APPELLATE CIVIL.

Before Guha and Nasim Ali JJ.

MATI MALA DEBEE

v.

SURENDRA NATH MUDI.*

1936

Aug. 19, 20, 21.

Will—Spes successionis—*Attachment—Code of Civil Procedure (Act V of 1908), s. 60,* prov. (1), cl. (m).

Where a testator had bequeathed a life-interest to his widow, but had vested his properties absolutely in his daughter, who, however, died intestate during her mother's lifetime

held that the daughter's interest was not a mere possibility or *spes successionis*, but a vested remainder: but though, so long as the daughter was alive, her husband as her heir had only an expectancy of succession to this vested remainder, after her death it devolved on her husband by inheritance, and this interest of his was not a mere expectancy of succession, which could not be attached under the provisions of s. 60, prov. (*l*), cl. (*m*) of the Code of Civil Procedure.

In re *Parsons. Stockley* v. *Parsons* (1) and *Ma Yait* v. *Official Assignee* (2) referred to.

APPEAL FROM ORIGINAL ORDER by the judgment-debtors.

The facts of the case and the arguments in the appeal appear sufficiently in the judgment.

Atul Chandra Gupta and *Phaneendra Kumar Sanyal* for the appellants.

Radha Binode Pal (with him *Narendra Nath Chaudhuri*) for the respondent.

Cur. adv. vult.

NASIM ALI J. This is an appeal by the judgment-debtors against an order of the Subordinate Judge of Howrah, dated March 16, 1936, rejecting their objections to the attachment and sale of certain properties

*Appeal from Original Order, No. 215 of 1936, against the order of Dheerendra Nath Guha, Subordinate Judge of Howrah, dated Mar. 16, 1936.

(1) (1890) 45 Ch. D. 51. (2) (1929) I. L. R. 8 Ran. 8; L. R. 57 I. A. 10.

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in an execution proceeding. One Jyotish Chandra Banerji was owner of these properties. He died, having made his last will and testament, on September 9, 1917. By the said will, after making specific bequests, the residual estate was granted to his wife for life, then to his daughter for life, then to her husband for life and then to certain persons absolutely. By a codicil dated May 5, 1918, the residual estate was bequeathed by the testator to his daughter absolutely. The testator left surviving him his widow, Moti Mala Debee appellant No. 1, his daughter Anila Bala Debee and her husband Mrigendra Nath Mukherji, appellant No. 2. Probate of the will was granted in due course. Thereafter, the daughter of the testator died intestate leaving her husband appellant No. 2 as her sole heir. The respondent in this Court has attached these properties in execution of a decree obtained by him against the widow and the son-in-law of the testator. The latter objected to the attachment and sale of these properties on the ground that they were not liable to attachment, in view of the provisions contained in s. 60, prov. (*l*), cl. (*m*) of the Code of Civil Procedure. The learned Subordinate Judge has overruled this objection. The judgment-debtors appeal to this Court.

At the time of the hearing of this appeal, Mr. Gupta, appearing for the appellants, did not press the objection of the appellant No. 1 to the sale of her life-interest in the property in question. The whole argument of the learned advocate was confined to the question whether the interest of appellant No. 2 in the properties in question was liable to attachment and sale in execution of the decree against him. His contention is that, although the right of the daughter was vested right in terms of the will, the right of her legal representative after her death, is only an expectancy of succession so long as the widow of the testator was alive and was consequently not liable to attachment. An expectancy of succession is a mere possibility and is not an interest or even a contingent title.

It is indisputable law that no one can have any estate or interest, at law or in equity, contingent or other, in the property of a living person to which he hopes to succeed as heir at law or next of kin of such living person. During the life of such person no one can have more than a *spes successionis*, an expectation or hope of succeeding to his property.

In re *Parsons*. *Stockley* v. *Parsons* (1).

The right to the properties in question vested absolutely in the daughter on the testator's death, and though a life-interest was bequeathed to the widow, her interest was not a mere possibility but a vested remainder, which was an interest granted out of the original estate. So long as the daughter was alive, her heir had only an expectancy of succession to this vested remainder. After her death, it devolved on Mrigendra, appellant No. 2, by inheritance. The interest of appellant No. 2, therefore, is not a mere expectancy of succession. It is argued by Mr. Gupta that Mrigendra's right depends on a contingency, namely, the death of the widow during his lifetime. But a contingent interest is—

Something quite different from a mere possibility of a like nature of an heir-apparent succeeding to the estate, or the chance of a relation obtaining a legacy, and also something quite different from a mere right to sue. It is a well-ascertained form of property—it certainly has been transferred in this country for generations—in respect of which it is quite possible to raise money and to dispose of in any way that the beneficiary chooses.

Ma Yait v. *The Official Assignee* (2).

The learned Subordinate Judge was, therefore, right in rejecting the objection of appellant No. 2 to the attachment and sale of the properties in question.

The appeal is therefore dismissed with costs. The hearing fee in this Court is assessed at two gold mohurs.

GUHA J. I agree.

G.S.

(1) (1890) 45 Ch. D. 51, 55.

(2) (1929) I. L. R. 8 Ran. 8 (11-2); L. R. 57 I. A. 10 (13).