

APPELLATE CIVIL.

Before Mr. Justice Tottenham and Mr. Justice Norris.

SALAMAT HOSSEIN AND ANOTHER (DEFENDANTS) v. LUCKHI RAM
(PLAINTIFF.)*

1884
March 5.

Civil Procedure Code (Act XIV of 1882), s. 266, proviso, cl. 1.—Attachment of monthly allowances.

A heritable right to receive a certain monthly allowance originally assigned in lieu of a share of landed property is not a mere right to maintenance or anything else exempted by the proviso to s. 266 of the Civil Procedure Code, and is saleable in execution of a decree.

THIS was a suit upon a bond for the sum of Rs. 3,000 with interest. One of the condition of the bond was as follows:—

“I, Salamat Hossein, mortgaged and hypothecated the allowance of Rs. 100, which, on account of the inheritance of Bibi Fasihunnissa Begum, the late wife of mine, is paid to me, Salamat Hossein, in lieu of my right to the estate, month by month from the *deorhi* of Khugra. * * * * I again pledge the same,” &c., &c. The plaintiff sought to enforce a lien on the monthly allowance secured to him by the bond. The Subordinate Judge gave him a decree for the realization of the amount by the sale of the mortgaged property.

The defendant appealed to the High Court

Mr. R. E. Twidale (with him Munshi Mohamed Yusuf) for the appellants, contended, as it had been in the Court below; that the right to receive the allowance was not property which could be seized in execution under s. 266 of the Code of Civil Procedure.

Mr. C. Gregory and Baboo Nilmadhub Bose for the respondent.

The judgment of the High Court was delivered by

TOTTENHAM, J.—The only question laid before us in this appeal is whether or not the right to receive a certain monthly allowance is seizable and saleable in execution of a decree. The appellant, Sala-

* Appeal from Original Decree No. 134 of 1882, against the decrees of Baboo Moti Lal Sironi, Subordinate Judge of Purneah, dated March 25th, 1882.

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mat Hossein, who is the party entitled to the allowance, mortgaged it under a bond executed by himself and other persons to the plaintiff respondent in consideration of a loan advanced by the latter. The decree provides for the realization of the amount due by the sale in the first place of the mortgaged property.

It is contended that the right to receive the allowance is not property which can be seized in execution under s. 266 of the Code of Civil Procedure. It seems to us that, under the circumstances, it is saleable, for it is shown to be a heritable right derived by the appellant from his deceased wife to whom it was assigned in lieu of her share of landed property. It is thus not a mere right to maintenance, nor anything else exempted by the proviso to s. 266; and as the appellant himself mortgaged it with a stipulation that it should, if necessary, be sold for the liquidation of his debt, it does not lie in his mouth to deny that it can be seized and sold. His pleader has relied upon the case of *Nilkunto Dey v. Harrosoondaree Dossee* (1) in which a question arose as to the attachment of *malikana* payable by the Collector to the judgment-debtor. But in that case it was not ruled that the right to *malikana* could not be sold; but only that the attachment was not sufficiently made by the mere issue of a notice to the Collector under s. 237 of Act VIII of 1859. The case does not help the appellants before us. We granted time to enable the parties to come, if possible, to an amicable settlement, but they have found it impossible to do so; and we do not see our way to impose terms on the plaintiff or to stay execution. The appeal must be dismissed with costs.

Appeal dismissed.

(1) I. L. R. 3 Cal., 414.