

not deducible from the facts and the circumstances of this case. These do not warrant a conclusion which the plaintiff desires us to draw; and the concomitant features of this case do not justify an inference that the transaction was not of sale which it purported to be, but actually of a mortgage.

Lal Chand  
v.  
Atma Ram and  
another  
Tek Chand, J.

The result is that the plaintiff's appeal fails and it is dismissed with costs throughout.

SHAMSHER BAHADUR, J.—I agree.

Shamsher Bahadur,  
J.

K. S. K.

### APPELLATE CIVIL

Before D. K. Mahajan, J.

DR. TARLOCHAN SINGH,—Appellant

versus

SHRIMATI MOHINDER KAUR,—Respondent.

First Appeal from Order No. 6/M of 1960

1960

*Hindu Marriage Act (XXV of 1955)—Sections 24 and 28—Order passed under section 24—Whether appealable.*

May, 2nd

Held, that an order passed under section 24 of the Hindu Marriage Act, 1955, is appealable under section 28 of the same Act.

*Smt. Sobhana Sen v. Amar Kanta Sen (1) and Rukhmanibai v. Kishanlal Ramlal (2) followed; Bhamidipati Saraswathi v. Bhamidipati Krishna Murthy (3) dissented from.*

*First Appeal from the Order of the Court of Shri Jasmer Singh, Senior Sub-Judge, Amritsar, dated the 23rd December, 1959, ordering that husband Dr. Tarlochan Singh will pay maintenance pendente lite at the rate of Rs. 80 per month from 28th May, 1959, onwards to his wife Smt. Mohinder Kaur and also Rs. 200 as expenses of this litigation.*

D. R. MANCHANDA, ADVOCATE, for the Appellant.

L. D. KAUSHAL, ADVOCATE, for the Respondent.

(1) A. I. R. 1959. Col. 455

(2) A. I. R. 1959. M. Pra. 187

(3) A. I. R. 1960, Andh. Pra. 30

## JUDGMENT

Mahajan, J.

MAHAJAN, J.—In a husband's petition under section 10 of the Hindu Marriage Act (No. 25 of 1955) for judicial separation, the wife made an application under section 24 for maintenance and expenses for litigation *pendente lite*. This application was granted by the trial Court on the 23rd of December, 1959. He allowed Rs. 80 per mensem as maintenance and Rs. 200 for litigation expenses. Against this decision, the present appeal has been preferred by the husband.

Mr. L. D. Kaushal, who appears for the respondent wife, raises a preliminary objection that the order under section 24 is not appealable. Section 28 of the Act, which deals with appeals is in these terms:—

“28. All decrees and orders made by the Court in any proceeding under this Act shall be enforced in like manner as the decrees and orders of the Court made in the exercise of its original civil jurisdiction are enforced, and may be appealed from under any law for the time being in force:

Provided that there shall be no appeal on the subject of costs only.”

Basing himself on the words “appealed from under any law for the time being in force:” he argues that no appeal from an order under section 24 of the Act is provided under any law for the time being in force, namely, the Code of Civil procedure or any other enactment. For this contention, he relies on a decision of the Andhra Pradesh

High Court in *Bhamidipati Saraswathi v. Dr. Tarlochan Singh* (1), wherein a similar contention was advanced and had prevailed. *Shrimati Mohinder Kaur*

*Mahajan, J.*

Mr. Manchanda, learned counsel for the appellant, however, draws my attention to the decisions of the Calcutta and Madhya Pradesh High Courts respectively in *Smt. Sohana Sen v. Amar Kanta Sen* (2), and *Rukhmanibai v. Kishan Lal Ramlal* (3), wherein an order under section 24 of the Act has been held to be appealable. I am inclined to follow the view of the Calcutta and the Madhya Pradesh High Courts in preference to the view propounded by the Andhra Pradesh High Court. If I accept the view of the Andhra Pradesh High Court, the provision of appeal in section 28 of the Act becomes wholly meaningless, for no appeal against an order would be competent and this will lead to far reaching consequences. The language of the section is somewhat defective, but the intention seems to be clear that an appeal against the orders under the Act was sought to be provided for, I would, therefore, repel the preliminary objection.

Coming to the merits, so far the provision for litigation expenses is concerned, it cannot be said to be either excessive or unreasonable. On the other hand, it errs on the side of meagreness.

As regards the provision for Rs. 80 per mensem as maintenance, the learned Judge has not attached due weight to the fact that the wife is earning Rs. 80 and up to this date she has never made any application against the husband for maintenance. Considering the means of the husband, I reduce the amount of Rs. 80 to Rs. 50 per mensem.

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(1) A.I.R. 1960 A.P. 30  
(2) A.I.R. 1959 Cal. 455  
(3) A.I.R. 1959 M. Pra. 187

Dr. Tarlochan Singh  
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The trial Court will allow the appellant three months' time to make the payment before it puts into operation its order under appeal with the modification made by me.

Mahajan, J.

For the reasons given above, I modify the order of the trial Court fixing the maintenance of Rs. 80 and substitute therefor Rs. 50 per mensem; otherwise the order granting maintenance and litigation expenses will stand.

There will be no order as to costs.

B. R. T.

#### CIVIL MISCELLANEOUS

Before Daya Krishan Mahajan, J.

DASAUNDI AND OTHERS,—*Petitioners*

*versus*

THE STATE OF PUNJAB AND ANOTHER,—*Respondents.*

1960

Civil Writ No. 646 of 1959

May. 9th

*Gram Panchayat Act (IV of 1953)—Section 109—Proceedings under—Whether criminal or administrative—Complainant Panchayat—Whether can try the offender—Power to award compensation—Whether vests in the Panchayat.*

*Held*, that the proceedings under section 109 of the Gram Panchayat Act, 1953, are criminal proceedings and not administrative or civil proceedings and have to be taken in conformity with Chapter IV of the Act, which deals with the "Criminal Judicial Functions" of the Panchayat. It is of fundamental importance that in criminal matters the rules of procedure should be strictly complied with because they affect the liberty of the subject, and in any case no proceedings can be taken in the absence of the accused.