

1887.

MEHIA
JETHALAL
v.
JAMIATRAM
LALUBHAI.

the members who had seceded, and constituted the small section, out of their own funds and for their own purposes; and the question to whom those lands now belong, cannot be a caste question, unless indeed the small section itself could be regarded, and it has not been contended that it can, as a separate and district caste. Under these circumstances it is for the Civil Court alone to determine who is now entitled to the property in dispute, although it may be incidentally necessary for that purpose to inquire into the usage and practice, (if there be any), of caste sections, situated as the small section of this caste was, with respect to the property in question. We must, therefore, reverse the decree of the Court below, and send down the case for retrial. Costs of this appeal to abide the result.

Decree reversed.

APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and
Mr. Justice Nánábhái Haridás.*

IN RE THE PETITION OF RÁDHI.

1887.

September 22.

Married woman—Execution of decree—Liability of married woman—Arrest—Stridhan—Application for review of an order contrary to law—Waiver.

R., as surety for her husband, joined with him in executing a bond for Rs. 90. In a suit brought upon the bond, a decree was passed against both. R. was arrested in execution of the decree, and brought before the Court. She was then asked if she desired to apply to be declared an insolvent under the insolvency sections of the Civil Procedure Code (Act XIV of 1882), but not doing so she was committed to jail. Subsequently, however, she applied to be declared an insolvent, but her application was rejected. She then claimed to be released, on the ground of her coverture. The Judge rejected her application as being too late. On reference to the High Court,

Held, that her application for release was virtually an application for review of the order for her imprisonment, on the ground that it was contrary to law; that her mere omission to take the objection at the time of her arrest, could not be regarded as a waiver of her right of exemption from arrest; and, having regard to the nature of the right claimed, it was one which the Court could not properly decline to consider on review, however late the application might have been.

Held, also, that although the decree was absolute in its terms, and contained no express limitation of R.'s liability, nevertheless the law being clear that she could only be liable to the extent of her *stridhan*, it was to be assumed that the direction to pay, contained in the decree, had reference to that fund only.

THIS was a reference by Ráv Bahádúr K. C. Bedarkar, Acting Judge of the Court of Small Causes at Poona, under section 617 of the Civil Procedure Code (Act XIV of 1882).

1887.

 IN RE THE
 PETITION
 OF
 RÁDHI.

The applicant Rádhi and her husband were sued for Rs. 90 by a creditor of the husband on a bond dated the 15th September, 1884, which Rádhi executed as surety for her husband. The husband appeared, and admitted the claim. Rádhi did not appear. A decree was passed against them both.

In execution of this decree Rádhi was arrested. On being brought before the Court she was asked if she desired to apply to be declared an insolvent, under the provisions of the Civil Procedure Code. She did not then apply, and she was sent to jail. She subsequently, however, applied to be declared an insolvent, and prayed, at the same time, for an *interim* order of release. The latter prayer was refused on the 25th May, 1887, and her application was refused on the 3rd June, 1887.

On the 9th June, 1887, she applied to be released, on the ground of her coverture. The Judge of the Small Cause Court rejected her application, holding that it was too late. He referred the case to the High Court.

Vishnu Krishna Bhátvadekar for the applicant:—The Small Cause Court Judge was wrong in rejecting the application. The applicant was entitled to plead her coverture, and her omission to do so when she was arrested does not affect her right. She has no *stridhan*. If she had any, she would be liable only to that extent. See *Govindji Khimji v. Lakmidás Nathubhoy* (1); *Narotam v. Nánka* (2).

Ganpat Sadáshiv Ráv for the creditor:—The applicant had an opportunity to set up the defence of coverture, but she waived it, and she cannot claim it now. The decree was against her and her husband in general terms, and it should be executed as it is. See *Shaik Budan v. Rámchandra* (3). The execution proceedings came to an end when she was lodged in jail, and now the defence cannot be put forward.

(1) I. L. R., 4 Bom., 318.

(2) I. L. R., 6 Bom., 473.

(3) I. L. R., 11 Bom., 537.

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 IN RE THE
 PETITION
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 RÁDHI.

SARGENT, C. J.—The application by Rádhi to be released from prison was virtually an application for review of the order for her imprisonment, on the ground that it was contrary to law. Two objections were taken to this application by the judgment-creditor. First, that Rádhi should have taken the objection when she was arrested and brought before the Judge, and that not having done so, it is now too late; but her mere omission to do so cannot, as it was contended by the opponent, be regarded as a waiver of her right of exemption from arrest; and, having regard to the nature of the right claimed, it was one which the Court could not properly decline to consider on review, however late the application might have been. Secondly, it was said that the decree was absolute in its terms, and contained no express limitation of her liability; and as she did not apply for a review, no other course was open to the Small Cause Court Judge in executing it but to enforce it in the ordinary manner. The decree had been made in a suit on a bond in which she had joined with her husband as surety, and simply directed her to pay the debt. As the law is clear that in such a case Rádhi would only be liable to the extent of her *stridhan*—*Govindji Khimji v. Lakmidás Nathubhoy*⁽¹⁾ and *Narotam v. Nánka*⁽²⁾—it must be assumed that the direction to pay had reference to that fund only. We think, therefore, that the Small Cause Court Judge was wrong in refusing the application.

(1) I. L. R., 4 Bom., 318.

(2) I. L. R., 6 Bom., 473.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and
 Mr. Justice Náúbhái Haridás.

KASTURCHAND GUJAR, PLAINTIFF, v. PARSHA MAHAR,
 DEFENDANT.*

1887.
 September 22.

Jurisdiction—Decree—Execution—British Courts in India, power of, to send their decrees for execution to Courts not in British India—Practice.

The Courts of British India have no authority to send their decrees for execution to Courts not in British India.

THIS was a reference by Ráv Sáheb Venkatrav R. Inámdár, Subordinate Judge of Bijápur, under section 617 of the Civil Procedure Code (Act XIV of 1882).

* Civil Reference, No. 37 of 1887.