

APPELLATE CIVIL.

Before Guha and Bartley J.J.

GIRIBALA DEBEE

v.

NIRMALABALA DEBEE.*

1934

Nov. 21, 27.

Maintenance—Criminal courts' order—Personal right—Charge not created on property—Not assignable—Arrears of maintenance not debt or saleable property—Code of Civil Procedure (Act V of 1908), s. 60—Code of Criminal Procedure (Act V of 1898), s. 488.

Arrears of maintenance payable under the order of a criminal court do not constitute either debt or saleable property within the meaning of section 60 of the Code of Civil Procedure.

The right to receive maintenance is a purely personal right created by an order of a criminal court; there is no charge created on property by the order for maintenance and the maintenance cannot, therefore, be held to be alienable property.

In re *Robinson* (1) and *Tara Sundari Debi v. Saroda Charan Banerjee* (2) referred to.

If the right to receive maintenance is only a personal right, it is not assignable and cannot be held liable to be seized and sold in execution of a decree for money.

APPEAL FROM APPELLATE ORDER by the defendant.

The facts of the case and the arguments in the appeal appear sufficiently in the judgment.

Bijankumar Mukherji and *Sanatkumar Chatterji* for the appellant.

Radhabinode Pal and *Dhirendranath Ghosh* for the respondent.

Cur. adv. vult.

*Appeal from Appellate Order, No. 76 of 1934, against the order of S. N. Modak, Additional District Judge of Howrah, dated Dec. 13, 1933, affirming the order of A. C. Ganguli, First Subordinate Judge of Howrah, dated Aug. 30, 1933.

The judgment of the Court was as follows:—

The question arising for decision in this appeal relates to the legality or otherwise of the orders passed by the courts below, holding that arrears of maintenance allowed by a criminal court under section 488 of the Code of Criminal Procedure were not liable to be attached and sold in execution of a decree for costs passed by a civil court. The orders were passed on an application made by the decree-holder under section 60 of the Code of Civil Procedure, on the footing that the arrears of maintenance were debts within the meaning of the aforesaid provisions of the law, and were attachable as such. The application for attachment was resisted by the judgment-debtor. The learned Subordinate Judge, by whom the question was dealt with in the first instance, came to the conclusion that maintenance allowance allowed by a court was not assignable and was not liable to be attached in execution of a decree for money. The learned Additional District Judge, in the court of appeal below, was of opinion that the case before the court must be governed by the special provisions of the criminal law, in which arrears of maintenance do not amount to debts or saleable property at all; and, in that view of the case, agreed with the primary court in holding that the objection raised by the judgment-debtor was valid under the law.

The facts of the case, giving rise to this appeal, were not in dispute. The maintenance allowances, payable to the judgment-debtor and which were sought to be attached, were in arrears; and there was no question that the arrears were legally due from the person held liable to pay the same by the order of the criminal court under section 488 of the Code of Criminal Procedure. The question, that falls to be decided in the case before us, is a question of first impression: whether arrears of maintenance payable under the order of a criminal court do or do not constitute either debt or saleable property within

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the meaning of section 60 of the Code of Civil Procedure.

It may be stated at the outset that the view presented by the court of appeal below, that arrears of maintenance in the case before us were not attachable, for the reason that the order for payment of maintenance was passed by a criminal court, does not commend itself to us. There appears to be no principle or authority in support of the position thus indicated by the judge below, regard being had to the fact that there was no question that the arrears of maintenance were due, and were payable by the person against whom the order for maintenance was made by the criminal court; there being no question whatsoever of enforcement of an order for maintenance as contemplated by sub-section (3) of section 488 of the Code of Criminal Procedure. The only matter for consideration then is whether, in view of the nature of the order for maintenance allowed in the case before us, could it be said that the arrears of maintenance were attachable property within the meaning of section 60 of the Code of Civil Procedure, and closely connected with that question is the other question whether the order for maintenance, in the case before us, was a purely personal right to recover a sum of money. The right to receive maintenance was a purely personal right created by an order of a competent court; it was inalienable. There was no charge created on property by the order for maintenance in the case before us, and the maintenance could not, therefore, be held to be alienable property. In our judgment, the right created by the order of the criminal court was a personal one, a right which was not assignable and consequently not liable to be sold in execution of a decree for money, in view of the provision of section 60 of the Code of Civil Procedure. In the case before us, the monthly allowance directed to be paid by the criminal court was to be paid by the husband for maintenance of his wife, it was not in the nature of property, but

only money to be paid by the order of the court personally to the wife for her maintenance; it was not, therefore, assignable by the wife.

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It may be mentioned that a number of decisions by this Court were placed before us for consideration, during the course of argument in this appeal, but we are unable to see that those decisions as they stand, are of real assistance to any of the parties to this case. We are unable, therefore, to base our decision on any of the decisions cited before us [*Mahatab Chund v. Pearee Dossee* (1), *Hoymobutty Debia Chowdhraïn v. Koroona Moyee Debia Chowdhraïn* (2), *Haridas Acharjia Chowdhry v. Baroda Kishore Acharjia Chowdhry* (3), *Asad Ali Mollah v. Haidar Ali* (4), In the matter of the petition of *Luddun Sahiba* (5) and *Ead Ali v. Lal Bibi* (6)], and we have given our decision as indicated above on general principles applicable to the facts of the case. So far as those principles go, we are supported by the observation of eminent Judges contained in the decision in *In re Robinson* (7), where Cotton L.J. expressly held that alimony, as an allowance which the court thinks right to be paid as the wife's maintenance from time to time, was not in the nature of property and not alienable. It may also be noticed that in the case of *Tara Sundari Debi v. Saroda Charan Banerjee* (8), Sir Asutosh Mookerjee J. observed, in the course of his judgment, that the true test to be applied in a case like the one before us, in which the question is raised whether maintenance allowance is attachable in execution of a decree for money under the Code of Civil Procedure, is whether a purely personal right was created by an order for maintenance or not: if the right to receive maintenance allowance was only a personal right, as it is in the case before us, it was not assignable, and could not be held liable to be seized and sold in execution of a decree for money.

(1) (1866) 6 W. R. (Misc.) 61.

(2) (1867) 8 W. R. (C. R.) 41.

(3) (1899) I. L. R. 27 Calc. 38.

(4) (1910) I. L. R. 38 Calc. 13.

(5) (1882) I. L. R. 8 Calc. 736.

(6) (1913) I. L. R. 41 Calc. 88.

(7) (1884) 27 Ch. D. 160.

(8) (1910) 2 C. L. J. 146.

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In the above view of the case before us, the orders passed by the courts below have to be affirmed and we direct accordingly.

The appeal is dismissed with costs. The hearing fee in the appeal to this Court is assessed at two gold mohurs.

Appeal dismissed.

G.S.