the Authority under the Payment of Wages Act and of the learned District Judge granting Rs. 4,473-5-0, only I direct that the petitioner should be paid full amount of Rs. 5,059-13-0, as claimed. That this is the amount due after including two allowances has not been questioned before me. The petitioner is entitled to his costs of these proceedings.

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APPELLATE CIVIL.

Before S. S. Daulat and Daya Krishan Mahajan, JJ.

HANS RAJ PANDIT, *Decree-Holder—Appellant.*

versus

DHANWANT SINGH,—*Judgment-debtor.*

Execution First Appeal No. 202 of 1956.

Punjab Debtors' Protection Act (II of 1936)—S. 9—Whether offends article 14 of the Constitution of India—Hindu Succession Act (XXX of 1956)—S. 4—Effect of on succession which opened before its commencement—Attachment of property in execution of decree—Effect of—Whether creates a charge in favour of attaching creditor—Constitution of India—Article 14—Applicability of—How to be determined.

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Sept.' 8th.

Held, that section 9 of the Punjab Debtors' Protection Act, 1936, does not offend the provisions of article 14 of the Constitution of India. It enacts no new provision of law but merely gives recognition to the rule of law applicable to a well-recognised class of persons, namely, persons governed by the Customary Law of the Punjab. This rule applies to persons irrespective of their religion, colour or race.

Held, that section 4 of the Hindu Succession Act, 1956, does away with the rule of custom so far as succession is concerned and therefore, after this Act came into force,

no Hindu can be said to be governed by the rules of customary law and the succession to the property held by a Hindu must be regulated by the provisions of this Act. But the provisions of this Act will not avail in a case in which the succession had opened out before its coming into force as this Act is not retrospective. Such a case will be governed by the law prevailing at the time the succession opened out.

Held, that the attachment of property in execution of a decree confers no title on the attaching creditor, but merely prevents a private alienation of the attached property.

Held, that for the purpose of article 14 of the Constitution of India, each impugned provision has to be examined with reference to the purpose and object underlying its enactment and if that provision has not for its basis class legislation, but is based on reasonable classification, it would not violate article 14.

Case referred by Hon'ble Mr. Justice Mahajan on 14th May, 1959 to a Division Bench for decision of the important question of law involved in the case and was finally decided by a Division Bench of this Court consisting of Hon'ble Mr. Justice Dulat and Mr. Justice Mahajan on 8th September, 1960.

Execution first appeal from the order of Shri Om Nath Vohra, Sub-Judge, Ist Class, Jullundur, dated 4th August, 1956, accepting the objections to the extent that the attachment of the land is illegal and hence vacated. ...

B. R. TULI AND V. C. MAHAJAN, ADVOCATES, *for the Appellant.*

K. C. NAYAR, ADVOCATE, *for the Respondent.*

JUDGMENT

Mahajan, J. MAHAJAN, J.—This execution first appeal is by the decree-holder. It came up before me on the 14th of May, 1959. In veiw of the importance of the question involved, I referred it to a Division Bench. By order of my Lord, the Chief Justice, the appeal has been placed before us for hearing.

The relevant facts out of which this appeal has arisen are as follows :—

Pandit Hans Raj obtained a decree for Rs. 26,000, against Balwant Singh on the 29th of July, 1938. In execution of this decree, the ancestral land belonging to the judgment-debtor was attached along with the *jagir*. Before the land could be put to sale, Balwant Singh died in April, 1953, and was succeeded by his son Dhanwant Singh. On the 26th of February, 1954, and the 3rd of July, 1954, Dhanwant Singh filed two objection petitions under sections 47 and 60 of the Code of Civil Procedure and section 9 of the Punjab Debtors' Protection Act (No. II of 1936)—hereinafter referred to as the Act. These objections were resisted by the decree-holder on a number of grounds. These objections prevailed with the executing Court only so far as the land in dispute is concerned. By his order, dated the 4th of August, 1956, the executing Court held that the land in dispute could not be sold in execution of the decree in view of the provisions of section 9 of the Act. So far as the *jagir* is concerned, the objections of the judgment-debtor were dismissed. The present appeal is confined to the question whether the land to which Dhanwant Singh has succeeded on his father's death and which admittedly is ancestral can be sold in execution of the decree obtained against the father. It is no longer in dispute that the parties are governed by custom and that the land is ancestral.

Three contentions have been raised by the learned counsel for the decree-holder. These contentions are :—

(1) That in view of section 4 of the Hindu Succession Act (No. 30 of 1956), Dhanwant Singh could not be said to

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be governed by custom. The rule of custom with regard to succession has been abrogated by section 4 of the Hindu Succession Act. Therefore the basic requirement of section 9 of the Act, namely, that the rule of succession to immovable property sholud be custom are not fulfilled and therefore its protection is no longer available o the respondent;

(2) that section 9 of the Act is *ultra vires* Article 14 of the Constitution of India inasmuch as it creates discrimination *inter se* the debtors. Debtors who are not governed by customary law and who hold ancestral immovable property have no immunity *qua* that property for it can be sold in execution of the decree obtained against a previous holder, while in the case of debtors governed by that law, such property in the hands of a subsequent holder is not liable to be proceeded against in execution of a decree obtained against the previous holder;

(3) that, in any case, the property having been attached in the life time of the previous holder against whom the decree had been properly obtained, it will only vest in the subsequent holder subject to the charge created by the attachment.

So far as the first contention is concerned, it is no doubt true that section 4 of the Hindu Succession Act, which is in these terms :—

"4. (1) Save as otherwise expressly provided in this Act,—

(a) any text, rule or interpretation of Hindu Law or any custom or usage

as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) * * * *

(2) * * * *"

does away with the rule of custom so far as succession is concerned and therefore after the Hindu Succession Act came into force, no Hindu can be said to be governed by the rules of customary law and the succession to the property held by a Hindu must be regulated by the provisions of the Hindu Succession Act. Therefore, section 9 of the Act, which is in these terms :—

"9. When custom is the rule of decision in regard to succession, the immovable property then, notwithstanding any custom to the contrary, ancestral immovable property in the hands of a subsequent holder whether male or female and if female whether she holds as a limited owner or full owner shall not be liable in the execution of a decree or order of a court relating to a debt incurred by any of his predecessors-in-interest:"

would be of no avail to these persons, who before the coming into force of the Hindu Succession Act were governed by custom but on its coming into force can no longer be said to be so governed. But this argument fails in the present case because the succession opened out long before the Hindu Succession Act came into force. It is not disputed and

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indeed it cannot be, that the Hindu Succession Act is not retrospective. Therefore, the succession to the land in dispute in the instant case is not governed by the Hindu Succession Act, but will be governed by the law prevailing at the time the succession opened out and at that time, the law governing the debtor was the customary law. In this view of the matter, the protection of section 9 of the Act is available to the respondent. There is no force in the first contention and it must, therefore, be repelled.

The second contention is based on the ground that the provisions of section 9 of the Act violate the fundamental right granted by Article 14 of the Constitution. For the purpose of this contention, the scope and the effect of the provisions of Article 14 has to be considered. So far as this matter is concerned, it has been settled by a large number of decisions of the Supreme Court. It will serve no useful purpose to examine each one of those decisions. I would only refer to two of them in some detail. In these decisions, the entire scope of this Article has been exhaustively examined. I have, therefore, taken liberty to quote in extenso from these decisions. The first of these decisions is *Budhan Choudhry and others* v. *The State of Bihar* (1). At page 1048 of the Supreme Court Reports, it was observed by their Lordships as follows :—

> "The provisions of Article 14 of the Constitution have come up for discussion before this Court in a number of cases, namely, *Chiranjit Lal* v. *Union of India* (2), *State of Bombay* v. *F. N. Balsara* (3), *State of West Bengal* v. *Anwar Ali Sarkar* (4),

(1) (1955) 1 S.C.R. 1045=A.I.R. 1955 S.C. 191.
(2) 1950 S.C.R. 869=A.I.R. 1951 S:C. 41.
(3) 1951 S.C.R. 682=A.I.R. 1951 S.C. 318.
(4) 1952 S.C.R. 284=A.I.R. 1952 S.C. 75.

Kathi Raning Rawat v. *State of Saurashtra* (1), *Lachmandas Kewalram* v. *State of Bombay* (2), *Qasim Razvi* v. *State of Hyderabad* (3), *and Habeeb Mohammad* v. *State of Hyderabad* (4). It is, therefore, not necessary to enter upon any lengthy discussion as to the meaning scope and effect of the article in question. It is now well established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that that differntia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases, namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure."

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(1) 1952 S.C.R. 435=A.I;R; 1952 S;C; 123;

(2) 1952 S.C.R. 710=A;I;R 1952 S;C; 235;

(3) 1953 S.C.R. 589=A:I;R; 1953 S;C; 156;

(4) 1953 S.C.R. 661=A.I;R; 1953 S:C: 287;

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The other decision is in the case of *Shri Ram Krishna Dalmia* v. *Shri Justice S. R. Tendolkar* (1), wherein at page 547, Das C.J., observed—

"The decisions of this Court further establish—

(a) that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself;

(b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;

(c) that it must be presumed that the Legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds;

(d) that the Legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest;

(e) that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report,

(1) A.I.R. 1958 S.C. 538.

the history of the times and may assume every state of facts which can be conceived existing at the time of legislation; and

(f) that while good faith and knewledge of the existing conditions on the part of a Legislation are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the Court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always, holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation.

The above principles will have to be constantly borne in mind by the Court when it is called upon to adjudge the constitutionality of any particular law attached as discriminatory and violative of the equal protection of the laws.

A close perusal of the decisions of this Court in which the above principles have been enunciated and applied by this Court will also show that a statute which may come up for consideration on a question of its validity under Article 14 of the Constitution may be placed in one or other of the following five classes:—

(i) A statute may itself indicate the persons or things to whom its provisions are intended to apply and the basis of the

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classification of such persons or things may appear on the face of the statute or may be gathered from the surrounding circumstances known to or brought to the notice of the Court. In determining the validity or otherwise of such a statute the Court has to examine whether such classification is or can be reasonably regarded as based upon some differentia which distinguishes such persons or things grouped together from these left out of the group and whether such differentia has a reasonable relation to the object sought to be achieved by the statute, no matter whether the provisions of the statute, are intended to apply only to a particular person or thing or only to a certain class of persons or things. Where the Court finds that the classification satisfied the test, the Court will upheld the validity of the law, as it did in *Charanjit Lal* v. *Union of India* (1), *State of Bombay* v. *F. N. Balsara* (2), *Kedar Nath Bajeria* v. *State of West Bengal* (3), *V. M. Syed Mohammed & Company* v. *State of Andhra* (4), *and Budhan Choudhary* v. *Bihar* (5)

(ii) A stateute may direct its provisions against one individual person or thing or to severa l indibidual persons or things, but no reasonable basis of classification may appear on the face "of it or be deducible from the surrounding

(1) A.I.R. 1951 S.C. 41.
(2) A.I.R. 1951 S.C. 318.
(3) 1954 S.C.R. 30=A.I.R. 1953 S.C. 404.
(4) 1954 S.C.R. 1117=A.I.R. 1954 S.C. 314.
(5) A.I.R. 1955 S.C. 191

circumstances, or matters of common knowledge. In such a case, the Court will strike down the law as an instance of naked discrimination, as it did in *Ameerunnisa Begum* v. *Mahboob Begum* (1) and *Ramprasad Narain Sahi* v. *State of Bihar* (2),

(iii) A statute may not make any classification of the persons or things for the purpose of applying its provisions but may leave it to the discretion of the Government to select and classify persons or things to whom its provisions are to aply. In determining the question of the validity or otherwise of such a statute the Court will not strike down the law out of hand only because no classification appears on its face or because a discretion is given to the Government to make the selection or classification but will go on to examine and ascertain if the statute has laid down any principles or policy for the guidance of the exercise of discretion by the Government in the matter of the selection or classification. After such scrutiny, the Court will strike down the statute if it does not lay down any principle or policy for guiding the exercise of discretion by the Government in the matter of selection or classification on the ground that the statute provides for the delegation of arbitrary and uncontrolled power to the

(1) 1953 S.C.R. 404=A.I.R. 1953 S.C. 91.
(2) 1953 S.C.R. 1129=A.I.R. 1953 S.C. 215.

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Government so as to enable it to discriminate between persons or things similarly situate and that, therefore, the discrimination is inherent in the statute itself. In such a case the Court will strike down both the law as well as the executive action taken under such law as it did in the *State of West Bengal* v. *Anwar Ali Sarkar* (1), *Dwarka Prasad* v. *State of Uttar Pradesh* (2), and *Dhirendra Kumar Mandal* v. *Superintendent and Ramembrances of Legal Affairs* (3).

(iv) A statute may not make a classification of the person or thing for the purpose of applying its provisions and may leave it to the discretion of the Government to select and classify the persons or things to whom its provisions are to apply, but may at the same time lay down a policy or principle for the guidance of the exercise of discretion by the Government in the matter of such selection or classification; the Court will upheld the law as constitutional, as it did in *Kathi Raning Rawat* v. *The State of Saurashtra* (4).

(v) A statute may not make a classification of the persons or things to whom their provisions are intended to apply and leave it to the discretion of the Government to select or classify the persons or

(1) A.I.R. 1952 S.C. 75.
(2) 1954 S.C.R. 803=A.I.R. 1954 S.C. 224.
(3) (1955) 1 S.C.R. 224=A.I.R. 1954 S.C. 424.
(4) A.I.R. 1952 S.C. 123.

> things for applying these provisions according to "the policy or principle laid down by the statute itself for guidance of the exercise of discretion by the Government in the matter of such selection or classification. If the Government in making the selection or classification does not proceed on or follow such policy or principle, it has been held by this Court e.g., in *Kathi Raning Rawat* v. *The State of saurashtra* (1), that in such a case the executive action but not the statute should be condemned as unconstitutional."

It would thus be apparent that the scope and effect of the provisions of Article 14 of the Constitution can admit of no dispute. But the real difficulty often arises in the application of the set principles to different sets of facts presented by different cases. That is why in cases which seemingly appear to possess similar facts different results have followed. It is axiomatic that for the purpose of Article 14, each impugned provision has to be examined with reference to the purpose and object underlying its enactment and if that provision has not for its basis class legislation, but is based on reasonable classification, it would not violate Article 14. At this stage, it will be proper to examine the relevant scheme of the Act and ascertain the effect of the provision under challenge.

The Act as its preamble discloses has been enacted in order to provide more effective protection to debtors, and to modify the existing law on certain points and also to amend the law with respect to persons carrying on business in money-lending. Section 4 provides for temporary

(1) A.I.R. 1952 S.C. 123.

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alienation of land in execution of decree for the payment of money and the maximum period of temporary alienation is 20 years. Section 9 (the impugned section) exempts ancestral immovable property in the hands of a subsequent holder from being proceeded with in execution of a decree obtained against a previous holder, unless it was expressly charged by way of mortgage by the previous holder. Section 10 exempts standing crops and trees from attachment or sale. Section 11 cuts down the period prescribed for execution of a decree from 12 years to 6 years. Section 11-A forbids execution of a money decree by sale without attachment or by appointment of a receiver of land or the produce of land or an interest in land which under any law for the time being in force, is exempt from attachment or sale.

So far as section 9 is concerned, I may mention at this stage that it enacts no new provision of law, but merely gives recognition to the rule of law applicable to persons governed by the customary law of the Punjab. In this connection, refference may be made to *Jagdip Singh* v. *Bawa Narain Singh* (1), and *Mst. Miker and others* v. *Chhaju Ram* (2). It was held in *Jagdip Singh's* case that—

> "Where a male proprieter, governed by customary rules, has ccntracted a just debt and dies leaving ancestral landed property, such property is not liable in the hands of the next holder in respect of such debt, unless the debt had been expressly charged on the property.
>
> A person who has obtained a simple money decree for such a debt against

(1) 4 P.R. 1913.
(2) 17 P.R. 1919.

the debter himself or his representatives, has no right to execute it against the ancestral land, once in the debtor's possession, which has passed into the hands of the next holder under customary law."

As late as 1944, in *Bahadur Chand* v. *Mt, Daulat* (1), a Full Bench of the Lahore High Court presided over by Harries, C.J., in which the judgment was delivered by Mahajan, J., as he then was, while dealing with section 9 of the Act it was observed as under:—

"The rule laid down by the Full Bench in 4 P. R. 1913 has received statutory recognition in section 9, Debtors' Protection Act. The *ratio decidendi* of the Full Bench decision is that a reversioner or a descendant of the common ancestor having a residuary interest in ancestral immovable property the property passes to him by reason of his connection with the common ancestor and he does not succeed to the last owner, and is therefore not liable for the debts of his predecessor-in-interest."

Therefore, section 9 of the Act merely enunciated a rule of law applicable to a well-recognised class of persons, namely, persons governed by the customary lay of the Punjab. It will be of interest to note that it is only those classes, who are dependent for their livelihood on agriculture and what are commonly known in this State as agricultural classes that are governed by the rules

(1) A.I.R. 1944 Lah. 369.

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of customary law. This rule applies to persons irrespective of their religion, colour or race. In other words, those persons may be Hindus, Muslims Christians. If they are governed by the rules of customary law, they are entitled to the benefit of section 9. It cannot with any force of reason be urged that the Mohammadan Law is *ultra vires* the Constitution because it does not govern all Indian citizens, and similarly the Hindu Law. These laws are laws governing succession *inter se* well-known classes of citizens, who have their different social systems and cultures, and for this reason have their different personal laws. This being so, the argument based on Article 14 of the Constitution must fail. I have not, therefore, examined numerous decisions cited by the learned counsel for the parties for their respective contentions. As I have already said, each decision turns on the peculiar facts of that particular case. The only decision, which has some parallel to the present case, though it cannot be said that it is identical, is the decision of the Bombay High Court in *Manilal Gopalji* v. *Union of India* (1), where in section 4(3) of the Bar Councils Act came up for consideration and it was held that the power of the High Court to make provision for reservation of seats for certain classes of lawyers are not themselves discriminatory. The Legislature in reserving seats for classes of advocates did not do something which was prohibited by Article 14 of the Constitution. Lawyers as a class were sub-divided for purposes of representation to the Bar Council on the basis of standing and qualification, just as in the instant case a class of debtors has been divided into those governed by the customary law and those not governed by the customary law.

(1) A.I.R. 1950 Bom. 83.

This now brings me to the third contention. The contention is based on the observations of the Privy Council in *Suraj Bunsi Koer* v. *Sheo Persad Singh* (1), The relevant observations occur at page 174 of the report and are in the following terms:—

> "They think that, at the time of Adit Sahai's death, the execution-proceedings under which the mauza had been attached and ordered to be sold had gone so far as to constitute, in favour of the judgment-creditor, a valid charge upon the land, to the extent of Adit Sahai's undivided share and interest therein, which could not be defeated by his death before the actual sale. They are aware that this opinion is opposed to that of the High Court of the North-Western Provinces, in the case of *Goor Pershad* v. *Sheodeen* (2), already referred to. But it is to be observed that the Court by which that decision was passed does not seem to have recognised the seizable character of an undivided share in joint property which has since been established by the before-mentioned decision of this tribunal in the case of *Deen Dyal Lal* v. *Jagdip Narain Singh* (3). If this be so, the effect of the execution-sale was to transfer to the respondents the undivided share in eight annas of Mouza Bissumbhupore, which had formerly belonged to Adit Sahai in his lifetime; and their Lordships are of opinion that not withstanding his death

(1) I.L.R. 5 Cal; 148:
(2) 4 N.W.P. Rep: 137
(3) 3 Cal.198.

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therespondents are entitled to work out the rights which they have thus acquired by means of a partition."

A similar argument based on the Privy Council decision in *Suraj Bunsi Koer's case* came up for consideration before a Division Bench of the Lahore High Court in *Ganpat Rai* v. *Santa Singh and others* (1), and was negatived. It was observed that—

> "The attachment of ancestral land in the lifetime of the original proprietor, for debts due from him does not create any charge on property and cannot preclude the accrual of reversionary rights.

Suraj Bunsi Koer's case was closely examined in *Firm Sukhram Pholley* v. *Kanwal Singh and others* (2), wherein it was held that the rule laid down in *Ganpat Rai's case* was the correct rule of law. While dealing with the observations of the Privy Council in *Suraj Bunsi Koer's case* Addison, J., observed as under:—

> "In this case before the Privy Council, however, a decree had been obtained against Adit Sahai alone for a certain sum to be realised by the sale of the mortagaged property. This case is, there fore, distinguishable on the ground that Adit Sahai had charged the joint Hindu family property, belonging to himself and his sons and it might perhaps be said that, for this reason alone, his share at least was liable for the debt. Further, in the case of coparceners under Hindu Law, it has been

(1) A.I.R. 1930; Lah 849
(2) A.I.R; 1940 Lah 4

held that the undivided interest of a co-parcener, if it is attached in his life time, may be sold after his death whether the order for sale is made in his lifetime or after his death. This principle might also explain the remark relied upon in the judgment of their Lordships of the Privy Council."

The rule laid down by the Privy Council in *Suraj Bunsi Koer's case* is a peculiar rule of Hindu Law as the rule laid down in *Jagdip Singh's case* (*supra*) is the peculiar rule of the customary law. Therefore, the considerations which prevailed with their Lordships of the Privy Council will have no bearing so far as the persons governed by the customary law are concerned. It is well settled that the attachment of property in execution of a decree confers no title on the attaching creditor, but merely prevents a private alienation of the attached property. See in this connection, the decisions of the Privy Council in *Moti Lal* v. *Karrabuldin* (1) and *Raghunath Das* v. *Sundar Das* (2). To the same effect are the decisions in *Natha* v. *Ganesha Singh* (3), and *Bhambul Devi* v. *Narain Singh* (4). I am therefore of the view that the third contention also has no force.

For the reasons given above, this appeal fails and is dismissed, but in view of the fact that the question involved was not free from difficulty, I leave the parties to bear their own costs throughout.

DULAT, J.—I agree. Dulat, J.

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(1) I.L.R. 25 Cal; 179:
(2) I.L.R. 42 Cal. 72.
(3) I.L.R. 13 Lah. 524.
(4) 29 I.C. 572.