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build; his house 60 feet high, is to build it so far back from the road as to leave the necessary open space required by the by-law for that height "between the point at which the building approaches nearest to the street, and the opposite side of such street." We return the case, with our answer to the question in the affirmative.

APPELLATE CIVIL.

Before Sir C. F. Farran, Kt., Chief Justice, and Mr. Justice Candy.

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December 6.

ANANDIBAI (ORIGINAL DEFENDANT), APPELLANT, v. RAJARAM GHINTA-
MAN PETHÉ (ORIGINAL PLAINTIFF), RESPONDENT.*

Civil Procedure Code (Act XIV of 1882), Sec. 266 (k)—Execution—Attachment—Spes successionis—"Expectancy of succession by survivorship"—Not attachable—Widow—Widow's estate.

One Sadashiv Anant devised a house, which was his self-acquired property, to his widow (the defendant), and died leaving a son, Vasudev. The will did not expressly give the widow power to dispose of it. The plaintiff in execution of a decree against Vasudev sought to attach Vasudev's interest in the house. The lower Court held that as the interest taken by the defendant in the house under her husband's will was only a widow's estate, Vasudev as her husband's son had an interest in the house which might be attached by the plaintiff.

Held (reversing the decree) that Vasudev had no interest in the house. He had only a *spes successionis*—an expectancy of succession by survivorship, and such a hope or expectancy is not attachable under section 266 (k) of the Civil Procedure Code (Act XIV of 1882).

The entire estate was vested by the testator in the defendant. No doubt her estate was a widow's estate. Her estate in it closely resembled that of a married woman in England to whom property is given with a restraint against alienation. That being so, she was unable to dispose of it, but still she was its full owner. The whole property passed to her from the testator. Nothing was left in him. But until she died it could not be known who would inherit the house.

Annaji v. Chandrabai⁽¹⁾ distinguished.

SECOND appeal from the decision of Ráo Bahádur D. G. Gharpure, additional First Class Subordinate Judge of Násik with appellate powers, reversing the decree of Ráo Sáheb L. K. Nulkar, Joint Subordinate Judge.

* Second Appeal, No. 661 of 1897.

(1) I. L. R., 17 Bom., 503.

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The plaintiff sued for a declaration that a certain house belonged to his judgment-debtor Vasudev and was liable to be sold in execution of a decree against him. The defendant, who was Vasudev's mother, denied that Vasudev had any interest in the house. She claimed to be the owner, alleging that it had been the self-acquired property of her husband Sadashiv, and that he had left it to her by his will.

The Subordinate Judge dismissed the suit, holding that the house in dispute was not Vasudev's property, and that it was not liable to be attached in execution of the decree against him.

On appeal by the plaintiff the Judge reversed the decree and allowed the claim on the ground that Sadashiv's will did not convey absolute title to the defendant, but only a widow's estate.

The defendant preferred a second appeal.

Mahadeo B. Chaubal for the appellant (defendant).

Balkrishna N. Bhajekar for the respondent (plaintiff).

FARRAN, C. J.:—We do not entertain any doubt in this case that the document upon which the defendant Anandibai bases her title to the house in suit is a will, and that the deceased testator Sadashiv Anant by it validly devised the house to her. As the will does not expressly give the defendant Anandibai (who was the testator's widow) a power of disposing of the house, the question remains whether Vasudev, one of the testator's sons, had any attachable interest in it at the time when the plaintiff attached it, Anandibai being still alive. We are of opinion that he had not. The testator, when he devised the house to his widow, vested the entire estate in her. No reversion was left in the testator to descend upon his heirs as undisposed of estate. The Subordinate Judge, A. P., speaks of the estate which the widow Anandibai took in the house as a widow's estate, and in all essential particulars it is of that character. The law imposes upon her the disqualification of being unable to dispose of it, but still she is its full owner. Her estate in it closely resembles that of a married woman in England to whom property is given with a restraint against alienation. In the case of such a gift or bequest the whole estate in the property given passes from the

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donor or testator. Nothing is left in him. Until the defendant Anandibai dies, it cannot be known who will inherit the house. Vasudev, as one of her husband's sons, has only a *spes successionis*, "an expectancy of succession by survivorship," and such a hope or expectancy is not attachable under section 266 (k) of the Civil Procedure Code. The law upon which that exception is founded will be found in *Ram Chunder v. Dhurmo Narain*⁽¹⁾. The case of *Annaji v. Chandrabai*⁽²⁾ was different. There it was expressly found that the donor only gave to the donee a life estate. The reversion expectant on the determination of the life estate given to the donee was left undisposed of, and consequently remained vested in the donor, and was, therefore, as such held to be attachable. The fact that the donor only gave a *life* estate to the donee was the *ratio decidendi* in that case.

The decree of the appellate Court is, for these reasons, reversed, and that of the Subordinate Judge restored with costs throughout on the plaintiff.

(1) 15 Cal. W. R., F. B. R., 17.

(2) I. L. R., 17 Bom., 503.

APPELLATE CIVIL.

Before Mr. Justice Candy and Mr. Justice Fulton.

GOVIND GOPAL (ORIGINAL PLAINTIFF), APPLICANT, v. BALWANTRAO HARI (ORIGINAL DEFENDANT), OPPONENT.*

Promissory note—Express promise to pay.

A document is not a promissory note if it does not contain an express promise to pay.

APPLICATION to the High Court under its extraordinary jurisdiction (section 25 of the Provincial Small Cause Courts Act, IX of 1887) against the decision of Khán Bahádur M. N. Nanavati, Judge of the Court of Small Causes, at Poona.

Plaintiff sued in the Court of Small Causes, at Poona, to recover the sum of Rs. 351-12-0 alleged to be due on a kháta account.

* Application, No. 177 of 1897 under Extraordinary Jurisdiction.