

## APPELLATE CIVIL.

Before Mr. Justice Sankaran-Nair and Mr. Justice  
Abdur Rahim.

1908.  
August 5, 26. SALAKSHI (PETITIONER—THIRD DEFENDANT), APPELLANT,  
v.

LAKSHMAYEE (RESPONDENT—PLAINTIFF), RESPONDENT.\*

*Civil Procedure Code—Act XIV of 1889, s. 266—Attachable interest—  
Hindu Law—Right of residence of widow in family house is personal  
and cannot be attached in execution.*

The right of a widow, under the Hindu law, to reside in her husband's family house, is a purely personal right and cannot be transferred.

Such right cannot be attached in execution under section 266 of the Code of Civil Procedure.

THE facts of the case are sufficiently stated in the judgment.

*T. V. Seshagiri Ayyar* for appellant.

*G. S. Ramachandra Ayyar* for respondent.

JUDGMENT.—The question for decision is whether the respondent has any interest in the property—a dwelling house—liable to be attached and sold in execution of a decree against her.

In a suit for maintenance brought by the respondent, a Hindu widow, against her step-son, his two sisters, wife and daughter, she obtained a decree against the first defendant, the step-son, for past and for future maintenance which was made a charge on certain properties. There was also a decree for surrender to her of the first defendant's share of item No. 1 in the plaint for her residence during life. Her interest in that property is now attached by one of the other defendants in execution of the decree for costs decreed against her.

The judge has held that she has no alienable interest and the attachment must therefore be set aside. In appeal reliance is placed upon the dictum of Muttusami Ayyar, J., in *Ramanadan v. Ranganmal*(1). That was a suit in which the question for

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\* Civil Miscellaneous Second Appeal No. 87 of 1907, presented against the decree of F. D. P. Oldfield, Esq., District Judge of Tanjore, in Appeal Suit No. 466 of 1907, presented against the order of M. R. Ry A. N. Anantharama Ayyar, District Munsif of Tanjore, on Execution Petition No. 715 of 1906 (Original Suit No. 241 of 1899).

(1) I. L. R., 12 Mad., 260.

decision was as to the right of a Hindu widow to live in the family house sold in execution of a decree for a debt binding on the family, and purchased by a stranger in good faith but with notice of her claim to reside therein. In the course of his judgment, negating her claim, Muttusami Ayyar, J., observed "a sale for the payment of her own debt would bind her interest in the house whatever it might be." This expression of opinion is referred to without disapproval in *Jayanti Subbiah v. Alamelu Mangamma*(1). The right of the widow is to live in the husband's family house. She has no right to insist on residing in any particular house, and, ordinarily, when living with the members of her husband's family, she must accept such reasonable arrangements for her residence therein as they make for her. The interest is therefore obviously one restricted in its enjoyment to her, and it is this interest which the decree gives to the respondent. If this interest can be transferred, what is it that the purchaser takes? It is the right to reside in the portion allotted to her, with the other members of the family living in the family house. This could not have been contemplated by the Hindu Law-givers. The case may be different where lands or other property may have been allotted to a widow in lieu of her claim for maintenance. It appears to us therefore that the respondent has been given a portion of the house only for her personal use and her right of enjoyment cannot be transferred. Recognizing a right of sale might be oppressive to the family, and would result in allowing her a right to choose a separate residence even where she is not entitled to do so under the Hindu Law.

SALAKSHI  
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LAKSHMAYEE.

We agree with the Judge and dismiss this appeal with costs.

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(1) I. L. R., 27 Mad, 50