Sm. Matimala Debi and Another Vs Surendra Nath Mudi

Court: Calcutta High Court

Date of Decision: Aug. 21, 1936

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Section 60(1)(m)

Citation: AIR 1936 Cal 802

Hon'ble Judges: Nasim Ali, J; Guha, J

Bench: Full Bench

Judgement

Nasim Ali, J.
This is an appeal by judgment-debtors against an order of the Subordinate Judge of Howrah, dated 16th March 1936,

rejecting their objections to the attachment and sale of certain properties in an execution proceeding. One Jyotish Chandra Banerji was owner of

these properties. He died having made his last will and testament, on 9th September 1917. By the said Will, after making specific bequests, the

residual estate was granted to his wife for life, then to his daughter for life, then to her husband for life, and then to certain persons absolutely. By a

codicil dated 5th May 1918, the residual estate was bequeathed by the testator to his daughter absolutely. The testator left surviving him his

widow, Motimala Devi appellant 1, his daughter Anila Bala Devi and her husband Mrigendra Nath Mukerji, appellant 2. Probate of the Will was

granted in due course. Thereafter, the daughter of the testator died intestate leaving her husband, appellant 2, as her sole heir. The respondent in

this Court has attached these properties in execution of a decree obtained by him against the widow and the son-in-law of the testator. The latter

objected to the attachment and sale of these properties on the ground that they were not liable to attachment. In view of the provisions contained in

Section 60, proviso (1), Clause (m), Civil P. C., the learned Subordinate Judge has overruled this objection. The judgment-debtors appeal to this

Court. At the time of the hearing of this appeal, Mr. Gupta appearing for the appellants did not press the objection of appellant 1 to the sale of her

life interest in the property in question. The whole argument of the learned advocate was confined to the question whether the interest of appellant

2 in the properties in question was liable to attachment and sale in execution of the decree against him. His contention is that although the right of

the daughter was a vested right in terms of the Will, the right of her legal representative after her death, is only an expectancy of succession so long

as the widow of the testator was alive and was consequently not liable to attachment. An expectancy of succession is a mere possibility and is not

an interest or even a contingent title:

It is indisputable in law that no one can have any estate or interest, at law or in equity, contingent or other, in the property of a living person, to

which he hopes to succeed, as heir at law or next of kin of such living person. During the life of such person no one can have more than a spes

successionis, an expectation or hope of succeeding to his property: (1890) 45 Ch D 51 In Re: Parsons, Stockley v. Parsons (1890) 45 Ch D 51

2. The right to the properties in question vested absolutely on the daughter on the testator''s death, and though a life interest was bequeathed to the

widow, her interest was not a mere possibility but a vested remainder, which was an interest granted out of the original estate. So long as the

daughter was alive, her heir had only an expectancy of succession to this vested remainder. After her death, it devolved on Mrigendra, appellant 2,

by inheritance. The interest of appellant 2 therefore is not a mere expectancy of succession. It is argued by Mr. Gupta that Mrigendra''s right

depends on a contingency, namely the death of the widow during his lifetime. But a contingent interest is

something quite different from a mere possibility of a like nature of an heir apparent succeeding to the estate or the chance of a relation obtaining a

legacy and also something quite different from a mere right to sue. It is a well ascertained form of property .... in respect of which it is quite

possible to raise money and to dispose of it in any way that the beneficiary chooses: In Re: Parsons, Stockley v. Parsons (1890) 45 Ch D 51

3. The learned Subordinate Judge was therefore right in rejecting the objection of appellant 2 to the attachment and sale of, the properties in

question. The appeal is therefore dismissed with costs. The hearing fee in this Court is assessed at two gold mohurs.

Guha, J.

4. I agree.