1918
December, 10.

Before Mr. Justice Piggott and Mr. Justice Walsh.

SITA RAM AND OTHERS (JUDGMENT-DEBTORS) *v.* DULAM KUNWAR AND OTHERS (DECREE-HOLDERS)*

Hindu law—Daughters in possession of their father's estate—Payment made by one daughter out of income of property—Decree obtained for recovery of money so paid—Death of decree-holder before execution—Who entitled to execute the decree.

Whilst two sisters—daughters of a separated Hindu—were in possession of their father's property, one of them made certain payments out of the income of that property in order to save from sale for arrears of Government revenue other property, which belonged to the sons of the other sister and to certain cousins of theirs. Subsequently she obtained a decree against the persons on whose behalf she had made the payments above-mentioned, but died before she executed it.

Held that the person entitled to execute this decree was not the surviving sister, but the legal representative (or representatives) of the decree-holder, *Isri Dut Koer* v. *Hansbutti Koerain* (1) referred to.

THE facts of this case were as follows:—

Two sisters, Tulsha Kunwar and Dulam Kunwar, had succeeded to the possession of their father's estate with the limited powers of Hindu women. Tulsha Kunwar made a certain payment out of the income of the estate in her hands to save certain property from being sold up on account of arrears of Government revenue due from the sons of Musammat Dulam Kunwar and their cousins. She brought a suit against them and obtained a decree, but died while the decree was still unsatisfied. The question then arose who was entitled to realize this money as the legal representative of Musammat Tulsha Kunwar. The court of first instance held that the decree in question was not part of the assets of the father, and that the personal heirs of Musammat Tulsha Kunwar, that is to say, some member of the lady's husband's family would be entitled to execute the decree, and accordingly dismissed Dulam Kunwar's application for execution. On appeal the Subordinate Judge reversed this decision on the ground that the debt due to Musammat Tulsha Kunwar under the decree amounted to a saving out of the estate of her father. The judgment-debtors appealed.

* Second Appeal No. 1140 of 1917, from a decree of Shekhar Nath Banerji, Subordinate Judge of Jaunpur, dated the 13th of June, 1917, reversing a decree of Rup Kishan Agha, city Munsif of Jaunpur, dated the 30th of May, 1916.

(1) (1883) I. L. R., 10 Calc., 324

Dr. *S. M. Sulaiman*, for the appellants, submitted that a Hindu widow cannot, except under very limited circumstances, touch the *corpus* of the property of her husband in her possession, but the income arising out of that property is absolutely at her disposal. If there was no indication by the widow to make the property acquired by the income a part of the husband's estate, the presumption is that she intended to retain control over it. He relied on *Akkanna* v. *Venkayya* (1). The savings are not her *stridhan*, and if she makes no attempt to dispose of them in her life-time they would follow the estate from which they arose. It is a question of intention depending upon the facts of each case whether such savings form an accretion to the husband's estate as distinguished from income held in suspense in the widow's hands. Reference was made to *Isri Dut Koer* v. *Hansbutti Kosrain* (2) and *Sheolochun Singh* v. *Saheb Singh*. (3). Where the accumulation has been kept separate from the original estate by the widow there is no presumption, in the absence of evidence to the contrary, that she has intended to part with her power of disposition for the benefit of the reversionary heirs; Mayne's Hindu Law, 8th Edition, pages 627 to 630. In the present case, Musammat Tulsha Kunwar never intended that it should form part of the estate. The very fact that she paid Government revenue and brought a suit for the recovery of the sum so paid against the heirs of her husband shows that she intended that it should not form part of the estate. In the absence of any outward signs of intention to accumulate, it cannot pass to her husband's heirs, while on the contrary the existence of a debt rebuts any such intention and points to the conclusion that the balance was held in suspense by the widow at the time of her death; *Rivett Carnac* v. *Jivibai* (4).

Munshi *Gokul Prasad*, for the respondents, submitted that the point, decided by the Privy Council in 10 Calcutta are two:—

(*i*) that her savings from the income are not her *stridhan*;

(*ii*) that if she made no attempt in her life-time to dispose of them, they will follow the *corpus*.

(1) (1902) I. L. R., 25 Mad., 351. (3) (1887) I. L. R., 14 Calc., 387.

(2) (1883) I. L. R., 10 Calc., 324. (4) (1886) I. L. R., 10 Bom., 478.

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My right arises in view of the fact that the decree was due to her and she left it undisposed of. Should she invest the income in such a way as to indicate her intention that it was not to form part of her husband's estate but to remain at her disposal, whether such investment be of temporary or permanent nature, she can deal with it, at any rate, during her life-time. Should she not dispose of the property during her life-time it does not pass to her heirs but is treated as a portion of her husband's estate. He relied on Trevelyan's Hindu Law, p. 468, and *Wahid Ali Khan* v. *Tori Ram* (1). The case reported in I. L. R., 25 Madras, is distinguishable. In that case the transfer was made by the widow in her life-time, and the question arose whether she had a right to do so. Of course in such a case the intention of the widow as to whether she wished the savings to form part of the estate or not was essential; but when she dies without disposing of the savings the intention is immaterial; there are two class of cases which have to be separately considered :—

(*i*) When she disposes of the property purchased out of the income in her life-time.

(*ii*) When she does not dispose of the property and dies.

In the first case the intention of the widow has to be seen, in the next it is not. The property acquired by a Hindu widow with accumulations of the income of her husband's estate does not constitute her *stridhan* but forms part of the *corpus* of the estate and as such is inalienable except for the purposes that would justify the alienation of the original estate. I rely on *Kula Chandra Chakravarti* v. *Bama Sundari Dasee* (2) and Dr. Guru Das Banerjee's Marriage and Stridhan, 3rd Edition, p. 323.

The case of *Rivett Carnac* v. *Jivibai* (3) is distinguishable in this respect that there the dispute was not about accumulations but the current year's income. The first will pass to the heirs of the *corpus* and the other will go to her personal heirs. The case reported in I. L. R., 10 Bombay, 478, has been interpreted in Mayne's Hindu Law, section 629, as above. There are two reported cases in which the case of *Rivett Carnac* v. *Jivibai* (3), has been referred and it seems that it has not found much

(1) (1913) I. L. R., 35 All., 551. (2) (1914) I. L. R., 41 Calc., 870.

(3) (1886) I. L. R., 10 Bom., 478.

favour there; *Ganpat Rao* v. *Vaman Rao* (1) and *Bhagbati Koer* v. *Sahudra Koer* (2). This decree is really a saving out of the income of her husband's estate which she has left undisposed of and consequently it passes to the heirs of the husband.

Dr. *S. M. Sulaiman*, in reply, submitted that the sole question was whether the decree is a saving. He submitted it was not so. The mere fact of her dealing with the income by paying off the Government revenue out of it showed that she meant to dispose of it. It has been converted into an actionable claim. The case reported in 10 Bombay Law Reporter was a single Judge case and had no value in face of a Division Bench ruling of the same High Court. The intention has to be gathered by the surrounding circumstances; *Bhagbati Koer* v. *Sahudra Koer* (2). Supposing Tulsha Kunwar had not brought the suit and had died, the respondents could not bring the suit for its recovery. The debt due is not a saving and cannot pass to the reversioners but passes to her personal heirs.

PIGGOTT and WALSH, JJ.:—The essential facts governing the decision of this appeal may be stated as follows:—Two sisters, Tulsha Kunwar and Dulam Kunwar, had succeeded to the possession of their father's estate. They held the same, of course, with the limited estate of Hindu women and subject to a right of survivorship as between themselves. While they were thus in possession Musammat Tulsha Kunwar made a certain payment out of the income of the estate in her hands, the object of this payment being to save certain property from being sold up on account of arrears of Government revenue due from her nephews, the sons of Musammat Dulam Kunwar, and from certain cousins of the said nephews. The payment so made by her she was entitled to recover from the persons for whose benefit she made it. She brought a suit with that object and obtained a decree. It would seem that she also took out execution of that decree on one or more occasions before her death, but she died while the decree was still unsatisfied. The question now is, who is entitled to realize this money as the legal representative of the deceased decree-holder? In one sense the proceedings actually taken,

(1) (1908) 10 Bom., L. R., 210 (225). (2) (1911-12) 16 C. W. N., 834 (837.

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which have been upheld as valid by the lower appellate court, are almost farcical; Musammat Dulam Kunwar, the mother of some of the judgment-debtors, claims the money due under this decree as one of the assets of the estate which belonged to herself and to Tulsha Kunwar jointly, and which has devolved upon her by survivorship, and takes proceedings to realize it through the agency of one of her sons, who is himself a judgment-debtor. She is taking out execution of this decree as against the cousins who were joint judgment-debtors. The court of first instance held, in a carefully written judgment, that the decree in question was not part of the assets of the estate to which Dulam Kunwar and Tulsha Kunwar had succeeded as the daughters of their father. The learned Munsif found that, if any one was entitled to execute this decree, it would be the personal heirs of Musammat Tulsha Kunwar, that is to say, some member of this lady's husband's family. The learned Subordinate Judge has reversed this decision upon what seems to us a highly technical view of the position. He lays stress on the fact that it was admitted that Musammat Tulsha Kunwar had no independent source of income outside of her share in the estate of her late father in the enjoyment of which she was living; consequently the money which she paid to Government for the benefit of the defaulting co-sharers must have come out of the income of the estate in her hands. Hence the learned Subordinate Judge holds that the debt due to Musammat Tulsha Kunwar under the decree amounts to a saving out of the estate of her father, and he relies upon the principle laid down by their Lordships of the Privy Council in *Isri Dut Koer* v. *Hansbutti Koerain* (1), that a widow's savings from her husband's estate are not her *stridhan*; if she has made no attempt to dispose of them in her life-time, they follow the estate from which they arose. The real difficulty in the way of accepting this view is that the judgment-debt in favour of Musammat Tulsha Kunwar was not a saving. She had applied a portion of the income of the estate in her hands, over which she admittedly had full power of disposal, to meet a certain emergency, and, by reason of the use which she had made of it, there was a debt due to her at the time of her death. The real question is, who is

(1883) I. L. R., 10 Calc., 324.

entitled to collect this debt? The efforts of Musammat Tulsha Kunwar to realize it, especially when it is considered that the sons of Musammat Dulam Kunwar were among the judgment-debtors against whom she took out execution, suggest the inference that she wanted this money back for herself, in order to spend it as she might think proper. There was no necessity for her to take out execution of the decree at all, if she had been under the impression that she was doing so for the benefit of the estate of which she herself and Musammat Dulam Kunwar were the joint owners. Under the circumstances of this case we think that the right to realize this debt was not one of the assets of the estate of which Dulam Kunwar and Tulsha Kunwar were joint owners, but was personal property (not necessarily *stridhan*) of Musammat Tulsha Kunwar, and that her legal representatives in respect of this debt are to be sought amongst her natural heirs under the Hindu Law, that is to say, in the family of her husband. Her sister Musammat Dulam Kunwar is not in the strict sense of the word, her heir at all. Her claim to realize this debt is based upon her right of succession by survivorship to a particular estate of which she became the joint owner, along with her sister Tulsha Kunwar, upon the death of their own father. It is not really a question of whether this decree was or was not the *stridhan* of Musammat Tulsha Kunwar, but whether it did or did not form part of the assets of the estate of which Tulsha Kunwar and Dulam Kunwar were the joint owners? For the reasons stated we think that it did not, and that the decision of the court of first instance was correct and ought to be restored. We allow the appeal, set aside the order and decree of the lower appellate court and restore that of the court of first instance, with costs throughout.

Appeal allowed.