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article 8, shows that when a party to a suit withdraws an original document (as was done in this case), any copy he leaves of that document is chargeable under it only if the original withdrawn is itself liable to stamp duty under the General Stamp Act. As stated above, the original entries in this case are not so liable. Therefore the copies left by the creditor are not chargeable with any court fee under the Court Fees' Act, Schedule I, article 8.

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Birdwood.

1887. *March* 15.

A. P. RA'JERA'V CHANDRA'RA'O, (ORIGINAL PLAINTIFF AND DECREE-HOLDER), APPELLANT, *v.* NA'NA'RA'V KRISHNA JAHA'GIRDA'R, (ORIGINAL DEFENDANT AND JUDGMENT-DEBTOR), RESPONDENT.*

Execution of decree—Duty of a Court to which a decree is transferred for execution—Maintenance—Arrears of maintenance due to a Hindu widow at her death—Liability of such arrears to satisfy a decree against her assets.

A Court, to which a decree has been sent for execution, cannot refuse execution on the ground that questions are raised between the parties that cannot properly be dealt with in execution.

Where sums due for a widow's maintenance have become a debt, such a debt should be regarded as assets of the widow after her death liable to be taken in execution of a decree against her.

A. sued upon a bond executed in his favour by R., a Hindu widow, and after her death obtained a decree against N., as her legal representative, directing "that the judgment-creditor should be satisfied out of such assets of the deceased widow as may in course of execution be proved to have come into the possession of the defendant N." A. sought, in execution, to obtain satisfaction out of arrears of an annuity due by N. to the deceased on account of her maintenance for fifteen years before her death.

The Subordinate Judge held that the right to recover these arrears was one personal to the widow R., and though it could be enforced by her, would not pass to her creditor. He, therefore, dismissed the *darkhást*.

Held, reversing the order of the Subordinate Judge, that the arrears of the annuity due by N. to R., as maintenance, were properly to be regarded as the assets of the widow, and, as such, were available in execution to satisfy the decree. N. owing money in his individual capacity to R., would, in the interest of creditors and justice, be assumed to have paid it to himself as her

* Appeal, No. 101 of 1885.

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legal representative. N. should, therefore, be held accountable for sums due by him to R., subject to such objections as he might be able to ground on limitation or other legal excuse.

THIS was an appeal from the decision of Ráv Bahádur G. V. Bhánap, First Class Subordinate Judge at Dhárwár, in *darkhást* No. 135 of 1884.

The plaintiff Rájeráv filed a suit in the District Court at Bangalore to recover the amount of a bond for Rs. 5,750 executed in his favour by his sister Rádhábái on the 20th November, 1879. Rádhábái having died, the defendant Nánáráv, who was her deceased husband's undivided brother, was sued as her legal representative. The plaintiff obtained a decree on the 24th September, 1883 directing the amount claimed to be recovered "out of such assets of the deceased Rádhábái as may in course of execution be proved to have come into the possession of the defendant Nánáráv."

The decree was transferred for execution to the Court of the First Class Subordinate Judge of Dhárwár.

In his application for execution the plaintiff alleged that the following property belonging to the deceased Rádhábái had come into the hands of the defendant, and was liable to satisfy the decree :—

(1) The amount of eight years' arrears of maintenance at Rs. 350 *per annum* (from 1865-66 to 1872-73) payable to Rádhábái by the defendant Nánáráv according to an agreement dated 21st November, 1849, which was not paid by the latter, and, therefore, was in deposit with him ... ... Rs. 2,800

(2) The amount of seven years' arrears of maintenance (from 1873 to 1880) at Rs. 332 *per annum* due to the deceased Rádhábái by the defendant under an agreement dated 17th April, 1873 ... ...Rs. 2,324

(3) The amount of mesne profits of certain lands belonging to the deceased Rádhábái which had come into the defendant's possession after her death ...Rs. 800

Total Rs. 5,924

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The defendant denied that there was any thing due by him in respect of the arrears of maintenance payable by him to the deceased Rádhábái; and contended that, even if there were any arrears unpaid by him, they were time-barred; that if any portion of the arrears were not time-barred, Rádhábái no doubt could have recovered them by suit during her life-time; but that, after her death, her right to recover them could not be enforced by the plaintiff, who was merely her creditor. As to the lands in dispute, the defendant contended that they were not the property of the deceased Rádhábái, but were assigned to her for maintenance during her life-time, and that after her death they became his own absolute property.

The Subordinate Judge rejected the plaintiff's *darkhást*, for the following reasons :—

"It appears to me, on a consideration of the circumstances of this case, that the defendant's contentions are sound and tenable.

"In the first place, supposing that there were some arrears of maintenance left unpaid by the defendant, he stood in the position of a debtor to that extent to the deceased Rádhábái; and if the petitioner, who holds a decree against her, could execute his decree against the amount due to her in this way, he should have attached it as a debt due by the defendant to her,—that is, he should have applied for the attachment of her right as creditor to receive the amount in question from the defendant.

"The defendant's liability to pay the debt in question could not be regarded as the property of the deceased in the hands of the defendant to the extent of which he could be held personally liable to satisfy the decree, as has been now prayed for by the petitioner; because the extent to which the defendant was really indebted to her in that respect can be inquired into and ascertained in a regular suit by the purchaser of her right, and not in these execution proceedings.

"As the petitioner has not prayed for the attachment and sale of the deceased Rádhábái's right to recover the amount in question from the defendant by his present petition, it would not be necessary to discuss this point further; but it may be remarked

here that even if the petition had contained such a prayer, it appears to me that it could not have been granted. Because the right of Rádhábái to recover the arrears of her maintenance was her personal right which she alone could have enforced only during her life-time, and such a right could only be transmitted by her to her heirs, inasmuch as her right to be maintained existed during her life-time, and died at her death. It has been held by the Bombay and Calcutta High Courts on this point that a right of maintenance is not assignable—*Ramábái* v. *Ganesh Dhonddev Joshi* (1), *Syud Tuffazal Hossein Khán* v. *Raghunáth Prasád* (2), *Bhyrub Chunder Ghose* v. *Nubo Chunder Gooho* (3), which are referred to in the same.

"For the reasons stated above, it appears to me that the petitioner cannot seek to attach and sell the right of maintenance of his judgment-debtor, the deceased Rádhábái, even during her life-time, much less after her death, as he would have to do in the present case in execution of his decree against her. In the present case, it may be further remarked here, the defendant Nánáráv himself is the heir of the deceased Rádhábái in respect of all her property,—a circumstance which goes to create another difficulty in the way of the petitioner to execute his decree in the manner prayed for by him.

"I am of opinion, therefore, that the first three items of money, stated in the petition and summarized above under the head A (*a*), were never the property of the deceased Rádhábái during her life-time, and that, therefore, they were not her assets in the hands of the defendant Nánáráv after her death."

Against this decision the plaintiff appealed to the High Court.

Mánekshán Jehángirshán for the appellant.

G. R. Kirloskar for the respondent.

WEST, J. :—It has been objected to the appeal in this case that the questions between the parties are such as cannot properly be dealt with in execution. But the decree of the Court at Bangalore directs expressly that "the judgment-créditor

(1) Printed Judgments for 1876, p. 188. (2) 7 Beng. L. R., 187.
(3) 5 Calc. W. R. Civ. Rul., 111.

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is to be satisfied out of such assets of the deceased Rádhábái as may in course of execution be proved to have come into the possession of the defendant Nánáráv." This may have been a good order, because the assets could not be ascertained, except by an inquiry to be made after the decree on the main issues had settled Nánáráv's liability, and the principle on which his responsibility in details was to be admitted or denied. It may have been an order open to objection, as not disposing of all that a decree should dispose of, so as to leave nothing but an executive function to be performed in order to give effect to it. But if it was a wrong or a defective decree, the respondent ought to have got it reversed or amended by the Court superior to that of Bangalore. It is not for a Court, to which a decree capable of just execution is sent by another, to enter on a criticism of it and to refuse execution if it is of opinion that too much has been left for the executing Court to do. The Subordinate Judge at Dhárwár had not authority to refuse execution, nor have we authority to forbid it.

The judgment-creditor of Nánáráv who was sued as Rádhábái's representative, sought in execution to obtain satisfaction out of arrears of an annuity due by Nánáráv to the deceased for several years before her death. The Subordinate Judge has held that the right to recover these arrears was one essentially personal, and though it could be enforced by her, could not pass to her creditor. The right to maintenance no doubt is not assignable, but where sums due for maintenance have become a debt under an agreement capable of precise determination, there is no reason why such a debt should not be regarded as assets of the widow. Were not such arrears so recognised, a widow might starve, because no one could safely furnish her with subsistence.

It has been contended that the sums due by Nánáráv to Rádhábái (supposing there are any) not being money or property received by him for her estate are not available in execution. This would put a very narrow construction on the Code of Civil Procedure. Nánáráv owing money in his individual capacity to Rádhábái would, in the interest of creditors and of justice,

be assumed to have paid it to himself as her representative. Such is the recognised law with regard to an executor, and the principle has obviously a wider application. Nánáráv must, therefore, be held accountable for sums due by him to Rádhábái, subject to such objections as he may be able to ground on limitation or other legal excuse.

As to the lands sought to be made answerable, the claim as to six, together with the other property mentioned in exhibit 78, has been abandoned. These are Nos. 123, 124, 125, 1, 171, 172 of the village of Aloor. As to the others, the Subordinate Judge has proceeded on a presumption that because Rádhábái was a widow, and the lands were fields in a surveyed village, held in *inám* by her husband's family, they must be regarded as *primâ facie* not her's, but the family's property. This is to subvert the usual presumption arising from possession. There is distinct evidence (exhibit 78) of what was assigned to Rádhábái for her maintenance. Her subsequent acquisitions would be *primâ facie* her own property, and there is some evidence that she exercised ownership over the four fields in question. Being capable of acquiring them they were presumably her's, and liable for her debts. If there were facts which rebutted this presumption, they ought to have been brought forward.

We reverse the decree of the Subordinate Judge, and remand the case for a new trial and adjudication with reference to the foregoing remarks. Costs to follow the final order.

Order reversed.