
(1938) 11 BOM CK 0010
In the Bombay High Court
Case No : First Appeal No. 279 of 1937

Lakshmibai Madhusudan Patil

APPELLANT

Vs

Shantaram Narayan Patil

RESPONDENT

Date of Decision : 22-11-1938

Acts Referred:

Citation : AIR 1939 Bom 206 : (1939) 41 BOMLR 420

Hon'ble Judges : Lokur, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Lokur, J

1. The appellant obtained a compromise decree against her husband's brothers in suit No. 290 of 1932 which provided that she should be paid Rs. 2,100 in lump for arrears of maintenance and the right of residence up to November 30, 1933, and for the costs of the suit, and that she should be paid future maintenance at the rate of Rs. 50 per month from December 1, 1933. A charge in respect of the amount due to her was kept on certain Immovable property described in the decree. The decree provided:

If the defendants fail to pay at the proper time the amounts which they have to pay to the plaintiff, the plaintiff is to, recover and do recover the same, through Court, from the Immovable property of the joint family or from the said charged property according to her choice.

2. A sum of Rs. 514-8-0 having fallen due under the decree, the appellant presented this darkhast to recover it by the attachment and sale of the respondents' moveable property. The executing Court dismissed the darkhast on the ground that the appellant must first proceed against the property, meaning thereby the charged property. It is now contended that the decree being a money decree, the appellant's right to recover the decretal amount out of the assets of the joint family is not curtailed by the fact that a charge is placed on

specific Immovable properties of the family. In support of this contention reliance is placed on the ruling in *Srinivasa Ayyar v. Lakshmi Ammal* ILR (1932) 56 Mad. 343. In that case the decree for maintenance obtained by a Hindu widow against her husband's coparceners directed the defendants to pay the plaintiff maintenance at a certain rate out of the assets of their joint family and charged some specific items of property with the maintenance awarded. It was held that, as the decree provided concurrent remedies, the plaintiff could, in execution of her decree, attach the assets of the joint family other than the charged property before exhausting her remedies against the charged property. The decision was based on the wording of the decree itself, which conferred upon the widow concurrent remedies at her choice and it was held that she could take advantage of either of those remedies. In the same way the decree under execution also has specifically provided the remedies open to the appellant in case of default on the part of the respondents. It gives her an option to recover the amount due either by having the charged property sold or out of other Immovable properties of the joint family. The decree was passed on a compromise and the parties apparently agreed that the amount due under the decree should be recovered only out of Immovable properties, though one of those properties was charged specifically.

3. When the decree itself specifies what remedy the decree-holder is to pursue in case of default on the part of the judgment-debtor, it is not open to her to seek some other remedy which is not given to her by the decree. The decree being merely a money decree, it is open to the decree-holder to recover her dues out of the assets of the joint family; but as her remedy is restricted specifically by the decree itself, I do not think the appellant can seek any other remedy and execute the decree for the recovery of her dues by the sale of moveable properties. On these grounds I confirm the order passed by the executing Court and dismiss the appeal with costs.