

APPELLATE CIVIL.

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

HIRACHAND MOTICHAND (ORIGINAL PLAINTIFF), APPELLANT *v.*
HANSABAI KOM GANPATRAO AND ANOTHER (ORIGINAL DEFENDANTS).
RESPONDENTS^o.

1922.

November 8.

Dekkhan Agriculturists' Relief Act (XVII of 1879), section 22 para. 2—Money decree—Execution—Immoveable property falling into the hands of the heirs of judgment-debtor—Court has no jurisdiction to direct Collector to take possession of the property.

The plaintiff obtained an ordinary money decree against one S an agriculturist. After S's death, the immoveable property of S was inherited by her daughters. The plaintiff filed a Darkhast against the daughters and sought to attach the immoveable property of S in their hands.

Held, that under para. 2 of section 22 of the Dekkhan Agriculturists' Relief Act, 1879, the Court had no jurisdiction to direct the Collector to take possession of the immoveable property falling into the hands of heirs of S.

SECOND appeal against the decision of J. K. Kale, Joint Judge at Poona confirming the decree passed by K. M. Kumthekar, Subordinate Judge at Baramati.

Proceedings in execution.

In 1914 the plaintiff obtained a money decree against the defendant Sagunabai who was an agriculturist.

On the death of Sagunabai execution of the decree proceeded against her heirs and the decree-holders prayed that immoveable properties in the hands of the heirs who were agriculturists should be taken by the Collector in his possession under para. 2 of section 22 of the Dekkhan Agriculturists' Relief Act, 1879.

The Subordinate Judge dismissed the Darkhast holding that immoveable properties sought to be attached were not specifically mortgaged for the repayment of the debt and did not in any way form part of

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the decree and, therefore, they could not be proceeded against under section 22, para. 2, of the Dekkhan Agriculturists' Relief Act, 1879.

On appeal the Joint Judge confirmed the decree.

The decree-holder appealed to the High Court.

S. R. Bakhale, for the appellant.

No appearance for the respondents.

MACLEOD, C. J.:—A question arises in this appeal which does not appear to have been decided in any reported case. The plaintiff obtained a decree against one Sagunabai. It was an ordinary money decree, and, therefore, he could not seek to execute the decree against the immoveable property of the judgment-debtor who was held to be an agriculturist. But the plaintiff might have applied to the Court under paragraph 2 of section 22 of the Dekkhan Agriculturists' Relief Act to direct the Collector to take possession, according to the terms of that paragraph, of any immoveable property of the judgment-debtor to the possession of which he was entitled, and which in the opinion of the Collector was not required for her support and the support of the members of her family dependent on her. The judgment-debtor having died, this Darkhast was filed against her daughters as her heirs; and it is now contended that the Court had jurisdiction to direct the Collector to take possession of the immoveable property which has come to the daughters as heirs of the original judgment-debtor. Both Courts have dismissed the Darkhast, and we think they were right. If it had been intended that in the case of the death of a judgment-debtor who was an agriculturist, his property in the hands of his heirs could be taken possession of by the Collector under the directions of the Court, then that ought to have been specifically stated in the

second para. of section 22. We cannot accede to the argument that we should read into the section "or his heirs" after the word "judgment-debtor" with the various consequential alterations which would have to be made in that paragraph. That would be, so far as I can see, entirely contrary to all canons of construction, and if the Legislature thinks that a creditor should have the remedy provided by section 22, paragraph 2, not only against the judgment-debtor, but also against his heirs, then it is for the Legislature to make the necessary amendments in the Act. The appeal will be dismissed.

Appeal dismissed.

J. G. R.

APPELLATE CIVIL.

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

RAGHUNATH VITEAL BHAT (ORIGINAL DEFENDANT), APPELLANT *v.*
SHRIMANT PURNANAND SARASWATI SWAMI (ORIGINAL PLAINTIFF),
RESPONDENT *.

1922.

November 10.

Hereditary office—Surrender of the office by one of the grantees to the grantor—One grantee can surrender his share to other grantees—Alienation of the share to stranger not permitted.

The duties of a hereditary office and the emoluments appertaining thereto remain within the family of the original grantee. If one of the members of the family wishes to get rid of his duties as well as his rights, he can only do so in favour of the remaining members of the family. The alienation of a share by one member of the family to an outsider is invalid even if made in favour of the original grantor of the office.

Mancharam v. Pranshankar⁽¹⁾ and *Kuppa v. Dorasami*⁽²⁾, considered.

* Second Appeal No. 630 of 1921.

(1) (1882) 6 Bom. 298 at p. 300.

(2) (1882) 6 Mad. 76 at p. 79