

of his house would not be an offence. Assuming that the request to go out of the house was accompanied by the words "Badva, Rascal," it cannot be said that the object or intention was to provoke a breach of the peace however improper the language may be.

The case was fully argued on both sides and giving it my best consideration I am of opinion that this is a case where I ought to interfere. It is easy to see what injury is likely to be inflicted on a respectable pleader by a vexatious and protracted criminal trial. It may be that after a protracted trial the accused will be acquitted but that does not appear to be a sufficient ground for not saving him from what I consider to be a groundless and vexatious prosecution.

I quash the proceedings in the lower Court.

K.R.

Re
KUPPUSWAMI
AYYAR,
—
KUMARA-
SWAMI
SASTRIYAR, J.

APPELLATE CIVIL.

Before Mr. Justice Sadasiva Ayyar and Mr. Justice Tyabji.

S. CHIDAMBARAMMA (PLAINTIFF), APPELLANT,

v.

S. HUSSAINAMMA AND TWO OTHERS (DEFENDANTS NOS. 1,
2 AND 4), RESPONDENTS.*

1914.
July 16 and
1915.
March 30.

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Hindu Law—Decree against widow for husband's debt—Attachment of property—Previous alienation by widow for no justifiable cause—Attachment and sale thereupon effective to convey reversionary interest.

A plaintiff who had obtained a decree against a Hindu widow in respect of a debt due by her late husband attached a certain property as belonging to her husband which she had sold to a stranger several years before the attachment, for no purpose binding on the reversioner,

Held, that the decree-holder was entitled to attach and bring to sale the reversionary interest in the property, subject to the enjoyment thereof by the alienee during the widow's life-time.

SECOND APPEAL against the decree of J. W. HUGHES, the District Judge of Kurnool, in Appeal No. 27 of 1911, preferred against the decree of B. SUBBA RAO, the District Munsif of Nandyal, in Original Suit No. 173 of 1910.

* Second Appeal No. 1495 of 1912.

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AMMA.
—
SADASIVA
AYYAR AND
TYABJI, JJ.

The facts of the case appear from the final judgment of SADASIVA AYYAR, J.

V. C. Seshachariar for the appellant.

T. M. Krishnaswami Ayyar and *R. Venkataramana Rao* for the second respondent.

The following ORDER of the Court was delivered by TYABJI, J.:—The learned District Judge is justified in his view on the burden of proof to this extent, namely, that the burden of proving that the alienation by the widow (first defendant) to the third defendant was nominal or without consideration lay on the plaintiff who attached the plaint property for realizing the amount decreed to him as due by first defendant's deceased husband. We must accept his finding that the plaintiff has not discharged that burden. But there is the further question whether the alienation by the widow was made for such a necessary purpose as would bind the property after the widow's death and whether the plaintiff is not entitled to attach and bring to sale the said reversionary estate in execution of his decree.

The burden of proving as against a creditor of the husband or as against a reversioner that an alienation by the widow is binding on the reversion is clearly on the alienee.

The learned District Judge says that "the defendants no doubt have not satisfactorily proved the necessity for the sale" but we are loath to accept and act upon that finding as the District Mansif had come to a different conclusion and the learned District Judge's above observation appears as a sort of *obiter dictum* in his judgment.

We shall therefore call for a fresh finding on the evidence already on the record on the question whether the alienation by the first defendant to third defendant in 1899 was made for purposes binding on the reversionary interest in the plaint property.

The finding should be submitted within six weeks from the date of receipt of records, and ten days are allowed for filing objections to the finding.

In obedience to the above ORDER the acting District Judge of Kurnool submitted the following FINDING:—

"A finding has been called for on the following issue:—

'Whether the alienation by the first defendant to third defendant in 1899 was made for purposes binding on the reversionary interest in the plaint property?'

In order that this issue may be found in the affirmative, it is necessary for the defence side to show that the alienation was for a purpose that comes under the category of legal necessity.

[On a consideration of the evidence on the point the Court held as follows :]—As the burden which is on the defence has not been discharged, I find the issue in the negative.”

This second Appeal coming on for final hearing the Court delivered the following JUDGMENTS:—

SADASIVA AYYAR, J.—The facts are as follows: the plaintiff is the decree-holder in Original Suit No. 311 of 1901 on the file of the Nandyal District Munsif's Court. The judgment-debtor is the first defendant, a Hindu widow who represented her husband's estate fully and the decree was passed for a debt due by her husband. The plaint property was attached by the plaintiff (decree-holder) as belonging to her husband's estate. The attachment was made on the 11th November 1908, but the widow (the first defendant) had sold the property in 1899 itself to the third defendant, who sold it in his turn to the second defendant in 1905. The widow's sale was not made for necessity and was invalid beyond her life-time.

On these facts the question in second appeal is whether the plaintiff, who is the appellant before us, is or is not entitled to attach and bring to sale in execution of his decree in Original Suit No. 311 of 1901 that portion of the husband's estate which is left unaffected by the sale executed by the widow, that sale-deed as we said before not affecting more than that interest in the property which could enure during the widow's life-time. There are no doubt observations in several cases deprecating the description of a Hindu widow's estate as a life interest, because she fully represents the estate for most purposes and nobody else represents any interest in the estate during her life-time and she is not a trustee for anybody. (See paragraphs 624 and 625 of Mayne's Hindu law.) My own opinion is that when once it is admitted that she represents the estate fully, some of the Hindu law texts which direct her not to alienate the estate except for necessary purposes are merely moral admonitions and a sale by her in contravention of those moral precepts does not fail to convey the absolute ownership to the purchaser. But authorities which cannot possibly be got over have held that an alienation not for legal necessity is only valid during her

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life-time, that is, it conveys to the purchaser only a right to enjoy during the widow's life-time. [See the very recent case *Singaram Chettiar v. Kalyanasundaram Pillai*(1).] When the full estate is vested in her and yet owing to the restrictions which from being moral restrictions have become legal restrictions, she can convey only an interest to last during her life-time by a conveyance not for legal necessity, it seems to me to follow that the absolute estate vested in her becomes by her alienation for her own purposes (valid during her life-time) divided into two estates (1) a life estate enjoyable by the purchaser during her life-time and (2) a reversionary estate to be enjoyed after her life-time, both of which estates or rather the total of which belonged to her husband at his death. So far as her life interest is concerned, it became by her alienation not available to the creditors of her husband; but the ownership of the remaining reversionary estate continues in her as part of the estate which she inherited from her husband. That seems to me to be available to her husband's creditors. Mr. T. M. Krishnaswami Ayyar relied upon the cases which have held that a presumptive reversioner has no interest in the property during the widow's life-time which can be attached by his creditor. [See the latest case of this Court in *Sri Jagannadharaju v. Sri Rajah Prasada Rao*(2).] In my opinion, these decisions are irrelevant in the consideration of the question whether the widow as heir of her husband has still left in her some property belonging to her husband's estate which could be attached by her husband's creditor after she had made an alienation binding on her during her life-time. No person can claim during the widow's life-time, after the alienation of the widow's life estate, to be the owner of that reversionary interest, but it does not follow therefrom that no reversionary interest in property forming part of the husband's estate is left after her alienation of her life estate. If an interest belonging to the husband's estate is left some legal person must be its owner. If a presumptive and contingent reversioner is not the legal person in whom the reversionary right exists, it must be the widow in whom the whole legal estate vested at her husband's death. If so the decree-holder who obtained a decree against her as fully

(1) (1914) M.W.N., 735.

(2) (1916) I.L.R., 39 Mad. 554.

representing her husband must be entitled to attach that reversionary interest remaining in her as part of her husband's estate.

Section 60, clause (m) of the Civil Procedure Code and section 6, clause (a) of the Transfer of Property Act, are also relied on by Mr. T. M. Krishnaswami Ayyar. Section 60 (m) of the Civil Procedure Code prohibits the attachment of a judgment-debtor's expectancy of succession. Section 6 (a) of the Transfer of Property Act prohibits the transfer of the chance of an heir-apparent's succession by such heir-apparent. These statutory provisions again are, in my opinion, irrelevant to the consideration of the question before us because the judgment-debtor here is not the presumptive or contingent reversioner but the widow representing her husband's estate fully, and the transfer which would be made by the attachment and court-sale of the reversionary interest is not made by any contingent reversioner or of the rights of the contingent reversioner in execution of a decree against him but by the Court acting upon the judgment-debtor's rights and upon the husband's estate vested in the judgment-debtor (widow).

I would therefore answer the question which I put to myself in the beginning of the Judgment in the affirmative, and setting aside the Judgments of the lower Courts give a declaration to the plaintiff that the attachment made by him in execution of the decree in Original Suit No. 311 of 1901 is valid in respect of the reversionary interest in the properties subject to the life interest of the widow. The parties will bear their respective costs throughout.

TYABJI, J.—I agree. It seems to me that the widow was a party to the proceedings in two capacities: (1) as to a life interest in her own absolute right and (2) as to the reversion as the representative of her deceased husband's estate which is to devolve on his reversioner. She had no doubt purported to convey the property in both capacities but it has been found that in so far as she purported to alienate the property in her latter capacity she had stepped beyond her legal powers and was not competent to bind the reversioner. She was on that account brought on the record so that the reversionary interest of her husband's estate may also be bound. The authorities to the effect that the presumptive reversioner's interest is such a

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mere expectancy as is referred to in the Transfer of Property Act, section 6 (a) support this view. For, if the reversionary interest in the widow's husband's estate is a mere expectancy so far as the reversioner is concerned the only person in whom "the legal estate" (I use that expression for brevity perhaps at the sacrifice of accuracy) can be said to be vested must be the widow.

N.R.

APPELLATE CIVIL.

*Before Mr. Justice Seshagiri Ayyar and Mr. Justice
Kumaraswami Sastriyar.*

VENKATAPERUNAL RAJA BAHADUR VARU, RAJAH OF
KARVETNAGAR (MINOR BY GUARDIAN W. A. VARADA-
CHARIAR)—(PETITIONER), APPELLANT IN ALL.

v.

VENKATA REDDI AND TWELVE OTHERS (COUNTER-PETITIONERS),
RESPONDENTS.*

Civil Procedure Code (Act V of 1908), ss. 47, 73 and 104—Rateable distribution, order for—Right of appeal—Mortgage-decree—Provision for execution personally against the mortgagor—Application for execution for sale of mortgaged property—Sale held—Application, not disposed of—Sale of other properties by other decree-holders—Proceeds paid into Court—Application for rateable distribution by holder of mortgage-decree, if maintainable—Application for execution, not formally disposed of, if pending.

An order for rateable distribution under section 73 of the Code of Civil Procedure is appealable if it was passed between the parties to the suit in which the decree was passed and related to the execution of the decree and so fell under the provisions of section 47 of the Code.

Section 73 of the Code does not say that no appeal shall lie against orders passed under it; nor does the omission to provide for an appeal against such orders in section 104 of the Code deprive a party of the right of appeal conferred by other provisions of the Code.

Where an application for execution prayed for specific reliefs and they were all granted by the Court and obtained by the decree-holder, but no final order of disposal was passed by the Court on the application, it must be deemed to be a pending application for execution for purposes of section 73 of the Code.

APPEALS against the orders of L. C. MOORE, District Judge of North Arcot, in Civil Miscellaneous Petitions Nos. 898, 899, 900,

* Appeals Against Orders Nos. 486 to 290 of 1913.

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