

1878  
 RUKA BAI  
 v.  
 GANDA BAI.

the parties to the suit may apply to the Court from time to time as they may be advised touching the estate of which administration is sought.

Munshis *Hanuman Prasad* and *Sukh Ram*, for the respondent.

The judgment of the Court was delivered by

PEARSON, J.—The appeal must prevail. The diminution of the income of the estate on which the defendant's income is chargeable, since her allowance was fixed, is obviously a sufficient cause for the present action of which the object is the reduction of the allowance formerly fixed. It would be unreasonable to hold that, even if the income of the estate should come to an end altogether, that allowance should still continue; and therefore it must be liable to be reduced in proportion to the existing income. We set aside the lower appellate Court's decree and remand the case to it for fresh disposal on the merits, with a direction that the costs of this appeal shall follow the result.

*Appeal allowed.*

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## APPELLATE CIVIL.

*Before Mr. Justice Pearson and Mr. Justice Spankie.*

GULZARI LAL AND OTHERS (DEFENDANTS) v. THE COLLECTOR OF BAREILLY (PLAINTIFF).\*

*Act VIII of 1859 (Civil Procedure Code), ss. 270, 309—Pauper Suit—Attachment in Execution of Decree—Court Fees—Prerogative of the Crown.*

*N* was allowed to bring a suit as a pauper. His suit was dismissed, the decree directing that he should pay the costs of the defendant. On the defendant's application certain immoveable property belonging to *N* was attached in execution of this decree, and was sold. *Held* that the Crown was entitled to be paid first out of the proceeds of such sale the amount of the Court fees *N* would have had to pay if he had not been allowed to sue as a pauper. The principle of the ruling in *Ganpat Putaya v. The Collector of Kanara* (1) followed.

THIS was a suit for Rs. 84-2-0. One Nait Lal had sued Gulzari Lal and certain other persons, defendants in this suit, in *formâ*

\* Second Appeal, No. 1142 of 1877, from a decree of W. Tyrrell, Esq., Judge of Bareilly, dated the 10th July, 1877, reversing a decree of Muhammad Mubarik Baz Khan, Officiating Munsif of Bareilly, dated the 9th January, 1877.

(1) I. L. R., 1 Bom. 7.

*pauperis*. His suit was dismissed by the Court of first instance with costs. He appealed, and his appeal was dismissed and the decree of the Court of first instance affirmed with costs. Gulzari Lal and the other persons applied to recover, in execution of these decrees, the sum of Rs. 787, being the costs incurred by them in defending the suit, and certain houses belonging to Nait Lal were accordingly attached. Subsequently, on the application of the Collector of the District, the Court executing the decrees ordered that the property should be sold in satisfaction of the amount which Nait Lal would have had to pay as Court fees had he not been allowed to sue and appeal as a pauper, *viz.*, Rs. 530-8-0, as well as in satisfaction of the demand of Gulzari Lal and the other persons, and that the Collector should be paid first out of the sale proceeds. The property was sold and realised Rs. 155. After the confirmation of the sale the Court made another order under which the Collector and Gulzari Lal and the other persons were paid out of the sale-proceeds rateably; the former getting Rs. 62-2-0, the latter Rs. 84-2-0. The present suit was brought by the Collector to contest this order. The Court of first instance dismissed the suit, holding that, under s. 270 of Act VIII of 1859, the defendants were entitled as attaching creditors to be first paid out of the sale-proceeds. It distinguished the present case from that of *Ganpat Putaya v. The Collector of Kanara* (1) on the ground that in the present case the pauper suit had been dismissed. On appeal by the plaintiff the lower appellate Court held that the principle laid down in the Bombay case applied, and gave the plaintiff a decree.

The defendants appealed to the High Court, contending that the decision of the lower appellate Court was opposed to the provision of s. 270 of Act VIII of 1859, under which they were entitled as attaching creditors to be paid first out of the sale-proceeds; and that the case relied on by the lower appellate Court was not applicable.

Munshi *Hanuman Prasad*, for the appellants.

The Senior Government Pleader (*Lala Juala Prasad*), for the respondent.

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The following judgment was delivered by the Court:

PEARSON, J.—The principle of the ruling of the Bombay Court (1), on which the lower appellate Court has relied, appears to us to be reasonable, and we decline to interfere.

*Appeal dismissed.*

1878  
February 15.

## APPELLATE CIVIL.

*Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Pearson.*

ABASI (PLAINTIFF) v. DUNNE (DEFENDANT).\*

*Custody of Minor—Guardian—Muhammadian Law.*

*Held*, where the plaintiff sued for the custody of her minor sister, as her legal guardian under Muhammadian law, that the fact of the plaintiff being a prostitute was, although she was legally entitled to the custody of such minor, a sufficient reason for dismissing the suit in the interests of such minor.

THIS was a suit for the custody of the plaintiff's minor sister, Chittan, the suit being based on the plaintiff's right of guardianship under Muhammadian law. In November, 1871, the Sessions Judge of Cawnpore tried a case in which the plaintiff in this suit, who was a prostitute by profession, had charged another prostitute with obtaining possession of Chittan for the purposes of prostitution. The accused was acquitted by the Sessions Judge, with an injunction to the Magistrate of the District to make suitable arrangements for the welfare of the minor. The Magistrate procured Chittan's admission to the Ghuttia Orphanage at Cawnpore. The present suit was instituted against the Magistrate and the Superintendent of the Orphanage. The lower Courts dismissed the suit on the ground that the plaintiff, being a prostitute, was not a proper person to have the custody of the minor.

The plaintiff appealed to the High Court, contending that under Muhammadian law she was the legal guardian of the minor and therefore entitled to the custody of her person.

Maulvi Obeidul Rahman, Mir Akbar Husain, and Mir Zahur Husain, for the appellants.

\* Special Appeal, No. 1312 of 1877, from a decree of J. H. Prinsep, Esq., Judge of Cawnpore, dated the 30th August, 1877, affirming a decree of Muuski Lalta Prasad, Munsif of Cawnpore, dated the 9th January, 1877.