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SADASHIV WAMAN v. RESHMA

*Barlee J.*

In this view of the law appellant must fail. A transfer of the right of adoption by a senior widow to her junior is recognized by Hindu law and this was a transfer and not merely a contract to convey. There is no authority for the proposition that she can revoke the transfer—whether it be looked on as a gift or sale. The case of *Padajirav* v. *Ramrav*,[1] which the learned advocate has cited, was decided on different facts. A senior widow had resiled from a promise to adopt, but had not transferred her right. It is clear, too, that the appellant cannot succeed on the ground of public policy, for a transfer by a senior widow is recognized by Hindu law. In fact there seems to be no principle of Hindu law which runs counter to the ordinary rule that property sold or given away cannot be reclaimed at the will of the transfer.

For these reasons I agree that the appeal fails.

*Appeals dismissed.*

Y. V. D.

[1] (1888) 13 Bom. 160.

## APPELLATE CIVIL.

*Before Sir John Beaumont, Chief Justice.*

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*April* 23

KRISHNAJI VISHNU MURALE AND ANOTHER (ORIGINAL PLAINTIFFS), APPLICANTS *v.* VISHNU PANDHARINATH BARSODE AND OTHERS (ORIGINAL DEFENDANTS), OPPONENTS.*

*Civil Procedure Code (Act V of 1908), section 73—Money decree—Execution—Non-agriculturist debtor—Sale of immoveable property—Another money decree passed against same debtor as agriculturist—Execution—Rateable distribution.*

The applicants obtained a money decree against a debtor (described in the decree as an agriculturist). The opponent also obtained against the same debtor a money decree in another suit in which it was held that he was not an agriculturist. The opponent having applied to execute his decree by sale of the judgment-debtor's immoveable property, the applicants applied for rateable distribution under section 73 of the Civil Procedure Code, 1908 :—

*Held*, (1) that the decree in respect of which the applicants sought rateable distribution was one which on the face of it was not executable against the property from which the assets held by the Court were derived ;

* Civil Revision Application No. 310 of 1936.

(2) that the applicants were not entitled to rateable distribution.

*Maniklal Venilal* v. *Lakha and Mansing*[1] and *Bithal Das* v. *Nand Kishore*,[2] referred to.

*Dattatraya Govindseth* v. *Purshottam*,[3] considered.

CIVIL REVISIONAL APPLICATION from an order passed by V. V. Pandit, First Class Subordinate Judge, Poona, in Darkhast No. 1968 of 1935.

Rateable distribution.

The material facts appear sufficiently from the judgment of the Court.

*P. B. Gajendragadkar*, for the applicants.

*A. A. Adarkar*, for the opponents.

BEAUMONT C. J. This is a revision application under section 115 of the Civil Procedure Code, which raises a short point as to the right of the applicants to rateable distribution under section 73 of the Code. The facts are that the applicants obtained a money-decree against the defendant, and in their suit it was admitted that the defendant was an agriculturist, and it is further admitted that the decree shows on the face of it that the defendant is an agriculturist. That being so, by virtue of section 22 of the Dekkhan Agriculturists' Relief Act the decree could not be enforced by attachment and sale of the immoveable property of the debtor. The opponent obtained a decree in another suit against the same debtor, and in that suit it was held that the debtor was not an agriculturist. Therefore the decree in that suit can be executed by sale of the immoveable property of the debtor. The opponent then applied to execute his decree by sale of the immoveable property, and thereupon the applicant made an application under section 73 of the Code for rateable distribution in respect of the amount due to him under his decree. The learned Judge held that the applicant was not entitled to rateable distribution, because

[1] (1880) 4 Bom. 429. [2] (1900) 23 All. 106.
[3] (1921) 46 Bom. 635, F. B.

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*Beaumont C. J.*

his decree could not have been executed against the land from the sale of which the money sought to be rateably distributed was derived. The question is whether that decision is right. Now section 73 provides that where assets are held by a Court, and more persons than one have before the receipt of such assets made application to the Court for execution of decrees for payment of money passed against the same judgment-debtor and have not obtained satisfaction thereof, the assets, after deducting the cost of realisation, shall be rateably distributed among all such persons. It is said that all the conditions of that section have been complied with by the applicant, that the assets are held by the Court, that the decrees obtained by the decree-holder and the attaching creditor are both decrees for the payment of money, that such decrees were obtained against the same judgment-debtor, that the applicant applied for execution to the Court by which the assets are held, and that application was made before the receipt of assets by the Court. Assuming all those facts in favour of the applicants, I think that they are not entitled to rateable distribution. In my opinion the application to the Court referred to in section 73 must be one which, on the face of it, is entitled to succeed. If the decree under which the applicants claim is on the face of it one which could not be executed against the property represented by the money in Court, it seems to me that the Court cannot allow the applicants to share in the rateable distribution of such money. This view accords with the cases referred to by the learned Judge in *Maniklal Venilal* v. *Lakha and Mansing*[1] and *Bithal Das* v. *Nand Kishore*.[2]

I have no doubt the Court under section 73 of the Code is taking a step in execution, and the ordinary rule is that the executing Court cannot go behind the decree, and I quite agree with the decision of the full bench of this Court in *Dattatraya Govindseth* v. *Purshottam*[3] which holds that under

[1] (1880) 4 Bom. 429. [2] (1900) 23 All. 106.
[3] (1921) 46 Bom. 635, F. B.

section 73 the Court cannot consider the question whether one of the decrees was obtained by fraud or collusion. But in such a case the decree on the face of it is good. In this case the decree on the face of it is not good so far as the right to execute it against immoveable property is concerned. In a case where the decree, as here, shows that the judgment-debtor is an agriculturist, or it may be, if the decree shows on the face of it that it is time-barred, I think the Court could not allow rateable distribution. Mr. Gajendragadkar contends that all that section 22 of the Dekkhan Agriculturists' Relief Act does is to prevent attachment and sale in execution of the immoveable property of the debtor, and he says that if property which was immoveable property of the debtor at the time of the applicant's decree is subsequently converted into cash, he could levy execution against that cash, and if there is any surplus over and above the amount due to the opponent on his decree, he will be entitled to attach that surplus. That may or may not be so. The question would depend on whether the proceeds of a sale carried out by the Court of property which was immoveable property at the date of the applicants' decree can be regarded as moveable property at the time when the applicants seek to execute their decree, and whether such proceeds retain their character of immoveable property as against the applicants. That is a question which does not arise on this application, which deals merely with the right of rateable distribution as between these two creditors. In my opinion the applicants must fail on the ground that their decree in respect of which they seek rateable distribution is one which on the face of it is executable against the property from which the assets held by the Court are derived. I think, therefore, that the judgment was right, and the application must be dismissed with costs.

*Application dismissed.*

Y. V. D.