

1929
 DURGA PRASAD
 MANNA LAL
 v.
 THE
 CAWNPORE
 FLOUR
 MILLS, CO.,
 LTD.,
 LUCKNOW.

that "the real proposition of law which these and other cases establish is that where an agent enters into a contract as such, if he has an interest in the contract, he may sue in his own name." We are, therefore, of opinion that where the agent has a special property or a beneficial interest in the subject matter of the contract he is entitled to enforce it even though his representative character may have been declared at the time of the contract. As pointed out before, there can be no doubt that the Cawnpore Flour Mills were not bare agents so far as the goods in question are concerned, but at the least the position in the case was of an agency coupled with interest. For these reasons we agree with the decision of the learned Subordinate Judge and dismiss this appeal with costs.

Hasan and
 Srivastava,
 JJ.

Appeal dismissed.

APPELLATE CIVIL.

*Before Mr. Justice Wazir Hasan and Mr. Justice
 Bisheshwar Nath Srivastava.*

1929
 July, 18.

GANPAT PRASAD (JUDGMENT-DEBTOR-APPELLANT) v.
 THE KASHMIRI BANK, LTD., FYZABAD,
 (DECREE-HOLDER-RESPONDENT).*

Gangaputra's right to receive offerings and to occupy particular spots on the river bank by putting chaukis, whether liable to attachment—Execution of decree—Attachment of Gangaputra's rights—Civil Procedure Code (Act V of 1908), section 60(f).

Held, that the right of a Gangaputra to receive offerings is merely a right of personal service and as such cannot be sold in execution of a decree. But the right of occupation of a particular spot on the banks of the river for the purpose of putting his *chauki* in order to carry on his profession is quite distinct from the personal right of receiving offerings and as such is not exempt from attachment or sale in execu-

*Execution of Decree Appeal No. 71 of 1928, against the decree of Pandit Kishan Lal Kaul, Additional Subordinate Judge of Fyzabad dated the 5th of October, 1928, reversing the decree of M. Muniruddin Ahmad Kirmani, Munsif Sadar Fyzabad, dated the 25th of July, 1928, allowing the objection.

tion of the decree. Similarly the physical articles namely *chaukis* or the wooden platforms placed on the ghat are also properties which are liable to attachment and sale. *Ganesh Ramchandra Date v. Shankar Ramchandra* (1), *Govind Lakshman Joshi v. Ramkrishna Hari Joshi* (2), *Raja Ram v. Ganesh* (3), *Kali Charan Gir Gossain v. Bangshi Mohan Das Baboo* (4), *Juggurnath Roy Chowdhry v. Kishen Pershad Surman* (5), *Kali Churn Gir Gossain v. Bungshee Mohun Dass* (6), *Jhummun Pandey v. Dinoonath Pandey* (7), *Narasimma Thatha Acharya v. Anantha Bhatta* (8), *Durga Prasad v. Shambhu* (9), *Durga Prasad v. Genda* (10), *Bhagwan Din v. Mani Ram* (11), *Baddu v. Babu Lal* (12), *Mahesh Prasad v. Bharath*, (13), *Sukhlal v. Bishambhar* (14), *Lokya v. Sulli* (15), *Suraj Prasad v. Ganesh Ram* (16), and *Gaya Din v. Gur Din* (17), relied on.

Mr. Haider Husain, for the appellant.

Mr. Mahabir Prasad, holding brief of Mr. R. D. Sinha, for the respondent.

HASAN and SRIVASTAVA, JJ.:—The Kashmiri Bank, Ltd., Fyzabad, in liquidation obtained a simple money decree on the 25th of November, 1919, against Panda Ganpat Prasad Gangaputra of Ajodhya, district Fyzabad. The decree-holder made an application for execution of the decree by attachment and the sale of certain properties belonging to the judgment-debtor. One of the items of property sought to be attached and sold, with which alone we are concerned in this appeal, is described in the application for execution in the following terms:—

“*Chaukis* on the bank of river Sarju, city Ajodhya, pargana Haveli Awadh, tahsil and district Fyzabad, numbered below in

- | | |
|--|-----------------------------------|
| (1) (1886) I.L.R., 10 Bom., 395. | (2) (1887) I.L.R., 12 Bom., 366. |
| (3) (1898) I.L.R., 23 Bom., 131. | (4) (1871) 6 B.L.R., 727. |
| (5) (1867) 7 W.R., 266. | (6) (1871) 15 W.R., 339. |
| (7) (1871) 16 W.R., 171. | (8) (1881) I.L.R., 4 Mad., 391. |
| (9) (1919) I.L.R., 41 All., 656. | (10) (1889) A.W.N., 169. |
| (11) (1902) 5 O.C., 225. | (12) (1908) 11 O.C., 212. |
| (13) (1920) 23 O.C., 252. | (14) (1916) I.L.R., 39 All., 196. |
| (15) (1920) I.L.R., 43 All., 35. | (16) () I.L.R., 43 All., 581. |
| (17) (1929) I.L.R. 5 Luck., 31; 6 O.W.N., 249. | |

. 1929

GANPAT
PRASAD
v.
THE
KASHMIRI
BANK,
LTD.,
FYZABAD.

Hasan and
Srivastava,
JJ.

1929

GANPAT
PRASAD
v.
THE
KASHMIRI
BANK,
LTD.,
FYZABAD.

the name of Panda Ganpat Prasad, son of Joti Sarup. 20, 77, 78, 79, 150, 164, 165, 184, 254, 255, 256, 298, 299, 300, 323, 324, 325, 334, 340, 341, 345, 348, 349, 350, 95, 96, 97, 98, 99, and 100. Total 30 plots.”

Hasan and
Srivastava,
JJ.

The judgment-debtor objected that the *chaukis* sought to be sold did not constitute any property, which could validly form the subject of attachment and sale in execution of the decree. He pleaded that the right to *chaukis* was only a personal right, which was exempt from attachment by virtue of section 60 clause (f) of the Code of Civil Procedure. The Munsif accepted the objection of the judgment-debtor. On an appeal by the decree-holder the learned Additional Subordinate Judge of Fyzabad set aside the order of the Munsif and declared that the *chaukis* in dispute were liable to attachment and sale in execution of the decree. The judgment-debtor Panda Ganpat Prasad has come here in the second appeal.

Mr. *Hyder Husain* the learned Counsel for the judgment-debtor appellant has contended that the right to *chaukis* consists merely of the right to receive offerings from pilgrims, who go to bathe at the ghats of river Sarju in lieu of services rendered by the Gangaputras. He argued that such a right is merely a personal right, which is exempted from attachment by section 60 clause 5 of the Code of Civil Procedure. The learned Counsel for the respondent has, on the other hand, maintained that the right to *chaukis* consists not merely of the right to receive offerings from the clients, but also of the right of occupation of particular spots on the bank of the river and that both these rights constitute property, which is heritable as well as transferable. It will be clear, on the contentions of the learned Counsel of the

parties, as set forth above, that the determination of the question in controversy between the parties must rest to a great extent upon the determination of the nature of the rights possessed by the judgment-debtor which are sought to be attached and sold. We have already quoted the description of the property as given in the application for execution. We regret that the trial court did not clearly elucidate the position of the parties as regards the right to *chaukis*, which formed the subject of controversy in the execution proceedings. However, the learned Counsel for the parties are agreed before us that the bank of river Sarju is Government Nazul land and that the various Gangaputras are in occupation of different spots on the ghats of the river Sarju, on which spots they place wooden *chaukis* or platforms where the pilgrims come and sit. These pilgrims generally after they have had their bath make voluntary offerings to the particular Gangaputra on whose *chauki* they sit and put their clothes. Though the Gangaputras have no proprietary right in the land on which they place their *chaukis*, and whatever may be the rights as between them on the one hand and the Government Nazul department on the other, yet there can be no doubt that they have at the least a right of occupation of the particular spot in their possession. The question, therefore, is whether this right of occupation of the particular spot on which the judgment-debtor is entitled to place his *chauki* assuming it to be nothing more than a possessory right can be subject to attachment and sale or not. In order to answer this question let us analyse the position a little more closely. The right to *chaukis* may consist of one or more of the following four rights:—

- (a) right to ownership of the land on which the *chaukis* are placed,
- (b) right to receive offerings from the persons who visit the ghats for bathing,

1929

GANPAT
PRASAD
v.
THE
KASHMIR
BANK,
LTD.,
FYZABAD

Hasan and
Sricastava,
JJ.

1929

GANPAT
PRASAD
v.
THE
KASHMIRI
BANK,
LTD.,
FZZABAD.

(c) right to the occupation of the particular spot on which the judgment-debtor is entitled to put his *chaunkis* independently of the rights between him and the Government Nazul, and

(d) right to ownership of the wooden platform called the *chauki*.

Hasan and
Srivastava,
JJ.

As regards the right to the ownership of the land it is admitted that the judgment-debtor has no such right of ownership. No claim for attachment or sale can, therefore, be based on this ground.

As regards the right to receive offerings from pilgrims we have no doubt that such a right is merely a right of personal service, which cannot be the subject of attachment and sale. This right of a Gangaputra or *ghatia* to receive offerings from pilgrims is similar to the right of a *shebait* or *poojari* to receive offerings at a Hindu shrine or the right of a *mahabrahman* to get alms and offerings on the death of any person. The nature of such rights has been the subject of discussion in various cases.

In *Ganesh Ramchandra Date v. Shankar Ramchandra* (1) it was held that the *vritti* by virtue of which certain religious ceremonies were performed on the river Godavari on behalf of the pilgrims who paid fees to the holders of such priestly offices for the performance of such religious ceremonies at or about the time of their performance was a hereditary priestly office and that it was a "right of personal service within the meaning of clause (f) of section 266 of the Code of Civil Procedure (Act XIV of 1882) and, therefore, protected from attachment.

Similarly in *Govind Lakshman Joshi v. Ramkrishna Hari Joshi* (2) it was held that *gyotishi vritti*

(1) (1886) I.L.R., 10 Bom., 395.

(2) (1887) I.L.R., 12 Bom., 366.

was a right to receive certain emoluments as a reward for personal service and therefore not liable to attachment.

In *Raja Ram v. Ganesh* (1) RANADE, J. in an instructive judgment held that a *vritti* cannot be sold in execution of a decree. He remarked on page 135 that "compulsory alienation by way of sale in execution of decrees has been disallowed in all cases as being not only opposed to Hindu law and public policy but against the provisions of section 266 as being rights of personal service Such compulsory sales might transfer such properties to persons disqualified to perform the duties of the office. In the case of private alienation this objection does not hold equally good and private alienations are not absolutely prohibited. Further on page 136 he observed "that the rules of succession depend upon the nature of each particular foundation or office and in respect of it custom and practice might differ and prevail over the text law which admittedly prohibited both partition and alienation . . . By force of custom, however, a limited right of partition and alienation might be established, and the custom must be ascertained by evidence in each class of cases." We are in entire agreement with this exposition of the law on the subject.

In *Kali Charan Gir Gossain v. Bangshi Mohan Das Baboo* (2), *Juggurnath Roy Chowdhry v. Kishen Pershad Surman* (3), and *Kalee Churn Gir Gossain v. Bungshee Mohun Dass* (4) it was held that the rights of a *shebait* or other person to perform worship of a Hindu idol cannot be transferred. Similar view was taken by the Madras High Court in *Narasimma Thatha Acharya v. Anantha Bhatta* (5).

(1) (1898) I.L.R., 29 Bom., 131.

(2) (1871) 6 B.L.R., 727.

(3) (1867) 7 W.R., 266.

(4) (1871) 15 W.R., 339.

(5) (1881) I.L.R., 4 Mad., 397.

1929

GANPAT
PRASAD
F.
THE
KASHMIRI
BANK,
LTD.,
FYZABAD.

Hasan and
Srivastava,
JJ.

1929

GANPAT
PRASAD
v.
THE
KASHMIRI
BANK,
LTD.,
FYZABAD.

Hasan and
Srivastava,
JJ.

In *Jhummun Pandey v. Dinoonath Pandey* (1),
Durga Prasad v. Genda (2) and *Durga Prasad v.*
Shambhu (3) it was held that *birt mahabrahmani* is a
right of personal service and cannot be attached. The
same principle underlies the decisions of the late Court
of the Judicial Commissioner of Oudh relating to *maha-*
brahmani dues in *Bhagwan Din v. Mani Ram* (4),
Baddu v. Babu Lal (5) and *Mahesh Prasad v. Bharath*
(6).

The learned Counsel for the respondent has relied
upon four cases, *Sukhlal v. Bishambhar* (7), *Lokya v.*
Sulli (8), *Suraj Prasad v. Ganesh Ram* (9) and *Gaya*
Din v. Gur Din (10). In *Sukhlal v. Bishambhar* (7),
there was a mortgage by one *mahabrahman* in favour
of another *mahabrahman* and the mortgage was up-
held. In *Lokya v. Sulli* (8) the only question was
whether the *birt jajmani* was heritable and partible.
In *Suraj Prasad v. Ganesh Ram* (9), it was held that
the right of a *ghatia* was a right to property and herit-
able under Hindu law. Lastly in *Gaya Din v. Gur Din*
(10) it was held that the right to receive
offerings was capable to passing to the heirs
by inheritance and also therefore subject to
partition. We do not wish to express any opinion as
regards the heritability or the power of making parti-
tion or private alienation in respect of such rights as no
such questions arise in the present case, but we have
no hesitation, on a review of all the authorities cited
before us, in holding that the right of a Gangaputra to
receive offerings is merely a right of personal service
and as such cannot be sold in execution of a decree.

As regards the judgment-debtor's right of occupa-
tion of a particular spot on the banks of the river for the

(1) (1871) 16 W.R., 171.

(3) (1919) I.L.R., 41 All., 656.

(5) (1908) 11 O.C., 212.

(7) (1916) I.L.R., 39 All., 196.

(9) (1921) I.L.R., 43 All., 581.

(2) (1889) A.W.N., 169.

(4) (1902) 5 O.C., 225.

(6) (1920) 23 O.C., 252.

(8) (1920) I.L.R., 43 All., 35.

(10) (1920) I.L.R. 5 Luck., 31 : 6
O.W.N., 249.

purpose of putting his *chauki* in order to carry on his profession it is unnecessary for us to enter into the question as regards the rights possessed by him in this respect as against the Government Nazul, but we are inclined to agree with the learned Additional Subordinate Judge that such a right of occupation of specific portions of the river bank as described by various numbers given in the application for execution is quite distinct from their personal right of receiving offerings and as such is not exempt from attachment or sale in execution of the decree. Similarly the physical articles namely *chaukis* or the wooden platforms placed on the *ghat* are also properties which are liable to attachment and sale.

For the above reasons we agree with the learned Additional Subordinate Judge and dismiss this appeal with costs.

Appeal dismissed.

APPELLATE CIVIL.

*Before Mr. Justice Wazir Hasan and Mr. Justice
Bisheshwar Nath Srivastava.*

MOHAMMAD USMAN KHAN (JUDGMENT-DEBTOR-
APPELLANT) *v.* BANKEY LAL (DECREE-HOLDER-
RESPONDENT.)*

1929
July, 22.

Oudh Civil Rules, rule 190(b)—Oudh Estates Act (I of 1869) as amended, sections 43A and 14.—Execution of decree—Attachment of village bequeathed to judgment-debtor by his grandfather, the original taluqdar—Attached village, if to be treated as ancestral land—"Ancestral land," definition of—"Estate" under the Oudh Estates Act, meaning of.

Where the judgment-debtor held the village in suit under a will of his grandfather who was a taluqdar, he being a possible heir of his grandfather was one of the persons mentioned in clause 2 of section 13A of the Oudh Estates Act

*Execution of Decree Appeal No. 8 of 1929, against the order of M. Humayun Mirza, Subordinate Judge of Lucknow, dated the 5th of January, 1919.

1929
GANPAT
PRASAD
v.
THE
KASHMIRI
BANK,
LTD.,
FYZABAD.
*Hasan and
Srivastava,
JJ.*