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the widow's rights and interests in her first husband's family, while section 5 preserved her rights to inherit outside that family according to Hindu law. If we were to accede to the appellants' contention we should have to hold that the Act should be construed as creating rights in favour of a remarried widow unknown to Hindu law. With regard to her first husband Ganga is dead, she cannot now be resuscitated so as to be considered as his *gotraja sapinda* on the death of Jannadas.

In my opinion the appeal should be dismissed with costs.

SHAH J. :—I entirely agree.

Appeal dismissed.

R. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

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February 2.

SARDAR NOWROJI PUDAMJI (ORIGINAL DEFENDANT No. 1), APPELLANT
v. THE DECCAN BANK, LIMITED (IN LIQUIDATION), BY ITS LIQUIDATORS LAXMAN MORESWAR DESHPANDE AND ANOTHER (ORIGINAL PLAINTIFFS), RESPONDENTS^o.

Civil Procedure Code (Act V of 1908) Order XXXVIII, Rule 5—Attachment before judgment—A mere agreement to sell property—Not sufficient to prove intent to defraud—Court must be satisfied on additional circumstances.

Before an order for attachment before judgment can be made, the Court must be satisfied by an affidavit or otherwise, that the defendant with intent to obstruct or delay the execution of any decree that may be passed against him is about to dispose of the whole or any part of his property; but from a mere agreement to sell a portion of his property by the defendant it cannot be presumed that he actually had that intention. There must be additional circumstances before the Court can be satisfied that such an intention exists.

Appeal from Order No. 57 of 1920.

APPEAL from order passed by J. N. Bhatt, Joint First Class Subordinate Judge at Poona, on application in Suit No. 25 of 1919.

The facts material for the purposes of this report are sufficiently stated in the judgment of his Lordship the Chief Justice.

Sir Thomas Strangman, instructed by *Kanga* and *Sayani*, attorneys, for the appellants.

Jinnah and *B. J. Desai* with *J. R. Gharpure*, for the respondents.

MACLEOD, C. J.:—This is an appeal from an order made on application to the Joint First Class Subordinate Judge of Poona for attachment before judgment under Order XXXVIII, Rule 5, of the Civil Procedure Code, in Suit No. 25 of 1919. The plaintiffs who were the voluntary liquidators of the Deccan Bank filed this suit against defendant No. 1 and other persons to recover from the defendants the losses incurred by the Bank owing to the alleged misconduct and negligence of the defendants. The Bank went into voluntary liquidation in 1916 and the suit was filed in January 1919. Before an order of attachment before judgment can be made, the Court must be satisfied by an affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him, is about to dispose of the whole or any part of his property. It is not disputed that defendant No. 1 had agreed to sell two items of his immoveable property in the Poona District. But merely because he has attempted to sell some of his immoveable property while proceedings against him are pending, it does not follow that he is disposing of the property with intent to obstruct or delay the execution of any decree that may be passed in the suit. The Judge in the Court below in his judgment after

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setting out the facts says: "Having regard, then, to the position in life of defendant No. 1 as well as to the nature and value of the plaintiffs' claim, the two agreements to sell for Rs. 29,300 do not appear to me to have been entered into by the defendant No. 1 *bona fide* but appear presumably to have been made with intent to defraud the plaintiffs." It may be quite possible that the defendant had an intention to defraud the plaintiffs. But there is nothing in the mere agreement to sell this portion of the first defendant's property from which it can be presumed that he actually had that intention. A man is not debarred from dealing with his property because a suit has been filed against him. Otherwise, in every case in which a suit is brought against a man, if during the pendency of the proceedings he sells some of his property, that would be at once a sufficient ground to satisfy the Court that he is disposing of his property with intent to defraud the plaintiff. Clearly there must be additional circumstances before the Court can be satisfied that such an intention exists.

The plaintiffs rely on certain sales effected by the first defendant in previous years to show that he had the intention to defraud when he entered into the present transaction. There are two previous sales: one so far back as 1898 and the other in 1916, three years before the institution of the suit. The sale in 1916, as the defendant himself says, was effected in order to pay off certain creditors from whom he had contracted debts in order to help the Bank which is now in liquidation. Therefore, it cannot possibly be inferred that because in 1916 the first defendant sold some of his property in order to pay off certain debts which had been incurred, the present transaction was entered into with intent to defraud, and the fact that the plaintiffs relied on those previous dealings is a sign

of the weakness of their case. There is absolutely no ground whatever upon which the Court could be satisfied that the first defendant had any fraudulent intention when he entered into the agreements in question. As a matter of fact, it is admitted there has been a considerable rise in the value of immoveable property in and around Poona, and it might more reasonably be inferred that the first defendant was taking advantage of that rise in price to dispose of these two items of his immoveable property, which admittedly form a small proportion of his whole property. It seems to me that the order of the Court below is wrong and therefore must be set aside. The appellant to get his costs in this Court, the costs incurred in the Court below will be costs in the cause.

SHAH, J.:—I agree. I am satisfied that the evidence on the present record is insufficient to justify the inference that defendant No. 1 was about to dispose of a part of his property with intent to obstruct or delay the execution of any decree that may be passed in the suit against him. The value of the properties which are agreed to be sold after the filing of the suit bears a small proportion to the total value of his assets; and in dealing with the property in that manner it cannot be said that he intended to obstruct or delay the execution of the decree that may be passed against him. His dealing with the property in 1898 has practically no bearing upon the question at issue and the alienation in 1916 also has, if at all, a remote bearing upon it. I may, however, add that though the facts now proved are insufficient to justify an inference as to his intention to defeat or delay the plaintiffs' claim, if he proposes hereafter to deal with any part of his property in such manner as would require the consideration of the question as to whether he does so with intent to obstruct or delay the execution of the

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decree that may be passed against him, these facts will not be excluded from consideration. All that we decide now is that the alienations so far as they have proceeded do not justify the inference as to the intention of defendant No. 1, which is necessary to invite the application of Rule 5, Order XXXVIII, Civil Procedure Code.

Order set aside.

J. G. R.

FULL BENCH.

APPELLATE CIVIL.

*Before Sir Norman Macleod, Kt., Chief Justice, Mr. Justice Shah and
Mr. Justice Fawcett.*

1921.

February 4.

SITARAM SAKHARAM MANGLE (ORIGINAL DEFENDANT), APPELLANT v.
LAXMAN VINAYAK KETKAR (ORIGINAL PLAINTIFF), RESPONDENT².

*Bombay Land Revenue Code (Bombay Act V of 1879), sections 216, 217†—
Sharakati Inam Village—Extension of survey settlement to the village*

² Second Appeal No. 68 of 1920.

† The sections run as follows :—

216. Save as is otherwise provided in section 111 or hereinafter in this section, the provisions of Chapters VIII to X...shall not be applied to any alienated village except for the purposes of fixing the boundaries of any such village, and of determining any disputes relating thereto. But the provisions of the said Chapters shall be applicable to—

(a) all unalienated lands situated within the limits of an alienated village ;

(b) villages of which a definite share is alienated, but of which the remaining share is unalienated ;

(c) alienated villages the holders of which are entitled to a certain amount of the revenue, but of which the excess, if any, above such amount, belongs to Government.

But it shall be lawful for the Commissioner, on an application in writing being made by the holder of any such village to that effect, to authorize the extension of all or any of the provisions of the said Chapters to any such village.