

(1890) ILR (Cal) 610

Calcutta High Court

Case No: None

Degumburi Debi

APPELLANT

Vs

Aushootosh Banerjee
and Others

RESPONDENT

Date of Decision: March 13, 1890

Citation: (1890) ILR (Cal) 610

Hon'ble Judges: Wilson, J

Bench: Single Bench

Judgement

Wilson, J.

On this application two questions arise. The first is whether this case falls within the enactment. The enactment in question is the

second paragraph of Section 380 of the Procedure Code, which paragraph has been added by a recent enactment, Act VI of 1888, and is as

follows: ""On the application of any defendant in a suit for money in which the plaintiff is a woman, the Court may at any stage of the suit make a

like order"" (that is an order for security for costs) ""if it is satisfied that such plaintiff does not possess any sufficient Immovable property within

British India independent of the property in suit""/ The first question, then, is whether this is a suit for money. It is a suit in which the plaintiff claims in

the alternative to recover certain gold and silver ornaments, chests, plates, clothing and other things, and Rs. 3,000 in cash and Rs. 500 in notes

said to be in one of the chests, or for the value of such things. As to the meaning of the section, I think it clear that a suit for money is wider than a

suit for debts. As to Rs. 3,500 of the Rs. 12,318 claimed, the suit is clearly a suit for money. As to the rest we must look at the substance. Suits

brought against a person for depriving the plaintiff of goods are in ninety-nine cases out of a hundred met by money damages. I think that this is a

suit for money damages, and therefore within the section.

2. That being so, is it a case in which the order should be made? There is no dispute that the plaintiff has not sufficient Immovable property to be

security for the defendant's costs, for she has none at all. I should be very sorry to lay down, and I guard myself against laying down, that this

section is imperative on the Court, and that the Courts have no discretion but to order security to be given; but having regard to the circumstances

of this case, I think I ought to exercise that discretion in favour of making the order. The order will therefore be made accordingly.