

1919
May, 30.

Before Justice Sir Pramada Charan Banerji, and Mr. Justice Muhammad Rafiq.
DURGA PRASAD AND ANOTHER (DECREE-HOLDERS) v. SHAMBHU
(JUDGMENT-DEBTOR)*.

Civil Procedure Code (1909), section 60—Execution of decree—Things not susceptible of attachment and sale in execution—Birt Maha Brahmani.

The office of a *maha brahman*, or a *birt acharji*, is a right to perform personal service, and as such is exempt from attachment and sale in execution of a decree under the provisions of section 60, clause (b), of the Code of Civil Procedure. *Durga Prasad v. Genda* (1) followed. *Rajaram v. Ganesh* (2) referred to.

THE facts of the case were, briefly, that the decree-holders of a simple money decree applied for attachment and sale of the rights of their judgment-debtor as a *maha brahman*. The judgment-debtor took objection that such rights were, under section 60 of the Code of Civil Procedure, not susceptible of attachment and sale in execution of a decree. The court of first instance (Munsif of Meerut) relying on the case of *Sukh Lal v. Bishambhar* (3) disallowed the objection. This decision was, however, set aside by the Subordinate Judge, on appeal by the judgment-debtor. The decree-holders appealed to the High Court and their appeal was dismissed. They then appealed under section 10 of the Letters Patent.

Dr. Surendra Nath Sen, for the appellant.

Pandit Kailas Nath Katju, for the respondent.

BANERJI and MUHAMMAD RAFIQ, JJ. :—The question raised in this appeal is whether in execution of a simple decree for money what is called *birt acharji* can be sold at the instance of the decree-holder. This *birt*, as we understand it, is the office of a *maha brahman* who officiates at funerals of Hindus and performs certain ceremonies. The application for the sale of this description of property has been disallowed by the lower appellate court on the ground that it is a right of personal service within the meaning of clause (b) of the proviso to section 60 of the Code of Civil Procedure and is, therefore, exempt from sale in execution of a decree. This decision of the court below has been affirmed by a learned Judge of this Court. He has referred to the authorities

*Appeal No. 168 of 1917, under section 10 of the Letters Patent.

(1) Weekly Notes, 1889, p. 169. (2) (1898) L. L. R., 23 Bm., 181.

(3) (1916) I. L. R., 39 All., 193.

on the subject and we deem it unnecessary to repeat them. The only case which is directly in point is the decision of this Court in *Durga Prasad v. Genda* (1). In that case a learned Judge of this Court held that the *birt maha brahmani* or right to officiate as a priest at the funeral ceremonies of Hindus dying within a particular district, is a right of personal service within the meaning of section 266 (f) of the Code of Civil Procedure, and as such is not liable to attachment or sale in execution of a decree. Section 60 of the present Code of Civil Procedure corresponds to section 266 of the old Code. We have not been referred to any case in which this ruling has been dissented from or the correctness of it has been questioned. The policy of the section apparently is to prevent such a compulsory sale as might transfer property of this description to persons disqualified to perform the duties of the office [See the observations of RANADE, J., in *Rajaram v. Ganesh* (2)]. Reference has been made to cases in which it has been held that a *birt jijmani* belonging to a *maha brahman* may be mortgaged by a *maha brahman* to another *maha brahman*, but that analogy cannot apply to the case of a compulsory sale in execution of a decree where a stranger might be the purchaser and be a person who can never perform the duties of a *maha brahman*. We think that the office of a *maha brahman* or a *birt acharji*, as it is called in the present instance, is a right to perform personal service and as such is exempt from attachment and sale in execution of a decree under the provisions of section 60, clause (b). We dismiss the appeal with costs.

Appeal dismissed.

(1) Weekly Notes, 1833, p. 169. (2) (1898) I. L. R., 23 Bom., 181 (135),

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