

Before Mr. Justice Niamat-ullah and Mr. Justice Allsop

PHOOL KUNWAR (JUDGMENT-DEBTOR) v. RIKHI RAM
(DECREE-HOLDER)*

1934
November, 16

Civil Procedure Code, section 50—Execution of decree against property of deceased judgment-debtor in the hands of his legal representative—Hindu widow succeeding to her husband's estate—Rents from tenants falling due after husband's death—Whether part of the deceased husband's estate or the personal property of the widow—Widow's estate.

Rents from tenants of the estate left by a deceased Hindu, which accrue due after his death when the estate is in possession of his widow as his heir, are part of his estate in the hands of his legal representative and are attachable in execution of a decree against him. Such rents can not be regarded as being the personal property of the widow in right of her "widow's estate" in opposition to her husband's estate of which she is the legal representative; *Rani Kanno Dai v. B. J. Lacy* (1), disapproved.

Dr. N. P. Asthana and Mr. B. N. Sahai, for the appellant.

Messrs. S. K. Dar and Din Dayal, for the respondent.

NIAMAT-ULLAH and ALLSOP, JJ.:—This appeal arises from an application for execution made by the respondent Pandit Rikhi Ram who obtained a simple money decree against Shah Jwala Prasad, since deceased. The decree-holder applied for execution of his decree by attachment of rents due from the tenants holding land left by the judgment-debtor. The latter's widows Mst. Phool Kunwar and Mst. Khem Kunwar objected to the attachment of the rents, *inter alia*, on the ground that they accrued after the death of Shah Jwala Prasad and were therefore their personal property and not part of the assets left by the deceased. Their objection was dismissed by the lower court. They have come up in appeal to this Court.

It is clear that the decree against the deceased judgment-debtor can be executed against the assets left by

*First Appeal No. 216 of 1933, from a decree of Muhammad Akib Nomanji, Subordinate Judge of Agra, dated the 21st of April, 1933.

(1) (1897) I.L.R., 19 All., 295.

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him. The question is whether the rents accruing due since his death and payable by the tenants holding immovable property once belonging to him can be considered to be part of his estate. The widows are in possession of the property belonging to their late husband as his legal representatives. The fact that they have widows' estate under the Hindu law does not make them any the less legal representatives of their husband. It may be that in the eye of Hindu law their position as representatives of the estate of their deceased husband is peculiar, but it cannot be gainsaid that so long as they are alive, they alone represent the estate of their deceased husband. It is equally undeniable that the income accruing from the property in their possession as legal representatives of their deceased husband is income accruing from his estate and therefore an integral part thereof. They do not claim his property adversely to him or his estate but as representing it. Anything received by them should be deemed to have been received by his estate. This being so, any rents which have accrued due and are payable to the widows must be considered to be part of his estate and therefore liable to pay his debts.

The learned advocate for the appellants has strongly relied on the case of *Rani Kanno Dai v. B. J. Lacy* (1). The facts of that case are quite different from those of the case before us. The judgment-creditor in that case had applied for attachment of rents due in respect of the property of the deceased judgment-debtor in possession of his widow. The learned Judges composing the Division Bench which decided the case held that the attachment could not be sustained in view of a compromise which the parties had entered into previously. The effect of that compromise was that the decree-holder was not entitled to take out execution against movable property of the widow and was to obtain satisfaction of

(1) (1897) I.L.R., 19 All., 235.

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the decree by proceeding against the husband's immovable property. The view there taken was that having regard to the terms of the compromise it was not open to the decree-holder to proceed against the rents received by the widow, which in the circumstances of that case were considered to be the property of the widow, and that the only manner in which the decree-holder could obtain satisfaction was by attachment of the immovable property. So far the decision does not involve any proposition of law which can be questioned. The learned Judges however proceeded to observe as follows: "There can be no doubt, as we conceive the law to be in this country, that this lady, as the widow of a separated and sonless Hindu, became, in virtue of her widow's estate, entitled upon the death of her husband to the rents which might accrue from the immovable property. Those rents if already received by her and put into her pocket, could not be treated in law as assets of her husband. They were her assets in virtue of her widow's estate. It can make no difference if the rents which accrued due after her husband's death had not been actually put into her pocket. She was entitled to them, *not as representative of her late husband, but in right of her widow's estate.*" (The italics are ours.) With great respect, we are unable to accept the view that the rents and profits receivable by her constituted property in her own right and were part of her personal estate. She was entitled to the possession of her husband's estate only because she happened to be his legal representative. But for that circumstance she had no right either to the estate left by her husband or its income. The fallacy of the argument underlying the observations quoted above is that the existence of a widow's estate is recognized as against the estate of her husband. The nature and extent of a widow's estate may be material where the question arises between her and the reversioners, but there can be no widow's estate

where the question is whether the property once belonging to her husband is part of his estate or is part of the widow's estate, which itself implies an estate carved out of the husband's estate. It continues to be the husband's estate while it is in the possession of the widow who represents it. If the observation quoted above had embodied the decision of their Lordships for the purposes of that case, we would have referred the question to a larger Bench. As in our opinion it is clearly an *obiter dictum* which was not part of the actual decision of the case, we feel, with all respect, that we are at liberty to differ from it.

In the case before us, it is not disputed that the appellants are in possession of the property, of which the rents are in question, as the heirs and legal representatives of their deceased husband against whom the decree sought to be executed had been passed. This being so, the rents attached at the instance of the decree-holder are, in our opinion, part of the estate of the deceased. The objection of the appellant was rightly overruled by the lower court. This appeal is dismissed with costs.

APPELLATE CRIMINAL

Before Mr. Justice Harries and Mr. Justice Rachhpal Singh

EMPEROR *v.* GIRJA PRASAD AND OTHERS*

Indian Penal Code, sections 111, 114—Abetment—Instigation of one act and unforeseen commission of another—Probable consequence of incitement—Knowledge of abettor—Joint commission of offence—Taking part in assault during which sudden and unforeseen stabbing by co-accused—Whether guilty of murder or abetment of murder—Indian Penal Code, section 34—Interpretation of statutes—Penal statutes.

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One Bhagwati, who was a servant of two brothers Girja and Bishnath, was surprised stealing mangoes from Barka's father's grove and was pursued by Barka, a youth of about 17, up to the house of Girja and Bishnath who were met with outside the

*Criminal Appeal No. 700 of 1934, from an order of L. V. Ardagh, Sessions Judge of Benares, dated the 14th of August, 1934.