

1901

KALKA
DUBE
v.
BISHESHAR
PATAK.

be in the interest of technicality, and would be productive of serious injustice to decree-holders. The appeal must be allowed, and the orders of the Courts below set aside, and we direct the first Court to proceed with the application of the 10th September 1897 for execution in accordance with law. The appellant will have his costs of this appeal.

Appeal decreed.

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January 18.

Before Mr. Justice Blair and Mr. Justice Aikman.

HAR SHANKAR PRASAD SINGH (JUDGMENT-DEBTOR) v. BAIJNATH DAS
AND OTHERS (DECREE-HOLDERS)*

Civil Procedure Code, section 266—Execution of decree—Attachment—Annuity payable to vendor by vendee of immovable property.

Held that where a person made over property to the Court of Wards, partly in consideration of a present payment, and partly in consideration of an annuity payable to the vendor, such annuity was property of the vendor which was capable of being attached in execution of a decree against the vendor. *Haridas Acharjia v. Baroda Kishore Acharjia* (1) and *Maniswar Das v. Baboo Bir Pertab Sahu* (2) referred to. *Syed Tuffuzzool Hossein Khan v. Rughoonath Pershad* (3) distinguished.

THE facts of this case sufficiently appear from the judgment of the Court.

Munshi *Jang Bahadur Lal*, for the appellant.

Munshi *Gokul Prasad*, for the respondents.

BLAIR and AIKMAN, JJ.—One question—and one only—is urged in this appeal. A judgment-debtor sold his property to the Court of Wards for consideration, part of which was present payment, and part of which was an annuity payable to the judgment-debtor. We can see no distinction between the Court of Wards and other purchasers. It is urged upon us that under the deed of sale the judgment-debtor undertook not to alienate such annuity. In our opinion such a stipulation is wholly inoperative to defeat the claim of a judgment-creditor. It seems to us that the annuity falls within section 266 of the Code of Civil Procedure as being money belonging to the judgment-debtor.

The decree was obtained in 1874, and at that time and up to the period, not less than six years later, at which the property was

* First Appeal No. 81 of 1900, from a decree of Maulvi Syed Zain-ul-Abdin, Subordinate Judge of Ghazipur, dated the 15th January 1900.

(1) (1899) I. L. R., 27 Cal., 38.

(2) (1871) 6 B. L. R., 646.

(3) (1871) 14 Moo. I. A., 40.

taken in charge by the Court of Wards, it was liable to be taken in execution of the decree. When the property was re-transferred by the Court of Wards to the judgment-debtor, it was equally chargeable, and we find it impossible to say that the proceeds of the subsequent sale to the Court of Wards are in any way exempt from liability, whether the payment was immediate or deferred. Moreover, a promise not to alienate cannot *per se* operate as a bar to expropriation by the act of a Court.

We have had cited to us the case of *Haridas Acharjia v. Baroda Kishore Acharjia* (1), in which it was held that there could not be a valid attachment of any portion of a maintenance allowance by prohibitory order issued to the person bound to pay such allowance, of a date anterior to the time when the same falls due to the judgment-debtor. The learned Judge relied upon a passage reported in the ruling *Syud Tuffuzool Hossain Khan v. Rughoonath Pershad* (2). We find that the subject-matter of that case was totally different from that which forms the subject-matter of this appeal.

Our attention was also called to the case of *Maniswar Das v. Baboo Bir Pertab Sahu* (3) as an authority for the proposition that future maintenance can be attached.

In our opinion to hold that the deferred payments in this case are exempt from attachment would be contrary to common sense, equity, and good conscience.

We consider the Court below was right, and we dismiss the appeal with costs.

Appeal dismissed.

Before Sir Arthur Strachey, Knight, Chief Justice, and Mr. Justice Banerji.
SHIBHO MAL (DEFENDANT). v. LACHMAN DAS (PLAINTIFF).*

Act No. IX of 1872 (Indian Contract Act), Section 30—Wagering contract
—Contract collateral to a wagering contract not unenforceable.

Although by reason of section 30 of the Indian Contract Act, 1872, a wagering contract is void, a contract collateral to such a contract is not necessarily unenforceable, and the fact that a person has constituted another

* First Appeal from Order No. 98 of 1900, from an order of Pandit Giraj Kishore Das, Additional Subordinate Judge of Saharanpur, dated the 2nd May 1900.

(1) (1899) I. L. R., 27 Calc., 38. (2) (1871) G B. L. R., 646.
(3) (1871) 14 Moo. I. A. 40.

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