

Sukhendra Singh vs Smt. Kishori Devi on 21 September, 1951

Equivalent citations: AIR1952ALL27, AIR 1952 ALLAHABAD 27

JUDGMENT

Chandiramani, J.

1. This is a second appeal of the judgment, debtor against the appellate order of Sri A.P. Bhatnagar, Civil Judge, Hardoi, dated the 3rd February, 1951.
2. It appears that the respondent decree-holder is none other than the wife of the judgment-debtor. She obtained a decree for maintenance of Rs. 400 per year, in a suit on 10th January 1949. The amount was payable in two instalments, in May and November of each year. The appellant judgment debtor made default and accordingly on 3rd July 1950, an application for execution was given. The judgment debtor objected to the execution on the ground that the decree-holder was not residing with her brother and mother and was unchaste. The executing Court rejected the objection on the ground that the Court could not go behind the decree which was unconditional. The lower appellate Court agreed with the view taken by the executing Court and dismissed the appeal.
3. It has been urged before me that the view taken is wrong, that the objection relates to the executability of the decree and not to its validity and that in any case the application should have been converted into a suit under Section 47(2), Civil P. C. I have heard the learned counsel and am satisfied that the decision of the lower Court is correct.
4. It has already been stated that the decree for maintenance was unconditional. The decree-holder sought to execute this decree and not to claim a right under the Hindu law. In Singaravelu Chettiar v. Pittammal, I. L. R. (1949) Mad. 613, it has been held that where a decree for maintenance passed in favour of a Hindu wife is unqualified and does not contain any condition that the decree holder would lose her right to execute the decree if she became unchaste subsequent thereto, it is not open to the judgment-debtor to plead in execution that the decree-holder was leading an unchaste life after the passing of the decree and that the decree, therefore, was unenforceable. Their Lordships followed an earlier Bombay ruling to the same effect in Maharana Shri Ranmalsanggi v. Bai Shri Kundankunwar, 26 Bom. 707. No authority to the contrary on this point has been shown by the learned counsel for the appellant. It is obvious that the question sought to be raised by the appellant is not against the executability of the decree but against the validity of the decree already obtained by the respondent decree holder and there can be no doubt that the executing Court cannot go behind it. The appeal must in the circumstances fail.

5. So far as the prayer is concerned that the application be converted into a suit no such prayer was made either in objection application or orally to the executing Court or to the lower appellate Court. I am informed by the learned counsel for the appellant that the suit if filed now will not be time barred. In these circumstances I do not see why this Court should allow the objection application to be converted into a suit.

6. The appeal is accordingly dismissed with costs. The stay orders dated 7th March 1951, and the 2nd May 1951 are hereby discharged.