APPELLATE CIVIL.

Before Mr. Justice Bayley, Chief Justice (Acting), and Mr. Justice Candy.

ANNA'JI DATTATRAYA (ORIGINAL PLAINTIFF), APPELLANT, *v.* CHANDRA'BA'I (ORIGINAL DEFENDANT), RESPONDENT.*

1892. *August* 15.

Civil Procedure Code (Act XIV of 1882), Sec. 266—Attachable interest—Vested remainder—Gift—Gift to a woman gives a life interest.

The plaintiff sued to have it declared that a certain house was liable to be attached and sold in execution of a decree obtained by him against the defendant's son. The defendant, who was 80 years of age, claimed the house as her absolute property, alleging that her son by a deed had given it to her as a provision for her maintenance. The deed stated that she had been made the owner of the house; that the donor had no right to it, and that it wholly belonged to her.

Held, that the plaintiff was entitled to the declaration prayed for. The surrounding circumstances showed that the house was revertible to the donor on the defendant's death. He had what in English law would be termed a vested remainder on her death, and he had, therefore, a saleable interest during her life. He had an interest which could be attached and sold under section 266 of the Civil Procedure Code (Act XIV of 1882).

In the case of gifts, as in the case of wills, the well-established rule must be followed that, in the absence of express words showing such an intention, a gift to a woman does not confer an absolute estate of inheritance which she is enabled to alienate.

THIS was a second appeal from the decision of Dr. A. D. Pollen, District Judge of Belgaum.

The plaintiff sued for a declaration that a certain house was liable to be attached and sold in execution of a decree obtained by him against the defendant's son, Rávji Raghunáth Karnik, in the Bombay Court of Small Causes.

The defendant Chandrábái contended that the house was her absolute property under an assignment from her son Rávji Raghunáth for her separate maintenance. The assignment was in the following terms:—

"You are my adoptive mother. We lived together till to-day, but we cannot live together hereafter. If you live apart I am not likely to provide maintenance for you at the proper time. Hence as a provision for your support I have delivered my house to you and made you the owner thereof. You should live in the house and let it to others. You may recover its rent direct. I have no

* Second Appeal, No. 321 of 1891.

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right to it. It wholly belongs to you. I have this day delivered possession of the house to you, and caused the tenants to execute *kabuláyats* in your favour. I have not mortgaged or sold the house to others. I have no right to do so in future. You will hereafter have no claim for maintenance against me. You should support yourself by the rent of the house. I have no objection to your managing the house according to your pleasure."

The Subordinate Judge found that the house was liable to sale in execution against Rávji Raghunáth subject to the defendant's right to enjoy it till her death, and decreed the claim making the declaration sought for.

The defendant appealed, and the District Judge reversed the decree.

The plaintiff preferred a second appeal.

Vásudeo Gopál Bhandárkar for the appellant:—The question is whether the appellant, who is the judgment-creditor of Rávji, is entitled to sell the house in dispute in execution of his decree. The effect of the deed made by Rávji in his mother's favour is to give her only a life-estate, and Rávji has a vested right in remainder—*Hirábái* v. *Lakshmibái*(1); *Seth Mulchand* v. *Bái Mancha*(2); *Koonjbehári* v. *Premchand Dutt*(3). Unless an express power of alienation is given to the widow in the document itself she cannot alienate—*Ganpat Ráo* v. *Rám Chandar*(4); *Umes Chunder Sirkár* v. *Zahur Fatima*(5). The present is, therefore, not a case of contingent interest, and consequently it does not fall under the provisions of section 266 (*k*) of the Civil Procedure Code.

Mahádeo Chimnáji Apté for the respondent:—Though the document does not authorize the mother to alienate, still the question with respect to succession after her death is to be taken into consideration. If Rávji be not alive at the time, some other person would succeed, but if he be living he would succeed as heir to his mother. His interest is, therefore, contingent and not a vested remainder; consequently the case is governed by section 266 (*k*) of the Civil Procedure Code—*Ram Chunder Tantra Doss* v. *Dhurmo Náraín Chuckerbutty*(6). Under the

(1) I. L. R., 11 Bom., 573.
(2) I. L. R., 7 Bom., 491.
(3) I. L. R., 5 Calc., 684.
(4) I. L. R., 11 All., 296.
(5) I. L. R., 18 Calc., 164.
(6) 15 W. R., Full Bench, 17.

document the son has given up all his rights to the property till his mother's death, and his interest is contingent upon his surviving her. During the life-time of the mother, at least, his interest being contingent, it cannot be sold—*Bebee Tokai Sherob* v. *Davod Mullick Fureedoon*(1). Under the document the mother has become absolute owner, because at the outset the document purports to be *málaki patra* (deed of ownership). Further, in the body of the document it is distinctly stated that she is made the full owner, and is to deal with the property as she likes.

CANDY, J.:—We are unable to agree with the view taken by the District Judge, that Rávji had no saleable interest in the house, on the ground that the conveyance executed by him in favour of his adoptive mother was an absolute transfer of full ownership, and, therefore, Rávji's right to succeed to the property on his mother's death, if she still had an interest in it at the time of her death, was, as a mere contingent interest, not liable to attachment and sale under the Civil Procedure Code. We think in the case of gifts as in the case of wills, that the well-established rule must be followed, *i. e.*, that in the absence of express words showing such an intention, a gift to a woman does not confer an absolute estate of inheritance which she is enabled to alienate. (see *Herábái* v. *Lakshmibái*(2) and *Koonj-behári* v. *Premchand Dutt*(3)).

It may be assumed that a Hindu generally desires that an estate, especially an ancestral estate, shall be retained in his family; and it may be assumed that a Hindu knows that, as a general rule at all events, women do not take absolute estates of inheritance which they are enabled to alienate (*Mahomed Shumsool* v. *Shewukrám*(4)). Now what are the surrounding circumstances here? It is admitted that defendant, the adoptive mother, is over 80 years old; and the deed A recites that Rávji makes over to her the house in question (which is admittedly the only ancestral property remaining in the family) as a provision for her maintenance. She is to support herself by "the rents, &c., of the house." There are no words giving her

(1) 6 Moore's I. A., 510.
(2) I. L. R., 11 Bom., 573.
(3) I. L. R., 5 Calc., 684.
(4) L. R., 2 I. A., 7, at p. 14.

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expressly the power to alienate the property. She is made *owner* thereof, but that is quite consistent with a life-interest. We have no doubt, therefore, that the Subordinate Judge was right in holding that the surrounding circumstances show that the house was revertible to Rávji on the lady's death. If so, then Rávji had a saleable interest in the house during the lady's life. The Subordinate Judge quoted a case in which the rights of an adopted son in the family property were, by express agreement, deferred till the death of his adoptive mother—see *Chítko Raghunáth* v. *Janaki*[1]; and this Court held in Second Appeal, No. 547 of 1888, decided 18th December, 1889, that such rights could be attached and sold. Whatever may have been the rulings under Act VIII of 1859, it is clear that, under the present Civil Procedure Code, Rávji's interest could be attached and sold. The lady had an estate for life with power to appropriate the profits; and Rávji had what would be termed in the phraseology of English law a vested remainder on her death (*Cf. Bhagbutti* v. *Bholánáth* [2]). Such a property is capable of being attached under section 266, Civil Procedure Code. It does not fall within the description of an expectancy or of a merely contingent or possible right or interest (*Umes Chunder Sircár* v. *Zahur Fatima*[3]).

Under these circumstances we must reverse the decree of the District Judge and restore that of the Subordinate Judge, with all costs on defendant.

Decree reversed.

(1) 11 Bom., H. C. Rep., 199. (2) L. R., 2 I. A., 256 at pp, 259 and 260
(3) I. L. R., 18 Calc., 164.