

Before Mr. Justice Prinsep and Mr. Justice Wilson.

KRISTO GOBIND MAJUMDAR (JUDGMENT-DEBTOR) *v.* HEM CHUNDER CHOWDHRY (DECREE-HOLDER).

KRISHNA GOPAL MAJUMDAR (JUDGMENT-DEBTOR) *v.* HEM CHUNDER CHOWDHRY (DECREE-HOLDER).*

1889
March 19.

Execution of decree—Personal decree against person having life interest—Decree for arrears of rent—Hindu law.

A decree for arrears of rent was obtained by *H* against *B*, a daughter in possession for a life estate of property inherited from her father *R*. On the death of *B*, this property was taken by her two sons as heirs of her father *R*. The decree was for arrears which had accrued during the lifetime of *B*, and the sons had been substituted for *B* as judgment-debtors.

On an application for execution of the decree: *Held*, on the principle laid down in *Baijun Doobey v. Brij Bhookun Lall Awusti* (1), that the debt was a personal debt, payment of which could be enforced only against the property left by *B*. The decree, therefore, could not be executed against the property inherited by the sons from *R*.

Hurry Mohun Rai v. Gonesh Chunder Doss (2) distinguished.

IN these cases Hem Chunder Chowdhry had obtained a decree for arrears of rent against (among others) one Brojosundari Dassia, the daughter and heiress of one Rama Kanto Majumdar. Brojosundari having died, her two sons, Krishna Gopal Majumdar and Kristo Gobind Majumdar, succeeded to the property of Rama Kanto, their maternal grandfather, in which Brojosundari, their mother, had had a life interest, and were substituted as judgment-debtors in place of Brojosundari. In execution of his decree, Hem Chunder applied for attachment and sale of a taluk other than that in respect of which the arrears had accrued. Krishna Gopal and Kristo Gobind objected to the sale of a four-anna share of the taluk, being the portion to which they had succeeded as heir of Rama Kanto.

It was found by both the lower Courts, that the arrears of rent in respect of which the decree was obtained against Brojosundari,

* Appeals from Orders Nos. 415 and 421 of 1888, against the orders of H. Peterson, Esq., Judge of Mymensingh, dated the 26th of July 1888, reversing the orders of Baboo Koruna Moy Banerjee, Subordinate Judge of Mymensingh, dated the 10th of April 1888.

(1) L. R., 2 I. A., 275; I. L. R., 1 Calc., 133.

(2) I. L. R., 10 Calc., 823.

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had accrued during her lifetime. The Subordinate Judge held that the four-anna share was not liable to be sold.

On appeal however the Judge, relying on the Full Bench case of *Hurry Mohun Rai v. Gonesh Chunder Doss* (1), held that the portion of the taluk held by Krishna Gopal and Kristo Gobind was liable to be sold in execution of the decree.

From this decision Krishna Gopal and Kristo Gobind brought separate appeals to the High Court.

Baboo *Mukunda Nath Roy* and Baboo *Jadub Chunder Seal* for the appellants.

Baboo *Mohini Mohun Roy* and Baboo *Jogesh Chunder Roy* for the respondent.

Baboo *Mukunda Nath Roy* for the appellants.—The decree against Brojosundari was a personal decree against her. The reversioners were not parties to the suit in which the decree was obtained. The debt was purely a personal debt of their mother, and a purely personal decree was obtained. The cases of *Kristo Moyi Dossee v. Prasanna Narayan Chowdhry* (2), *Mohima Chunder Roy Chowdhry v. Ram Kishor Acharj Chowdhry* (3), *Nogendro Chunder Ghose v. Kaminee-Dossee* (4), and *Baijun Doobey v. Brij Bhokun Lall Awusti* (5) were cited.

The Full Bench case of *Hurry Mohun Rai v. Gonesh Chunder Doss* (1) is not applicable to the present case.

Baboo *Mohini Mohun Roy*, for the respondent, contended that the property of the reversioners was liable to be sold in execution of the decree, and cited *Teluck Chunder Chuckerbutty v. Muddon Mohun Joogee* (6) and *Anund Moyee Dasse v. Mohendro Narain Dass* (7).

(1) I. L. R., 10 Calc., 823.

(2) 6 W. R., 304.

(3) 15 B. L. R., 142, note; 23 W. R., 174.

(4) 11 Moore's I. A., 241.

(5) L. R., 2 I. A., 275; I. L. R., 1 Calc., 193.

(6) 15 B. L. R., 143, note; 12 W. R., 504.

(7) 15 W. R., 254.

The judgment of the Court (PRINSEP and WILSON, JJ. was) as follows:—

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Decrees for arrears of rent were obtained against Brojosundari, a Hindu widow, which are now put into execution after her death against properties forming her father's estate in which she had only a life interest. The question raised on these appeals is, whether they are decrees merely against her personally, and, therefore, to be satisfied out of whatever she left at her death, or whether the estate which has passed to the next heirs, is liable.

We are of opinion that the principle laid down by their Lordships of the Privy Council in the case of *Baijun Doobey v. Brij Bhookun Lall Awusti* (1) should be adopted, and that the debt cannot be regarded as other than a personal debt, payment of which can be enforced only against the property left by the widow. The case decided by the Full Bench of this Court—*Hurry Mohun Rai v. Gonesh Chunder Doss* (2)—is not in point, as the debt of the Hindu widow was contracted under different circumstances, such as were held by the majority of the Judges to bind the ancestral estate. We accordingly set aside the order of the lower Courts with costs. *Appeals allowed.*

J. V. W.

CRIMINAL MOTION.

Before Mr. Justice Mitter and Mr. Justice Macpherson.

ABHAYESSARI DEBI (PETITIONER) v. SHIDHESSARI DEBI
(OPPOSITE PARTY).*

1889
March 13.

Criminal Procedure Code Act X of 1882, s. 145—Dispute as to right to collect rents—Tangible immovable property.

A dispute as to the right to collect rents is a dispute concerning tangible immovable property within the meaning of s. 145 of the Criminal Procedure Code, and the operation of that section cannot be limited by any rule which would depend upon the area of the property in dispute.

* Criminal Motion No. 19 of 1889, against the order passed by G. Godfrey, Esq., Deputy Commissioner of Goalpara, dated the 29th of December 1888.

- (1) L. R., 2 I. A., 275 ; I. L. R., 1 Calc., 133.
(2) I. L. R., 10 Calo., 823.