

Mt. Phool Kunwar Vs. Rikhi Ram

Mt. Phool Kunwar Vs. Rikhi Ram

SooperKanoon Citation : sooperkanoon.com/478901

Court : Allahabad

Decided On : Nov-16-1934

Reported in : AIR1935All261; 153Ind.Cas.865

Appellant : Mt. Phool Kunwar

Respondent : Rikhi Ram

Judgement :

1. This appeal arises from an application for execution made by the respondent Pandit Rikhi Ram who obtained a simple money decree against Shah Jwala Prasad since deceased. The decree-holder applied for execution of his decree by attachment of rents due from the tenants holding land left by the judgment-debtor. The latter's widows Mt. Phool Kunwar and Mt. Khem Kunwar objected to the attachment of the rents, inter alia, on the ground that they accrued after the death of Shah Jwala Prasad and were therefore their personal property and not part of the assets left by the deceased. Their objection was dismissed by the lower Court. They have come up in ppeal to this Court.

2. It is clear that the decree against the deceased judgment-debtor can be executed against the assets left by him. The question is whether the rents accruing due since his death and payable by the tenants holding immovable property once belonging to him can be considered to be part of his estate. The widows are in possession of the property belonging to their late husband as his legal representatives. The fact that they have widows' estate under the Hindu law

does not make them any the less legal representatives of their husband. It may be that in the eye of Hindu law their position as representatives of the estate of their deceased husband is peculiar, but it cannot be gainsaid that so long as they are alive, they alone represent the estate of their deceased husband. It is equally undeniable that the income accruing from the property in their possession as legal representatives of their deceased husband is income accruing from, his estate and therefore an integral part thereof. They do not claim his property adversely to him or his estate, but as representing it. Anything received by them should be deemed to have been received by his estate. This being so, any rents which have accrued due and are payable to the widows must be considered to be part of his estate and therefore liable to pay his debts.

3. The learned advocate for the appellants has strongly relied on *Rani Kanno Dai v. B.J. Lacy*. (1897) 19 All. 235. The facts of that case are quite different from those of the case before us. The judgment-creditor in that case had applied for attachment of rents due in respect of the property of the deceased judgment-debtor in possession of his widow. The learned Judges composing the Division Bench which decided the case held that the attachment could not be sustained in view of a compromise which the parties had entered into previously. The effect of that compromise was that the decree-holder was not entitled to take out execution against movable property of the widow and was to obtain satisfaction of the decree by proceeding against his immovable property. The view there taken was that having regard to the terms of the compromise it was not open to the decree-holder to proceed against the rents receivable by the widow which in the circumstances of that case were considered to be the property of the widow and that the only manner in which the decree-holder could obtain satisfaction was by attachment of the immovable property. So far the decision does not involve any proposition of law which can be questioned. The learned Judges however proceeded to observe as follows:

There can be no doubt as we conceive the law to be in this country, that this lady, as the widow of a separated and sonless Hindu, became in virtue of her widow's estate, entitled upon the death of her husband to the rents which might accrue from the immovable property. Those rents if already received by her and put into

her pocket, could not be treated in law as assets of her husband. They were her assets in virtue of her widow's estate. It can make no difference if the rents which accrued due after her husband's death had not been actually put into her pocket. She was entitled to them, not as representative of her late husband, but in right of her widow's estate.

4. The italics are ours. With great respect, we are unable to accept the view that the rents and profits receivable by her constituted property in her own right and are part of her personal estate. She was entitled to the possession of her husband's estate only because she happened to be his legal representative. But for that circumstance she had no right either to the estate left by her husband or its income. The fallacy of the argument underlying the observations quoted above is that the existence of a widow's estate is recognized as against the estate of her husband. The nature and extent of a widow's estate may be material where the question arises between her and the reversioners, but there can be no widow's estate where the question is whether the property once belonging to her husband is part of his estate or is part of the widow's estate, which itself implies an estate carved out of the husband's estate. It continues to be the husband's estate while it is in the possession of the widow who represents it. If the observation quoted above had embodied the decision of their Lordships for the purposes of that case, we would have referred the question to a larger Bench. As in our opinion it is clearly an obiter dictum which was not part of the actual decision of the case, we feel, with all respect, that we are at liberty to differ from it.

5. In the case before us, it is not disputed that the appellants are in possession of the property of which the rents are in question, as the heirs and legal representatives of their deceased husband against whom the decree sought to be executed had been passed. This being so, the rents, attached at the instance of the decree-holder are, in our opinion, part of the estate of the deceased. The objection of the appellant was rightly overruled by the lower Court. This appeal is also dismissed with costs.