

[The appeal being sent back to the Bench which had made the reference was, in accordance with the opinion of the Full Bench, dismissed on the 4th of January, 1897.]

*Appeal dismissed.*

1890

SUBA SINGH  
v.  
SARAFPAK  
KUMAR.

## APPELLATE CIVIL.

1897

January 9.

*Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Blair.*

**RANI KANNO DAI (JUDGMENT-DEBTOR) v. B. J. LACY (DECREE-HOLDER).\***

*Execution of decree—Decree for money—Application for receiver of rents of immovable property of a deceased Hindu in the hands of his widow—Hindu law—Hindu widow.*

*Held* that a Court executing a simple money decree obtained against a sonless separated Hindu was not competent to appoint a receiver of the rents, accruing since his decease, of the judgment-debtor's immovable property, then in the hands of his widow as her widow's estate, such rents not being assets of the deceased, but the personal movable property of the widow, and this even if the decree-holder had not, as in fact he had, agreed for consideration not to execute his decree against the movable property of the widow.

THE facts of this case sufficiently appear from the judgment of the Court.

Pandit *Sundar Lal*, for the appellant.

Mr. *D. N. Banerji* and Babu *Satish Chandra Banerji*, for the respondent.

EDGE, C.J., and BLAIR, J.—This is an appeal from an order passed by the Subordinate Judge of Agra in execution of a decree for money. The applicant for execution describes himself as Mr. B. J. Lacy, son of Dr. J. C. Lacy, Englishman, occupation service, resident of Agra Cantonments, decree-holder. It is rather difficult from the record to ascertain who the real parties are. One of the papers is headed—"Dr. J. Lacy, decree-holder." Another paper is signed—"A. Lacy, attorney of the Revd. B. Lacy"; and Mr. A. Lacy describes himself as the decree-holder's brother. These proceedings in execution recall to the mind of any Judge who has

\* First Appeal, No. 199 of 1896, from a decree of Syed Muhammad Siraj-ud-din, Subordinate Judge of Agra, dated the 10th July 1896.

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RANI KANNO  
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sat in this Court in recent years the sad story of the ruin of Bishambar Nath of Agra. However, in this case, we have got to see what are the rights in law to which the Revd. B. Lacy is entitled; and we have also got to see that he gets nothing further than the law entitles him to. He applied for attachment, and he followed that up immediately by an application for the appointment of a receiver of the rents and profits of the property which he proposed to sell in execution of a decree for money. He apparently conceived that a judgment-creditor executing his decree for money was entitled to be placed in the position, at the expense of the judgment-debtor, of a mortgagee in possession. The application was made against the widow of Bishambar Nath. Bishambar Nath was a sonless separated Hindu, and the lady was, as his widow, entitled to a widow's estate in her husband's property; of course, subject to such rights as the law gave to other persons against the property of her late husband. On the 18th of July, 1895, a compromise was effected between Bishambar Nath's widow and the execution creditor. She produced as a consideration for the compromise, and delivered to the creditor, a promissory note or *hundi* of the value of Rs. 8,000, and on his side he undertook not to execute the decree against the movable property of the widow or any immovable property that might be acquired by her, but he was left at liberty to execute his decree against the immovable property which had been of Bishambar Nath in his lifetime. In violation of that agreement, and indeed, it appears to us, in contravention of law, the Revd. B. Lacy now seeks to execute his decree by a species of sequestration of the lady's personal estate. There can be no doubt, as we conceive the law to be in this country, that this lady, as the widow of a separated and sonless Hindu, became, in virtue of her widow's estate, entitled upon the death of her husband to the rents which might accrue from the immovable property. Those rents, if already received by her and put into her pocket, could not be treated in law as assets of her husband. They were her assets in virtue of her widow's estate. It can make no difference if the rents which accrued due after her husband's death

had not been actually put into her pocket. She was entitled to them, not as representative of her late husband, but in right of her widow's estate; and what the Revd. B. Lacy now seeks to do is, having obtained the advantage of the compromise, and having obtained the bundi for Rs. 8,000, to seize, in violation of that agreement, this lady's own personal estate and to deprive her of all means of subsistence, and possibly put it out of her power to contest any such proceeding on his part. The lady objected; and the Revd. B. Lacy, through his attorney A. Lacy, set up a case, in his reply of the 10th of July 1894, that he ought not to be bound in equity or in law by the compromise. What may be the views as to equity and good conscience of the Revd. B. Lacy, or his attorney A. Lacy, may be inferred from the facts which we have stated and from the reply which the Revd. B. Lacy, through his attorney, filed in this matter on the 10th of July 1896. The Revd. B. Lacy alleges, through his attorney A. Lacy, that A. Lacy, who appears to be his brother, was compelled by undue influence and pressure exercised upon him to give his consent to the compromise in respect of the Rs. 8,000. It apparently did not strike the Revd. B. Lacy, or his attorney A. Lacy, that equity and good conscience would expect of him, if he sought to avoid the compromise, to make restitution of the Rs. 8,000, or such portion of it as had got into his pocket. This is only another sad phase of this sad story. The Subordinate Judge made an order, the effect of which was that the Revd. B. Lacy might sequestrate the private and personal income of this lady derived from the estate in right of her title as a Hindu widow. In making that order the Subordinate Judge was wrong, and we set aside the order in that respect and allow the objection in that respect. The Revd. B. Lacy is entitled to execute his decree by obtaining a sale of the immovable property left by Bishambar Nath, or so much of it as will satisfy his decree and the costs of sale. Let us hope that, when the property is about to be put up for sale, permission to the decree-holder or any one on his behalf to bid may not be given.

We allow this appeal with costs.

*Appeal decreed.*

1896

RANI KANNO

DAI

B. J. LACY.