

(1952) 09 OHC CK 0006
In the Orissa High Court
Case No : O.S. No. 1 of 1952

Sm. Snehalata Devi

APPELLANT

Vs

Samanta Radha Prasanna Das

RESPONDENT

Date of Decision : 05-09-1952

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 16

Citation : AIR 1953 Ori 25 : (1953) 19 CLT 1

Hon'ble Judges : Jagannadhadas, C.J.;Panigrahi, J

Bench : Division Bench

Advocate : B.K. Pal, for the Appellant; D. Mohanty, for the Respondent

Judgement

Jagannadhadas, C.J.—This suit comes up to us by withdrawal from the Court of Sub-Judge, Cuttack, for a decision on the preliminary issue raised therein as regards jurisdiction. The suit was filed in the court of the Subordinate Judge at Cuttack and the defendant has taken an objection that the Cuttack Sub-Court has no local jurisdiction over the suit. A preliminary decision of this issue has been found necessary as incidental to the disposal of the application M.J.C. 164/51 that came up before us. That was an application for transfer of another suit at Balasore to be tried along with suit at Cuttack. In the course of the arguments on that application, a point was rightly taken on behalf of the respondent therein that it would be futile to consider the question of transfer of the Balasore suit to be tried with the Cuttack-suit if ultimately it is found that the Cuttack-suit was not maintainable on the ground of local jurisdiction.

It may be mentioned that during the earlier stages of the pendency of the above application for transfer, this Court while staying the trial of the Cuttack suit by its order dated 16-2-52, permitted the Subordinate Judge to decide the preliminary issue of jurisdiction.

This reservation was made at the suggestion of the respondent's advocate therein. The learned Subordinate Judge actually took up the preliminary issue for

consideration, as appears from his order No. 32 dated 6-3-52, but after hearing arguments, he appears to have felt disinclined to make up his mind on the legal question raised before him. He thought that a satisfactory decision on the question of jurisdiction required evidence to be taken as regards certain allegations of fact and that it would be more convenient to deal with the issue of jurisdiction at the time of the trial of the suit and not as a preliminary issue.

When we heard arguments on the application for transfer, the question of jurisdiction of the Cuttack-suit was incidentally raised and the above order of the Subordinate Judge was brought to our notice. We were, however, of the opinion that the issue of jurisdiction could be decided without the necessity of taking any evidence, and we felt it desirable that the issue should be decided one way or the other finally at this stage in order to deal effectively with the question of transfer. In the circumstances, we felt that instead of directing the Sub-Judge once again to take up the preliminary issue as to jurisdiction and to give a definite finding thereon, it would be more convenient to everybody concerned, that the question of jurisdiction raised in that suit should be dealt with finally by this Court itself and the advocates on both sides had no objection to the same. We accordingly kept M.J.C. 164/51 pending and by our order No. 11 dated 14-8-52 passed in M.J.C. 164/51 withdrew the Cuttack-suit O.S. 1/52 on the file of the Sub-Judge, Cuttack, to this Court, to enable us to decide the question relating to jurisdiction and to send the suit back to the appropriate Court after disposal of the transfer application. It is in these circumstances that this suit has come to us for disposal of the preliminary issue No. 3 raised therein viz., "Has this Court jurisdiction to try the suit?" and we accordingly proceed to decide the issue.

2. We have heard fresh arguments from both sides on the said issue. Learned counsel for the defendant maintains that the suit filed by the plaintiff is merely a suit for money claimed by her towards maintenance and that such a suit could be brought only at the place where the defendant resides by virtue of Section 20, C.P.C. He relies for this contention on relief No. (a) in para 18 of the plaint by which the plaintiff prayed for a decree directing the defendant to pay to the plaintiff a sum of Rs. 1,000/- every month payable in the 1st week of each succeeding calendar month during the lifetime of the plaintiff with effect from 13-4-50. To this the answer of the learned counsel for the plaintiff is three-fold, viz.,

1. The suit is not a suit for a bare money decree. The plaintiff asked for relief also by way of a charge on the immovable property mentioned in Schedule A of the plaint, and further asks for a decree directing the defendant to provide suitable residence to the plaintiff at Cuttack in the Sheikbazar building. These reliefs have been asked for in Clauses (c) and (b) of para 18 of the plaint. It is also pointed out that the items 1 to 5 in the plaint schedule are properties situated in Cuttack town or in Cuttack District over which the Cuttack Court has jurisdiction.

2. Since the plaintiff in the suit now resides at Cuttack, the maintenance if any

payable by the defendant to her would have to be paid to her at Cuttack following the well-known principle that the debtor has to discharge his obligation to the creditor at the latter's place. It is urged, therefore, that part of the cause of action for the suit arises within Cuttack, and hence the Sub-Court at Cuttack has jurisdiction by virtue of Clause (c) of Section 20, C.P.C.

3. Thirdly, (as appears to have been urged before the learned subordinate Judge) the jurisdiction of the Cuttack sub-Court arises also on the ground that the pleadings disclose the fact that the defendant though a resident of Ealasore has also a temporary residence at Cuttack and carries on business at Cuttack.

This appears from para 15 of the written statement of the defendant himself wherein he states as follows:

" The plaintiff knows that the Sheikbazar house (in Cuttack) is the only house of the defendant in the capital of the Province & that it is being used by the defendant and his family and officials whenever they go to Cuttack for medical aid, litigation and other business."

On the basis of this allegation in the written statement it appears to have been mentioned before the Sub-Judge that by virtue of explanation (i) of Section 20, C.P.C. the Cuttack Court has jurisdiction. It is in view of this third ground that the Sub-Judge felt that the issue as to jurisdiction could not be disposed of without taking evidence and that it would be more convenient to do so only at the trial.

3.-4. Before us, this last ground has not been reiterated by learned counsel for the plaintiff and he was prepared to take the decision of this Court on the question of jurisdiction without pressing the third ground and without waiting for evidence to be taken. We are also of the opinion that the question of jurisdiction can be satisfactorily disposed of without deciding the question of temporary residence. The only two grounds, therefore, on which the jurisdiction of the Cuttack-Court is sought to be maintained before us are (1) that the suit falls u/s 16, Clause (d) C.P.C., on account of the prayer for charge on the immovable properties including the properties at Cuttack, and the prayer for a right of residence in the house at Cuttack. (2) That the suit falls under Clause (c) of Section 20, C.P.C., on the ground that the debtor the defendant, has to seek the creditor, the plaintiff, & that, therefore, a part of the cause of action for the suit arises at Cuttack, where the plaintiff resides.

5. As regards the 2nd ground, it is a matter of some doubt whether the English rule that the debtor is to seek the creditor at his place of residence for discharging the obligation is one that applies only to contractual relations or to every case where one person incurs an obligation in law towards another person for paying certain moneys. In support of the view that the principle is one which is applicable not merely to contractual relations, but also to other kinds of obligations, learned counsel for the petitioners relies on the cases in *Champaklal Mohanlal Vs. The Nectar Tea Company*, . -- *Tusliman Bibi Vs. Abdul Latif Mia*, . The latter is a payment of dower-debt, but it would appear that the

legal obligation to pay the dower-debt in that case was further secured by a compromise to pay without any specification of the place where it was to be paid up. As against this, there is a later case in --"Ramalinga Iyer v. Jayalakshmi", AIR 1941 Mad 695, which has definitely held that with reference to the wife's right of maintenance by the husband, the English Common Law Rule does not apply. The cases in Champaklal Mohanlal Vs. The Nectar Tea Company, , Tusliman Bibi Vs. Abdul Latif Mia, , purported to rely on and follow the case of the Privy Council in -- AIR 1927 156 (Privy Council) ; but the case in M. Ramalinga Iyer Vs. T.K. Jayalakshmi and Another, purported to distinguish the said Privy Council case. In this state of the authorities relating to this matter, we would prefer not to express any final opinion on this matter; and we are not prepared to decide in favour of the jurisdiction in respect of the Cuttack-Court at this early stage relying on the said principle.

6. The 1st ground, however, appears to be a much clearer one. u/s 16, Clause (d), C.P.C. a suit for the determination of any right or interest in immovable property is one which could be filed only in the Court within the local limits of whose jurisdiction the property is situated. Learned counsel for the petitioners contends that since, in the present suit, a charge has been asked for, for the maintenance to be decreed in respect of the properties some of which are admittedly within the jurisdiction of the Cuttack Court and since also a right of residence with reference to the Cuttack-house of the defendant is prayed for, the suit is one for determination of interest in the immovable property at Cuttack. He urged that though the charge asked for is not confined to Cuttack-prpperty, but is also to be as regards properties situated outside Cuttack, viz., Balasore and Puri, still by virtue of Section 17, C.P.C., taken with Section 16, the suit can be filed in the Cuttack Court. In support of this argument learned counsel for plaintiff cites -- "Sitabai Raghunath v. Laxmibai Vyankatesh", 40 Bom 337; -- "Jai Deo Singh v. Jai Singh", AIR 1926 Lah 660 and -- Mt. Gauhar Jehan Begum Vs. Mt. Imteyaz Jehan Begum and Others, . In Sitabai Raghunath Vaidya Vs. Laxmibai Vyankatesh Vaidya, , it has been held by a Bench of the Bombay High Court that a suit for declaration that the plaintiff is entitled to maintenance allowance with a prayer that the sums claimed should be made a charge on the defendant's lands in Poona district, is one that could be brought within the said district, notwithstanding that the defendant lived in a native State. They held that such a suit fell within the scope of Section 16(d), C.P.C., and the learned Judges put it as follows:

"On the plaint as framed the question which has to be decided before the Court will be enabled to pass a decree is whether or not the plaintiff entitled to a right to, or interest in the immovable property in the Bhimatadi Taluka of the Poona District by way of charge as security for the maintenance which may be decreed. That being the question to be determined, it is a question directly within the terms of Section 16(d), of the C.P.C."

This case has been followed in AIR 1926 Lah 660, which was suit for recovery of

money due on a pro-note and for declaration that the amount to be so decreed is to be a charge on certain property. Similarly, in *Mt. Gauhar Jehan Begum Vs. Mt. Imteyaz Jehan Begum and Others*, a suit for a decree for a specified sum of money by way of dower-debt with a prayer asking the Court to declare the dower-debt as a charge upon the estate of a person, has been held to be one which falls within Section 16(d), C.P.C.

As against these, cases in -- "*Beer Chunder v. Raj-Coomar Nobodeep Chunder*", 9 Cal 535; -- "*Roshan Singh v. Balwant Singh*", 22 All 191 (PC) and -- "*Moolji Jaitha & Co. v. Khandesh S. & W. Mills Co., Ltd.*", AIR 1950 FC 83 (are cited?). These cases, however, appear to have no bearing on the question at issue. In 9 Cal 535 though the suit was one for maintenance, it was as against a person who was considered a foreign Prince, and the question as to jurisdiction depended in that case not on whether the charge for the maintenance asked for in that case was or was not an interest in the land within the jurisdiction of the Court; but whether in view of Sections 431, 432 & 433, C.P.C., then in force, the British Indian Court had jurisdiction against a foreign Prince. The case in 22 All 191 turned on the question whether the claim for maintenance of an illegitimate member of a Raj-family, was a personal right or was one that was transferable to his legal heir and it was held that the said right was not heritable. The case in AIR 1950 F.C. 83 turned on the interpretation of the phrase "suit for land" in the Letters Patent of the Bombay High Court for the purpose of determining whether or not the High Court of Bombay on its original side had jurisdiction in that case. It was decided by a majority that that question had to be determined with reference to the scope of the suit taken as a whole; and that in construing the phrase "suit for land" in the Letters Patent, Section 16, C.P.C. cannot be invoked in aid. None of these three cases cited by learned counsel for the respondent have, therefore, any bearing on the question now under consideration.

7. That a "charge" constitutes an interest in the immovable property is beyond dispute. If any authority were required for it, the case in -- "*Dayal Singh v. Indar Singh*", AIR 1926 P.C. 94 is clear enough for the purpose. In that case, their Lordships held that the charge created by Section 55(b), T. P. Act, in favour of the buyer in respect of the earnest money paid by him was an interest in immovable property. Therefore, if a charge is created over immovable property in respect of a claim for maintenance, there can be no doubt that that charge is an interest in the immovable property. Indeed, Section 39, T. P. Act, in a sense recognizes it when it says: "Where a person has a right to receive maintenance from the profits of immovable property, the said right may be enforced against the transferee of that property, except when the said transfer was for consideration and without notice." It was faintly suggested in the arguments that though the charge may be an interest in the immovable property, from the moment it has been actually created, by the decree, there can be no question of any such interest in the immovable property before the decree creating the charge is decreed and that, therefore, a suit which may result in a decree for the maintenance, does not fall within the scope of Section 16(d), C.P.C. But Section

16(c) relates to all suits for the "determination" of an interest in the immovable property and not merely for "declaration" (which) is of wider import than the word "declaration". A suit in which a charge is asked for by the decree to be passed, is such a suit for "determination" of the right to the charge and, therefore, for the determination of an interest in immovable property.

8. Learned counsel for the defendant further urged that even if by virtue of reliefs (b) and (c) in paragraph 18 of the plaint, it may be said that a determination of the interest in immovable property is asked for in the suit, the suit itself cannot be said to be one for determination of such interest taken as a whole. He urges that the main relief in the suit, is that which is indicated in Clause (a) of para. 18 viz., a decree for money and that reliefs indicated in Clauses (b) and (c) of the same paragraph are only ancillary or consequential. He further urges that the nature of the suit for purposes of Section 16, C. P. C., must be determined with reference to what may be considered to be the main relief in the suit and not with reference to the ancillary or consequential reliefs in the suit. He also tries to found a distinction on the fact that the right of maintenance in this case is asked for by the wife against husband and not by a widow against an undivided member of the family. It is argued that the husband's obligation to maintain his wife is, primarily, personal, and that consequently, the scope of the present suit must be taken to be the enforcement of that Personal obligation though incidentally reliefs by way of charge on immovable properties and residence in a house, have also been asked for. I am unable to accept these contentions. The wife has undoubtedly a personal right against the husband, but her right is as much a right out of the family property as that of any widow of the family. The personal obligation of the husband is only an additional factor in her favour. This point is well-settled, and does not require any authority; but if authority were needed, it is to be found in -- "Radhabai Gopal v. Gopal Dhondo", AIR 1944 Bom 50. Section 39, T. P. Act, which is above stated, has a bearing on the question, makes no distinction between the right of the wife and the right of the widow so far as the relief against immovable property is concerned.

As regards the further argument, viz., that the applicability of Section 16, C. P. C. to suits relating to immovable property depends upon the determination of the question as to what is the main relief and what are the ancillary reliefs, we have been shown no authority in support of any such contention. The case in -- "Moolji Jaitha & Co. v. Khandesh Spinning and Weaving Mills Co. Ltd.", AIR 1950 FC 83 which has been sought to be pressed into service in support of this argument, was, as already pointed out, a case in which the phrase "suit for lands" used in Clause 12 of the Bombay Letters Patent had to be considered. In that case it was pointed out that in construing that phrase Section 16, C. P. C., cannot be called in aid. Conversely, it may be said that in construing Section 16, C. P. C. the view taken of the phrase "suit for land" cannot be of any help.

On the other hand, learned counsel for the plaintiff has cited the cases in -- Manubothula Rama Rao Vs. Manubothula Venkayamma and Another, , and -- Mt.

Gauhar Jehan Begum Vs. Mt. Imteyaz Jehan Begum and Others, , which clearly indicate that if in a suit for maintenance, a relief by way of a charge on immovable property is asked for, the suit is to be filed in the Court which can give the relief against the immovable property if it upholds the plaintiff's claim. This is also the view taken in -- "Shiv Ram v. Prahlad Rai", AIR 1926 Lah 303, where it was held that notwithstanding that the main object of a suit is to attack the validity of probate proceedings, pending in another jurisdiction, a suit was maintainable for administration in a place where some of the properties were situated. It has to be remembered in this connection that Section 20, C. P. C., is what may be called a residuary section and if the suit fails within the scope of Section 16, it is that section which determines the jurisdiction, and not Section 20. I may also add that even if anything turns on which is the main relief and which ancillary, I have no doubt that in this case under the circumstances alleged, in the plaint, reliefs (fa) and (c) in para. 18, are the main reliefs, because, without them relief (a) would be useless.

9. I have, therefore, for all the above reasons, no doubt, that the Cuttack-Sub-Court has jurisdiction over the present suit. This issue is accordingly decided in favour of the plaintiff.

10. Since we have withdrawn the suit from the file of the Court of the Subordinate Judge at Cuttack, to the file of this Court, only for the purpose of enabling us to decide the issue as regards jurisdiction raised in the suit finally, we direct that this suit should now go back to its original file in the Court of the Subordinate Judge, Cuttack.

Panigrahi, J.

11. I am of the same opinion. The plaintiff prays for a decree directing the defendant to provide a suitable residence to her & for the due discharge of the amount that may be decreed towards her maintenance, she also prays that, as security, the immovable properties in items 1 to 6 of the schedule be charged. She further prays that she may be declared entitled to apply for a decree absolute for the sale of the properties so charged, in the event of the defendant failing to discharge his liability under the decree.

12. Admittedly the house which the plaintiff wants to be allotted to her for her residence and the properties against which the charge is claimed are within the jurisdiction of the Court of the Subordinate Judge, Cuttack. The plaintiff's contention is that this is a suit for the determination of "a right to, or interest in, immovable property" within the meaning of Section 16(d), Civil P. C. and that the Cuttack Court has no jurisdiction to try the suit. Mr. Mohanty, learned counsel for the defendant, contends that the relief for the declaration of a charge on the immovable properties situated within the jurisdiction of the Subordinate Judge, Cuttack is only ancillary to the main relief claimed by the plaintiff, namely, a decree for the sum of Rs. 1,000/- being paid to her every month towards maintenance and that jurisdiction should be determined by the primary relief

claimed in the suit. Even if this contention were correct, it would make no difference so far as the jurisdiction of the Court is concerned. The plaintiff may combine a number of reliefs arising out of the same cause of action in her suit against the defendant, and whether one relief is dependent upon other or not would not affect her right to sue. If the reliefs are to be separated and classified on the basis of some of them being primary and the others ancillary, the plaintiff would be obliged to file more than one suit. In this case, for instance, according to the contention of the defendant, the plaintiff is required to file a suit at Balasore to have her right to maintenance declared in the first instance and another suit, later on at Cuttack, to have a charge declared over the properties situated within the jurisdiction at Cuttack. Such a position, if accepted, would deprive the plaintiff of her right to combine more than one relief in one suit even when all of them arise out of the same cause of action, and would offend the provisions in Order 2, Rule 2, Civil P. C. The jurisdiction of the Court to entertain a suit depends upon the situation of the subject-matter of the suit, and if the suit be one to enforce a charge upon specific immovable properties that Court, within whose jurisdiction the immovable properties are situated, is competent to entertain the suit.

13. Now is it necessary in order to confer jurisdiction that the right claimed should be an existing right. Section 16(d) speaks of determination of the right or interest in immovable property, and not merely the enforcing of an existing right or interest in immovable property. The latter would be covered by Section 16(c),

14. The contention raised by Mr. Mohanty has been expressly negated in more than one reported decision brought to our notice. In --"Sitabai v. Laxmibai", 40 Bom 337, it was contended that unless the claim for maintenance is expressly made a charge by deed or decree, it cannot be said to have matured into a charge or interest in immovable property. Scott C. J. observed:

"On the plaint as framed the question which has to be decided, before the Court will be enabled to pass a decree, is whether or not the plaintiff is entitled to a right or interest in immovable property in the Bhimthadi taluka by way of a charge as security for the maintenance which may be decreed. That being the question to be determined, it is a question directly within the terms of Section 16(d) of the Civil Procedure Code".

In -- The New Mofussil Co. Ltd. Vs. Shankerlal Narayandas Mundade, , the same contention was urged by counsel for the appellants and was negated. That was a case for specific performance of an agreement to sell executed at Bombay. The cotton factory agreed to be sold under that agreement was situated within the jurisdiction of the Subordinate Judge at Dhulia where the suit was filed. The subsequent purchasers were made parties u/s 27, Specific Relief Act, but the vendor (defendant 1) was a limited company having its registered office in Bombay. It was argued for the appellant-company that Section 16(d) would not govern the case as the appellant had no existing right to be enforced and that that clause would not apply to the right claimed. It was held that, although the

plaintiff could have filed two separate suits, one for specific performance at Bombay and another for possession at Dhulia, the two causes of action could be combined in the same suit for the sake of convenience or in order to avoid a multiplicity of suits, and that, therefore, defendant 1 could be sued at Dhulia where the cotton factory was situated. In "*Veeraraghavayya v. Sitaramayya*", AIR 1935 Mad 1043 the Madras High Court has taken the same view following 40 Bom 337. In -- "*Jaidev Singh v. Jai Singh*", AIR 1926 Lah 660, the suit was for the recovery of money due under a promissory note. The plaintiff also prayed for a declaration that the decretal amount may be made a charge upon a house called "Rose Cottage" situated at Simla. It was held that the Subordinate Judge, Rawalpindi, where the suit was instituted had no jurisdiction as the suit fell within the purview of Section 16(d), Civil P. C. following 40 Bom 337.

This view was followed in -- *Mt. Gauhar Jehan Begum Vs. Mt. Imteyaz Jehan Begum and Others*, . That was a suit brought by a widow for the recovery of her dower debt and for the administration of her deceased husband's estate. Most of the properties belonging to the estate of the deceased lay outside the district of Patna where the suit was filed; and only a fractional portion of the properties lay within the jurisdiction of the Patna Court. The plaintiff prayed that the Court might declare that the dower debt is a charge upon the estate of her deceased husband. Mention of the word "charge" was held to bring the case within the purview of Clause (d) of Section 16, Civil P. C.

In -- "*Sundara Rai Saheb v. Tirumal Rao*", 33 Mad 131 the suit was by a widow against her sons for maintenance. Their Lordships observed that where the plaintiff claims to have her maintenance made a charge on specified immovable property she prays for a decree to operate directly on land, and the decree to be passed, if she succeeds, is a decree against that property, though the question in that case was whether it was a "suit for land" within the meaning of Clause 12 of the Letters Patent. I would, therefore, hold that the plaintiff's right to maintenance is not merely a right to enforce a personal obligation, but is a real right and can be enforced against specified property by the declaration of a charge over it. I would accordingly agree with My Lord, the Chief Justice that the Subordinate Judge of Cuttack has jurisdiction to try the suit and that Section 16(d), Civil P. C. governs the case.

15. Mr. Mohanty then contended that these cases are distinguishable on the ground that they were all suits by widows against the heirs of a deceased husband and that the case of a wife suing her husband stands on a different footing. That is a distinction without a difference. Whatever be the nature of the right, the jurisdiction of the Court depends upon its competency to deal with the property which is the subject-matter of the suit. The right of a wife against her husband to claim maintenance from him attaches from the moment of marriage and the husband is personally liable to maintain her. No other member of the family incurs any obligation for her maintenance. A widow, however, loses this personal right against her husband on his death. But in both the cases the

property of the husband is liable to meet her maintenance claim. A widow can enforce her right to maintenance against those who take her husband's share by survivorship as also against the separate property of her deceased husband that may remain in the hands of his male issue. Another distinction that may be noticed is that the wife is bound to live with her husband unless, of course, there are good grounds justifying her separate residence. If there are grounds for depriving the husband of his right to consortium in a suit for restitution of conjugal right, the wife would equally be entitled to live apart from her husband and claim a right to separate maintenance and residence. This obligation to live with her husband ceases when she becomes a widow. The Privy Council has recognised such a right in a Hindu widow who left the residence of her deceased husband and lived with her father --See -- "Mt. Ekradeshwari Bahuasini v. Homeshwar Singh", 56 Ind App 182 . It would, therefore, appear that a Hindu husband is under a personal obligation to maintain his wife, independently of his possession of any property while in the case of a widow that right could be enforced only on the property left by the deceased husband. But in either case a woman's claim to be maintained out of the property of her husband cannot be denied. Section 39, T. P. Act, recognises a right to receive maintenance out of the property of the husband, in enacting that the right may be enforced against the transferee if he has notice of it, or if the transfer is gratuitous.

In -- "Radhabai v. Gopal", AIR 1944 Bom 50, the plaintiff sued her husband for maintenance and wanted a charge to be declared on the property described in the plaint. Her husband who was defendant 1, had sold the whole of his property to his natural father, defendant 2, and contended that the Subordinate Judge, Belgaum, had no jurisdiction to entertain the suit as defendant 1 had no interest left in the property situate in Belgaum district. The Court held that although the sale to defendant 2 by defendant 1 was not hollow and could not be set aside, the plaintiff's right to have a charge declared on that property should be upheld as the consideration for the sale fell short of the real value of the properties sold to defendant 2. What all was acquired by defendant 2 by this sale was the title to the property subject to the burden of providing maintenance to the plaintiff. In that view it was held that the Trial Court was wrong in holding that it had no jurisdiction to entertain the suit. I cannot, therefore, appreciate the distinction that is sought to be introduced into the case of a wife claiming maintenance, from that of a widow so as to affect the jurisdiction of a Court to try the suit.

16. I would hold, in agreement with My Lord, that the Subordinate Judge, Cuttack, has jurisdiction to try this suit.