

(1871) 04 CAL CK 0005

Calcutta High Court

Case No: Special Appeal No. 407 of 1870

Ram Chandra Tantra
Das

APPELLANT

Vs

Dharmo Narayan
Chuckerbutty

RESPONDENT

Date of Decision: April 17, 1871

Judgement

Norman, J.

We are all of opinion that the interest of an heir, according to Hindu law, expectant on the death of a widow in possession, is not property. It is a mere expectancy, and therefore not rendered liable to attachment and sale in execution of a decree by the 205th section of Act VIII of 1859. This point was considered, after very full argument, in Bhoobun Mohun Bannerjee v. Thacoor Doss Biswas 2 Ind. Jur., N.S., 277, in which case the Court, on the original side, followed a previous decision of Mr. Justice Campbell and Mr. Justice Macpherson, in Koraj Koonwar v. Komal Koonwar 6 W.R., 34.

2. This case will go back to the Division Bench for trial.

¹Before Mr. Justice Bayley and Mr. Justice Hobhouse.

The 17th June 1869.

Gaur Hari Dutt and Others (Plaintiffs) v. Radha Gabind Shaha (Defendant.)

Special Appeal No. 463 of 1869, from a decree of the Judge of Dacca, dated the 26th November 1868, affirming a decree of the Subordinate Judge of that district, dated the 25th January 1868.

Baboo Srinath Banerjee for the appellants.

Mr. R.T. Allan for the respondent.

Hobhouse, J. - In this case the sole question before us is this:--There were two houses, originally the property of one Loknath. Chandra Mani, his widow, was for her life-time holding those houses as heir-at-law of Loknath, and the plaintiff before us was, during Chandra Mani's incumbency, the reversionary heir to those houses. In this state of facts, a certain person held a decree for money against the plaintiff; and in execution of that decree, he advertized for sale whatever rights and interests the plaintiff had in those houses, and the defendant became the auction-purchaser of those rights and interests. Thereafter, Chandra Mani died, and the plaintiff became the heir-at-law to the property of Loknath, and as such heir-at-law, he now sues to recover possession of those two houses.

The contention is that, inasmuch as, at the time of the sale, the plaintiff had only a reversionary interest in the houses, so under the ruling in the case of *Pranputtee Koer v. Lalla Futtek Bahadoor Sing* 2 Hay's Rep., 608, the plaintiff had no existing interest in those houses, but only a contingent interest; and thus it is argued, that, when the defendant bought whatever interest the plaintiff had, he bought nothing at all, and could buy nothing. It is evident that there is on the face of it a fallacy in this argument. In the first place, we are not shown any authority on the point that a reversionary interest cannot be sold in execution of a decree; and, secondly, it is quite clear that in this case the reversioner had some interest. It was indeed but a contingent interest, that is, contingent upon his surviving Chandra Mani, but it was not the less an interest, and, no doubt, had, as it is proved by the sale that it had, a marketable value; and at any rate when the defendant is found to have purchased whatever interest the plaintiff had at that time in those houses, it is not for the plaintiff, that is, the person who, in some shape or other, put the purchase-money in his pocket, to come in and say that the defendant has bought nothing.

We think that the sale was a good sale, and the lower Appellate Court was right, although his reasoning may not be quite accurate in finding it to be so.

The special appeal is dismissed with costs.