

Before Sir Grimwood Mears, Knight, Chief Justice, and Mr. Justice Dalal.

RAM PRASAD (DECREE-HOLDER) *v.* GORE LAL AND ANOTHER (JUDGEMENT-DEBTORS).<sup>\*</sup>

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April, 20.

*Act (Local) No. II of 1903 (Bundelkhand Land Alienation Act) section 3—"Brahmans"—"Brahma Bhats"—Execution of decree—Objection raised after record sent to Collector to carry out sale.*

*Held.* (1) that "Brahma Bhats" are "Brahmans" within the purview of the Bundelkhand Land Alienation Act, 1903, and (2) that an objection that property is not, under the terms of the Act, saleable in execution of a decree, can be taken at any time up to the actual sale.

THIS was a second appeal arising out of proceedings in execution of a decree, the material question at issue being whether the property was not exempt from sale under the provisions of the Bundelkhand Land Alienation Act, 1903. The facts of the case, so far as they are necessary for the purposes of this report, sufficiently appear from the judgement of the Court.

Dr. *Surendra Nath Sen* and Mr. *B. Malik*, for the appellants.

Pandit *Rama Kant Malaviya*, for the respondents.

MEARS, C. J., and DALAL, J.:—Both subordinate courts have held that the respondents are Brahma Bhats and included in the term "Brahmans," who are privileged persons, and whose agricultural land cannot be attached or sold in execution of a decree under the provisions of the Bundelkhand Land Alienation Act. It was argued here (1) that Bhats are Brahma Bhats and are not included in the term

\* Second Appeal No. 227 of 1926, from a decree of E. L. Norton, District Judge of Jhansi, dated the 28th of October, 1925, confirming a decree of Shamsuddin Khan, Subordinate Judge of Jhansi, dated the 28th of May, 1925.

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“Brahman” but are either *baniyas* or *sudras* and (2) that the objection was raised by the judgement-debtors very late in the proceedings, after attachment was made and the file was sent to the Collector to carry out the sale of the agricultural land.

The finding is one of fact that Brahma Bhats are included in the term “Brahman.” The learned Judge of the lower appellate court has given reasons for holding that the intention of the Government was to include Brahma Bhats in the term Brahman. In the Notification issued under the Act all Brahmans are granted this privilege except Marwari Brahmans. The exception of Marwari Brahmans indicates that all other sub-castes of Brahmans are included. A reference was made to the Punjab Census Report, where these people were included under the heading as Brahmans, and also to the usage in the Central Provinces, and the lower court on the basis of that evidence held that Brahma Bhats were Brahmans. This is a finding of fact and binding on us in second appeal.

So long as the property is not sold the judgement-debtors are entitled to claim the privilege to which they are entitled under the Act. They are in no way estopped, because we were not told how the decree-holder suffered by the objection being raised at a late stage of the proceedings.

We dismiss the appeal with costs.

*Appeal dismissed.*