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not more than eighteen, we do not think that this by itself in this case is sufficient ground for us to reduce his sentence. This will be a matter for the Local Government when the case comes before them. We dismiss the appeal and confirm the sentence of death.

P. S.

*Appeal dismissed.*

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**LETTERS PATENT APPEAL.**

*Before Addison and Din Mohammad JJ.*

SANT SINGH (JUDGMENT-DEBTOR) Appellant

*versus*

SAIN DAS (DECREE-HOLDER) Respondent.

**Letters Patent Appeal No. 103 of 1936.**

*Civil Procedure Code, Act V of 1908, s. 60 (1) (n) and O. XL, r. 1 — Equitable execution of a decree — by appointment of a Receiver — of a house of the judgment-debtor — though not liable to attachment, as being in the nature of future maintenance — Principles governing such appointment.*

In execution of a decree, the decree-holder applied for the attachment and sale of a house belonging to the judgment-debtor. The judgment-debtor objected that the house could not be attached as he had no disposing power over it, and that the attached house being in the nature of future maintenance, was immune from attachment and sale. These objections were found to be correct.

*Held* that, although by virtue of s. 60 (1) (n) of the Code, the right of residence in the house reserved for the judgment-debtor could not be attached and sold in execution. this was a fit case for *equitable* execution by the appointment of a Receiver to act under the orders and supervision of the Court, realise the income of the property and after defraying the expenses and his own remuneration to devote the proceeds in satisfaction of the decretal amount.

*Lal Rajindra Narain Singh v. Mst. Sundar Bibi* (1),  
*Wasif Ali Mirza v. Karnani Industrial Bank, Ltd.* (2) and  
*Hemendra Nath Roy Chowdhury v. Prokash Chandra Ghosh*  
 (3), relied upon.

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*Held also*, that in appointing such a Receiver, there are two principles to be applied, (1) to see whether in lieu of the assets, the amount due under the decree is likely to be realised within a reasonable time from the profits of the attached property, and (2) that such an appointment appears in the circumstances to be the best course both for the creditor and the debtor.

*Hemendra Nath Roy Chowdhury v. Prokash Chandra Ghosh* (3), relied upon.

*Appeal under Clause 10 of the Letters Patent, from the judgment of Agha Haidar J., passed in Civil Appeal No.55 of 1936, on 26th May, 1936, modifying that of Sheikh Abdul Majid, Senior Subordinate Judge, Rawalpindi, dated 13th January, 1936, directing the lower Court to appoint a Receiver.*

PARKASH CHANDRA, for Appellant.

MELA RAM AGGARWAL, for Respondent.

ADDISON J.—Tikka Sant Singh is the son of Baba Ujagar Singh Bedi. There was a dispute between the father and son as regards the maintenance to be allowed to the son and it was referred to the arbitration of Nawab Malik Mohammad Hayat Khan Noon, Deputy Commissioner of Gujranwala, who made an award on the 9th November, 1927. By means of this award, besides other properties, an area of 1,150 acres situated on the right bank of the Parah canal was given to Tikka Sant Singh for the maintenance of himself, his wife and his children. He was also given the option of residing in village Akalgarh and in

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(1) I.L.R. (1925) 47 All. 385 (P.C.). (2) I.L.R. (1932) 59 Cal. 1 (P.C.).  
 (3) I. L. R. (1932) 59 Cal. 205.

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addition thereto there was reserved for his residence the house known as "Cosy Nook" in the hill-station of Murree. It was further provided that Tikka Sant Singh had no right to sell, mortgage or otherwise transfer or charge the estate granted to him for the purpose of maintenance and residence in any way.

Sain Das obtained a decree against Tikka Sant Singh for a sum of Rs.7,800, part of which sum had already been realised in execution. In further execution proceedings the decree-holder proceeded to attach and sell the house "Cosy Nook" at Murree. Tikka Sant Singh preferred objections to the effect that the house could not be attached as he had no disposing power over it. He also relied upon section 60 (1) (n) of the Code of Civil Procedure, claiming that the attached house was in the nature of future maintenance and was thus immune from attachment and sale. This contention was upheld by the executing Court and the decree-holder instituted an appeal in this Court which was heard by a Single Judge. He upheld the decision of the executing Court to the effect that the right of residence enjoyed by Tikka Sant Singh in "Cosy Nook" could not be put to sale in execution of the decree, but relying upon *Lal Rajindra Narain Singh v. Mst. Sundar Bibi* (1) the Single Judge directed that the executing Court should appoint a receiver to act under the orders and supervision of the Court, realise the income of the property and after defraying the incidental expenses and his own remuneration to devote the proceeds in satisfaction of the decretal amount. This was allowed by way of equitable execution. Against this decision Tikka Sant Singh has preferred this Letters Patent Appeal.

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(1) I. L. R. (1925) 47 All. 385 (P. C.).

In the Privy Council case, *Lal Rajindra Narain Singh v. Mst Sundar Bibi* (1) the respondent had obtained a money decree against the appellant and applied to attach and sell 16 villages in execution thereof. The appellant held the villages under the terms of a compromise deed which provided that he was to hold and possess the villages in lieu of his maintenance without power of transfer during the lifetime of his brother. It was held that the appellant's interest in the villages was 'a right to future maintenance' within section 60, sub-section (1) (n) of the Code of Civil Procedure, 1908, and therefore could not be attached and sold, but that a receiver should be appointed to realise the rents and profits with direction to pay thereout a sufficient and adequate sum for the maintenance of the appellant and his family, and to apply the balance, if any, to the liquidation of the decree. It was remarked by their Lordships that although section 60 (1) (n) of the Code of Civil Procedure barred the attachment and sale of the property, the proper remedy lay in a fitting case in the appointment of a receiver with powers as already indicated. This case is nearly on all fours with the case before us and it only remains to determine whether this is a fit case to do so. Another case where their Lordships of the Privy Council held that a receiver of the rent and profits had been rightly appointed in execution of a decree is reported as *Wasif Ali Mirza v. Karnani Industrial Bank, Ltd.* (2).

Another case which may be referred to is *Hemendra Nath Roy Chowdhury v. Prokash Chandra Ghosh* (3), a Division Bench decision. It was said there that the observations of the Judicial Committee of the

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Privy Council in *Lal Rajindria Narain Singh v. Mst. Sundar Bibi* (1) show sufficiently that the view that by the introduction of section 51 in the new Code of Civil Procedure the decree-holder may as of right and as a matter of course apply for execution by the appointment of a receiver is not correct, but that, on the other hand, the remedy by the appointment of a receiver is by way of equitable execution or indirect execution, the receiver taking the place of the debtor in cases in which equitable and special considerations intervene. It was also pointed out that the terms of Order 40, rule 1, are wider than the corresponding section 502 of the Code of 1882 and do not provide that the appointment of a receiver should be confined to a suit. But section 51 of the Code is to be read with rule 11 of Order 21 and rule 1 of Order 40 and the order is to be regarded as made under the last mentioned rule and justified, if only that rule would justify it. Under the Law of England there is authority for the proposition, that a person seeking 'equitable execution' must show that he was met by difficulties arising from the nature of the property, which prevented his obtaining relief at law. One principle to be applied is to see whether in lieu of the assets the amount due under the decree is likely to be realised within a reasonable time from the profits of the attached property. Another principle is that such an appointment should appear in the circumstances to be the best course both for the creditor and the debtor.

With all respect I am in agreement with the principles laid down in *Hemendra Nath Roy Chowdhury v. Prokash Chandra Ghosh* (2), and applying the principles therein I am of opinion that this is a fit case to

(1) I.L.R. (1925) 47 All. 385 (P.C.).

(2) I.L.R. (1932) 59 Cal. 205.

appoint a receiver in respect of the house 'Cosy Nook.' When the house was attached it was found to be in possession of a tenant. The decree is likely to be satisfied, by a receiver being appointed, in ten years or less. Though in the Punjab a son cannot under Hindu Law claim a partition against his father, it has been held by a Division Bench of this Court in *Nihal Chand v. Mohan Lal* (1) that the son's interest in coparcenary property is liable to attachment and sale during the lifetime of the father, although the son has no power to enforce a partition in his father's lifetime.

By the award between the father and son it is now doubtful whether the son's interest is liable to attachment and sale. Though, therefore, the right of residence reserved for the judgment-debtor in 'Cosy Nook' cannot be sold by virtue of the provisions of section 60 (1) (n), Civil Procedure Code, it appears to be just and convenient that a receiver should be appointed of that property in the terms stated by the Single Judge. The judgment-debtor was not actually in occupation of the house when it was attached and therefore there can be no inconvenience to him in this arrangement, while it will be to his interest that the decree should be gradually satisfied in the way directed.

For the reasons given I would dismiss the appeal with costs.

DIN MOHAMMAD J.—I agree.

P. S.

*Appeal dismissed.*

(1) I. L. R. (1932) 13 Lah. 455.

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