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was one of the considerations which influenced the Judge in the Court below. But there is no rule of law that we are aware of which forbids a Hindu widow to make a will of property which belongs exclusively to herself. She cannot, except for special purposes, alienate her husband's estate by will or otherwise, because she has only a life-interest in it. But she is only like other persons in that respect; and the grant of probate to the executor in this case will not prejudice in any way the objector's rights, if the property really belonged to him, and not to the testatrix.

Mr. Phillips also argued that, under s. 240 of the Succession Act, the Judge had no right to grant probate, unless the testatrix in this case had a fixed place of abode and some property, moveable or immoveable, within the jurisdiction of the District Court. But this is really an objection to the jurisdiction of the Judge, and it was never raised in the Court below; and moreover, if it had been, it appears that the testatrix had a fixed abode at the time she died within the district.

We are of opinion, therefore, that the judgment of the Court below should be reversed, and that probate should be granted to the applicant in accordance with the petition.

The petitioner will recover the costs incurred in the lower Court, as also in this Court.

Probate granted.

Before Mr. Justice Ainslie and Mr. Justice McDonell.

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SHEO GHOLAM SAHOO (DECREE-HOLDER) v. RAHUT HOSSEIN
 (APPLICANT).*

Limitation—Money or Moveable Property deposited in Court to stay a Sale in Execution of a Decree—Order for Sale confirmed—No Execution taken out within three years after Deposit.

When money or moveable property has been deposited in Court on behalf of a judgment-debtor in lieu of security, for the purpose of staying a sale in execution of a decree pending an appeal against an order directing the sale,

* Miscellaneous Special Appeal, No. 220 of 1878, against the order of E. Drummond, Esq., Judge of Zilla Sarun, dated the 12th of May 1877, reversing the order of Baboo Luchoomun Prosad, Sudder Munsif of that district; dated the 15th September 1876.

which is afterwards confirmed on appeal, neither the depositor, nor the judgment-debtor, can afterwards claim to have such deposit refunded or restored to him, notwithstanding that the decree-holder has omitted to draw it out of Court for more than three years, and that more than three years have elapsed since any proceedings have been taken in execution of the decree, and that the decree for that reason is now incapable of execution.

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Semble.—When money or moveable property is deposited in Court in such a case as the above, the Court, upon confirmation of the order for a sale, holds the deposit in trust for the decree-holder, and is at liberty to realize it and pay the proceeds over to him to the extent of his decree.

IN this case Sheo Gholam Sahoo (the decree-holder) had, sometime before 1870, obtained a decree against one Khoob Lall and others; and in the year 1870 attempted to obtain satisfaction of his decree by attaching and applying for an order for the sale, in execution of his decree, of certain properties of his judgment-debtors; the judgment-debtors intervened and opposed the order on the plea that the decree was barred by limitation, and that no proceedings could then be taken to execute it.

The Court to which the application for execution of the decree had been made rejected the plea of the judgment-debtors and ordered the sale of the attached properties to proceed. Against this order the judgment-debtors appealed, and at the same time applied for a stay of the sale in execution pending the hearing of the appeal.

The Appellate Court granted an order staying the execution proceedings pending the hearing of the appeal, subject to the condition that the judgment-debtors should give security for the satisfaction of the decree in the event of the judgment of the Appellate Court upon their appeal being against them. When this order was made Shaik Rahut Hossein, the mukhtear of the judgment-debtors, and the applicant in the present proceeding, deposited in the Appellate Court, in lieu of security, money and jewellery of value sufficient to satisfy the decree. This deposit was made on the 7th of March 1870. The order of the lower Court directing the sale was afterwards confirmed by the Appellate Court.

Some time in the year 1876, and more than three years after the last-mentioned order of the Appellate Court, and more than three years after any proceedings had been taken to execute the

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original decree, the applicant, Shaik Rahut Hossein, applied to the Appellate Court to have the deposit, which he had made on the 7th of March 1870, returned to him, on the ground that as the decree-holder had allowed the deposit to lie in Court without claiming it for more than three years after the final decree in his favor, and as the decree-holder had not within three years taken any proceedings to enforce or keep alive his decree, the decree-holder was no longer in a position to enforce his decree or to demand a transfer to him of the deposit.

The Court of first instance decided that the applicant having made the deposit in Court for the purpose of securing the satisfaction of any order or decree that might be made against his client, had no right, the final order or decree having been against his client, to withdraw his deposit until the order or decree had been satisfied. The lower Appellate Court reversed the order of the Court of first instance on the grounds that as the decree-holder was barred by limitation from getting hold of the deposit in execution of his decree, no one but the applicant had any right to it.

From this decision the decree-holder appealed to the High Court.

Baboo *Abinash Chunder Banerjee* for the appellant contended, that when the deposit was made, the Court immediately became a stakeholder for the parties, and that, on the appeal being decided in favour of the decree-holder, the Court held the deposit in trust for him, and that no limitation could bar his claim to the trust from the Court, his trustee.

Moulvie *Mahomed Yusoof* for the respondent contended, that immediately upon the decision of the Court in favour of the decree-holder (the appellant) he had a right to call upon the Court in which the deposit had been made either to satisfy his decree or to make over to him the deposit; that he had not done so; and was now barred by his abstention; and that he the appellant being no longer in a position to call upon the Court to make over or account for the deposit to him, no one was entitled to it but the applicant (the respondent), who had made

the deposit, and from whom the Court had received it in trust to make it over to any claimant who should in due time appear to be entitled to it.

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Baboo *Abinash Chunder Banerjee* in reply urged that the applicant, when he made the deposit, made it on behalf of one of the parties to a suit then pending before the Court in which deposit was made; and that the Court, when it received such deposit, became a trustee not for the depositor (the applicant), but for the parties to the suit, and held the deposit in trust to pay it over or to hold it for the benefit of whichever party should be successful in the then pending appeal.

The judgment of the Court was delivered by

AINSLIE, J. (who, after stating the facts of the case, continued):—If the money and property was sufficient for the satisfaction of the decree, it was not necessary for any further proceedings to be taken in execution. So far as the money is concerned, when the appeal was dismissed, it must be taken to have been transferred to the credit of the decree-holder, and the Court should similarly deal with the jewels pledged, converting them into cash for his benefit.

The District Judge reversed the order of the first Court on the ground that the decree was barred by limitation, but we are of opinion that no question of limitation arises.

The appeal must be decreed with costs, and the order of the Court of first instance restored.

Appeal decreed.