

(1923) 02 AHC CK 0013
In the Allahabad High Court

Musammat Kaneez Fatima Begum

APPELLANT

Vs

Ram Nanda Dhar Dube and Others

RESPONDENT

Date of Decision : 08-02-1923

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2

Citation : AIR 1923 All 331 : 73 Ind. Cas. 977

Hon'ble Judges : Ryves, J; Daniels, J

Bench : Division Bench

Judgement

1. This is an appeal in execution proceedings the respondent, Ram Nandan Dhar Dube, held a simple money-decree against the assets of Muhammad Ghulam Muhi-ud-din Ashraf Baksh Khan who is said to have died in 1903. In execution of that decree a share of i-anna 7-pies and a fraction in Mama Bhupgarh, alleged to have been inherited by Musammat Kaneez Fatima Begum, the widow of the deceased, was attached and sold. Musammat Kaneez Fatima had a claim for dower against the estate of the deceased. It is now common ground that the share which she inherited in this village from her husband was 7 1/2 pies only, and on her objection the sale has been set aside except as regards this 7 1/2 pies as to which it has been maintained. The remainder of the share owned by the deceased in this village passed to the other heirs of the deceased. Musammat Kaneez Fatima Begum instituted a suit to recover her dower-debt and, in execution of the decree which she obtained, the whole share of the deceased in the village except the share in her possession was brought to sale and purchased by her in the year 1918. She took objection to the sale held under the respondent's decree on the ground that she inherited only 7 1/2-pies share in this village; and that out of this share she had made a gift in the year 190S of 2 1/2 pies to one Musammat Amna Bai. Her case was that only 5-pies share was liable to sale under the respondents' decree and that even this share was subject to a charge of Rs. 27,000 in respect of the unpaid portion of her dower-debt. In a suit for dower which she filed she had not claimed the entire dower-debt but had deducted a sum proportionate to the share which she had inherited

and it is in respect of this sum that she now claims a charge.

2. The Courts below have held that only the 7 1/2-pies share which she inherited can be brought 2 1/2 to sale but have disallowed her claim to a charge and to the deduction of 2 1/2-pies share on account of the gift. In this appeal she again presses the two objections which have been rejected by the Courts below. As regards the 2 1/2-pies share which she gave away it has been found that on the same day she received from the donee a life-interest in a much larger share, viz., a share of 9 pies, in this very village, therefore, the share of 7 1/2 pies which she inherited had not really been diminished in any way and the entire share is liable to be sold. We can find no valid answer to this reasoning and none has been shown to us.

3. The claim to a charge is also untenable. It is well established that a dower-debt is not a secured debt but a simple debt ranking, equally with other debts due from the estate. The widow's lien for dower is the right which she has, where she has taken peaceable possession of her husband's estate, to hold that estate as against the heirs of her husband until they satisfy her claim to dower. It has no application to the share which she holds in her own right as heir of her husband, still less can it give her a right to prevent another creditor against her husband's estate from recovering the amount which is due to him. It is argued in the alternative that even as a simple creditor she is entitled to realise the amount of dower still due to her from the portion of the estate in her hands as heir equally with the respondent. The plea was not taken in the grounds of appeal and it is untenable. In the first place, the dower fell due on her husband's death, in 1903 and as a simple debt has long since been time-barred. In the second place, as she elected to sue for only a portion of the dower-debt Order II, Rule 2 of the CPC would prevent her claiming any amount which she had chosen to forego. A similar contention was put forward in a case before the Judicial Commissioner of Oudh reported as *Inayat Ali v. Jaitun Bibi* 32 Ind. Cas. 362 : 18 O.C. 263 : 2 O.L.J. 579 and was rejected. It is only as a secured creditor that she could claim to treat the amount for which she did not sue as being a charge on the share in not hands by inheritance, and the authorities are clear, and indeed it is not disputed, that a widow is not a secured creditor in respect of her claim for dower.

4. The appeal, therefore, fails. As the amount in respect of which the sale has been upheld is not sufficient to satisfy the respondent's claim, the learned District Judge has directed that the respondent shall be at liberty to realize the remainder of his decree from the objector's share in other villages which he has already attached. The appellant wishes it made clear and we declare by our decree that the District Judge's order will not prevent the appellant from putting forward any legitimate objection she may have to the sale of the estate of those shares. Subject to this, the appeal is dismissed with costs including fees on the higher scale.