Vs

Rashmoni Dasi

RESPONDENT

Date of Decision: April 3, 1969

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 47

Citation: 73 CWN 625

Hon'ble Judges: P.N. Mookerjee, Acting C.J.; S.K. Chakravarti, J

Bench: Division Bench

Advocate: Rabindra Nath Mitra and Mahendra Kumar Ghose, for the Appellant;

Final Decision: Allowed

Judgement

S.K. Chakravarti, J.

A short point arises for determination in this appeal. It is as to whether a decree in respect of future maintenance can be enforced in execution without having recourse to any further suit or not. The appellant before us had filed a suit against the respondent for a declaration that she was entitled to future maintenance at the rate of Rs. 20/- per month and for recovery of arrears of maintenance at that rate and also for granting a charge in respect of Kha schedule properties for arrears of maintenance and future maintenance. The decree in that suit, as modified by this Court, was to the effect that the plaintiff was entitled to future maintenance at the rate of Rs. 20 per month and that a charge on the Kha schedule properties was declared with respect to the future maintenance. There was also a decree for recovery of arrears of maintenance at the rate of Rs. 20/- per mensem.

2. The appellant put the decree into execution not only for realisation of arrears of maintenance but also for the future maintenance due to her on the basis of that decree. The respondent filed an application u/s 47 of the CPC alleging therein that the decree-holder was not entitled to realise future maintenance at the rate of Rs.

20 per month without bringing a fresh suit and obtaining a decree therein. This plea prevailed with the learned Subordinate Judge as also with the learned District Judge sitting in appeal.

3. In this appeal by the decree-holder it is contended by Mr. Mitra that both the courts below erred in so holding. Though the decree with regard to the future maintenance in this decree with regard to the future maintenance in this particular case was in the form of a declaratory one, still, in substance, it directed the respondent to pay to the appellant a sum of Rs. 20/-per month by way of maintenance, and Mr. Mitra submits that the future maintenance may be realised in execution. The same question arose for determination before a Full Bench of this Court reported in (1) Ashutosh Banerjee v. Lukhimoni Debya, ILR 19 Cal. 139, and the question was answered in the affirmative. It was subsequently followed by this Court in (2) Asad Ali Mollah v. Haidar Ali, ILR 38 Cal. 13. The same principle has also been laid down in (3) [Sm. Indra Devi Vs. B. Pirag Nath](#), and also in (4) Sankaran Pankajakshan v. Narayana Pillai Velayudhan Pillai, AIR 1957 TC 90, by the Patna High Court in (5) [Sah Badha Krishna Vs. Mt. Bechni Debi](#), and by the Madras High Court in (6) [\(Haji A.S.\) Abdul Muhammad Rowther and Others Vs. Seethalakshmi Ammal and Others](#), .

4. The learned District Judge appears to have relied on section 581 of Mulla's Principles of Hindu Law (12th Edition) at page 728. There also it has been laid down that a decree which directs the payment of future maintenance from time to time can be enforced by execution, but a decree which merely declares a right of maintenance cannot be so enforced. Here there was not only a right of maintenance declared but the amount was also fixed and property charged and in the Madras decision, which has also been referred to in section 581 of Mulla's book, it has been held that such a decree is executable. The learned Judge appears to have misread section 581 of Mulla's Hindu Law.

5. As a matter of fact, the decisions of the different High Courts are quite unanimous on this point that in such a case the party concerned need not be compelled to file another suit claiming arrears of maintenance, but that the right to maintenance may be enforced in execution of the original decree. In this view of the matter, the appeal is allowed, the judgments and orders passed by the courts below are set aside and the miscellaneous case filed u/s 47 of the CPC is dismissed and it is directed that the execution case do proceed in accordance with law, in the light of the observations mentioned above.

6. There will be no order as to costs in this appeal. We may also note that the respondent has not appeared in this proceeding before it.

P.N. Mookerjee, A.C.J.

I agree.