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of a *pardanashin* lady and therefore peculiarly entitled to the protection of the Court. The learned Subordinate Judge has, in the exercise of his discretion, decided the case against the defendant and has appointed a third party as Receiver. We do not think that it would be right in the circumstances of this case to interfere with the exercise of his discretion.

It has been objected, however, that the remuneration of 7 *per cent.* on the collection imposes too severe a burden on the estate. We think that 7 *per cent.* is too high and the Subordinate Judge should reconsider it. Five *per cent.* ought to be sufficient and the Subordinate Judge will see whether he cannot obtain a suitable person to act as Receiver on this remuneration. The name of Jamuna Prasad has been mentioned on behalf of the appellant. Without in any way, fettering the discretion of the learned Subordinate Judge, we think that this name might be considered along with others. It has also been contended on behalf of the appellant that the cost of the Receiver should be charged to the plaintiff; but, in our opinion, there is no justification for such a course.

With these observations the appeal is dismissed with costs and the application in revision is also dismissed with costs.

*Appeal dismissed*

### APPELLATE CIVIL.

*Before Das and Ross, J.J.*

RANI JOTIRMOYEE DEBI

v.

RĀGHUNATH PATHAK.\*

*Attachment before Judgment—Mortgage suit—attachment of properties other than mortgaged properties, legality of.*

\* Appeal from Original Order no. 222 of 1923, and Civil Revision no. 355 of 1923, from an order of P. M. Robertson, Esq., Subordinate Judge of Rajmahal, dated the 6th July, 1923.

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Where, in a suit on a mortgage, it is apparent that the mortgaged property does not provide a sufficient security for the loan and that the mortgagee will eventually have to claim a personal decree, the court has power to attach before judgment properties other than the mortgaged properties, provided it is satisfied that circumstances exist requiring such an attachment.

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*Jogemaya Dassi v. Baidyanath Pramanick*(1), followed.

Appeal by the petitioner.

The facts of the case material to this report are stated in the judgment of the Court.

*Noresh Chandra Sinha and Nitai Chandra Ghosh*, for the appellants.

*Sivanandan Ray*, for the respondents.

Ross, J.—This is an appeal against an order passed by the learned Subordinate Judge of Rajmahal, refusing an application by the plaintiff-appellant to issue attachment before judgment against certain properties other than the mortgaged properties belonging to the defendant, plaintiff's mortgagor. Although no cause was shown against the attachment before judgment, the learned Subordinate Judge was of opinion that in a mortgage suit there can be no attachment before judgment of any property other than the mortgaged property. This opinion is undoubtedly wrong [see, for example, the decision in *Jogemaya Dassi v. Baidyanath Pramanick* (1)]. There is no reason why, if the mortgaged property is not a sufficient security and the mortgagee will have to claim a personal decree eventually, he should not have attachment before judgment of properties other than the mortgaged properties, if he satisfies the Court that circumstances entitling him to such an attachment exist. In the present case it must be taken that he did satisfy the Court, because no cause was shown by the mortgagor.

I would, therefore, allow this appeal and remand the case to the learned Subordinate Judge with

(1) (1919) I. L. R. 46 Cal. 245.

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a direction that he should issue an attachment of the properties specified in the plaintiff's petition of such portions thereof as appear to him sufficient to satisfy any decree which may be passed in the suit. The appellant is entitled to the costs of the appeal. The application in revision is dismissed.

Ross, J.

A question has arisen as to the representation of the respondents nos. 6 and 7 who are minors. It appears that Mr. Bindheshwari Prasad, a Vakil of this Court, was appointed guardian on the 12th of May, 1924. Subsequently the respondents entered appearance under the guardianship of the *karta* of their family, *viz.*, respondent no. 2. But respondent no. 2 was never appointed guardian of these minors and they must be taken to be represented by Mr. Bindheshwari Prasad, Vakil, the guardian appointed by the Court.

DAS, J.—I agree.

*Appeal allowed.*

## APPELLATE CIVIL.

*Before Jwala Prasad and Kulwant Sahay, J.J.*

RUDRA DAS CHAKRAVARTI

v.

KUMAR KAMAKHYA NARAYAN SINGH.\*

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*Specific Performance—Court of Wards Act, 1879 (B. C. Act IX of 1879), sections 14 and 18—Power of manager to agree to grant prospecting license and mining lease—Agreement by manager to grant prospecting license and mining lease—contract not concluded—commencement of term of lease not fixed—suit for specific performance against minor ward, maintainability of—expired contract, suit for specific performance of, not maintainable.*

\* Appeal from Original Decree no. 90 of 1922, from a decision of B. Pramathanath Bhattacharji, Additional Subordinate Judge of Hazaribagh, dated the 29th December, 1921.