movable property charged with that amount or from immovable property of joint family—She cannot execute that decree by sale of moveable properties.

Where a widow has obtained a decree for maintenance which provides that in case of default of payment to her, it would be at her option to recover the amount either by sale of immovable property charged with the amount or from immovable property of the joint family, she cannot seek any other remedy and cannot execute the decree for the recovery of her dues by the sale of moveable property : *A I R 1933 Mad 33, Expl.* [P 207 C 2]

B. S. Kalelkar and V. H. Kamat — *for Appellant.*

S. A. Desai and V. N. Chhatrapati — *for Respondents.*

Judgment. — The appellant obtained a compromise decree against her husband's brothers in Suit No. 290 of 1932 which provided that she should be paid Rs. 2100 in lump for arrears of maintenance and the right of residence up to 30th November 1933, and for the costs of the suit, and that she should be paid future maintenance at the rate of Rs. 50 per month from 1st December 1933. A charge in respect of the amount due to her was kept on certain immovable property described in the decree. The decree provided :

If the defendants fail to pay at the proper time the amounts which they have to pay to the plaintiff, the plaintiff is to recover and do recover the same, through Court, from the immovable property of the joint family or from the said charged property according to her choice.

A sum of Rs. 514-8-0 having fallen due under the decree, the appellant presented this darkhast to recover it by the attachment and sale of the respondents' moveable property. The executing Court dismissed the darkhast on the ground that the appellant must first proceed against the property, meaning thereby the charged property. It is now contended that the decree being a money decree, the appellant's right to recover the decretal amount out of the assets of the joint family is not curtailed by the fact that a charge is placed on specific immovable properties of the family. In support of this contention reliance is placed on the ruling in 56 Mad 343.[1] In that case the decree for maintenance obtained by a Hindu widow against her husband's coparceners directed the defendants to pay the plaintiff maintenance at a certain rate out of the assets of their joint family and charged some specific items of property with the maintenance awarded. It was held that, as the decree provided concurrent remedies, the plaintiff could, in execution of her decree, attach the assets of the joint family other than the charged property before exhausting her remedies against the charged property. The decision was based on the wording of the decree itself, which conferred upon the widow concurrent remedies at her choice and it was held that she could take advantage of either of those remedies. In the same way the decree under execution also has specifically provided the remedies open to the appellant in case of default on the part of the respondents. It gives her an option to recover the amount due either by having the charged property sold or out of other immovable properties of the joint family. The decree was passed on a compromise and the parties apparently agreed that the amount due under the decree should be recovered only out of immovable properties, though one of those properties was charged specifically. When the decree itself specifies what remedy the decree-holder is to pursue in case of default on the part of the judgment-debtor, it is not open to her to seek some other remedy which is not given to her by the decree. The decree being merely a money decree, it is open to the decree-holder to recover her dues out of the assets of the joint family; but as her remedy is restricted specifically by the decree itself, I do not think the appellant can seek any other remedy and execute the decree for the recovery of her dues by the sale of moveable properties. On these grounds I confirm the order passed by the executing Court and dismiss the appeal with costs.

D.S./R.K. *Appeal dismissed.*

1. Srinivasa Ayyar v. Lakshmi Ammal, (1933) 20 A I R Mad 33=140 I C 408 = 56 Mad 343 =63 M L J 843.

A. I. R. 1939 Bombay 207

LOKUR J.

Jivanrao Anandrao Deshpande — Appellant.

v.

Vishnu Rangnath Kalawade — Respondent.

First Appeal No. 159 of 1937, Decided on 22nd November 1938, from decision of First Class Sub-Judge at Ahmednagar, in Darkhast No. 1135 of 1936.

Hindu Law—Religious endowment—Right of worship—Private family devasthan — Worship and management given to members by annual turns but without right to alienate — Descendants through females cannot inherit right of worship and management.

Where the management of a private family devasthan is vested in the family with a provision that the wahivat as to the worship and management should be made by members of the family by annual turns but it is provided that the wahiwatdars should not alienate the devasthan property in any way, then upon the death of one of the wahiwatdars, his descendants through a female who by marriage has gone to another family are not entitled to inherit the right to worship the deity and manage the devasthan property: *A I R 1926 Bom 309, Rel. on.* [P 208 C 1, 2]

Dr. B. R. Ambedkar and P. S. Bakhale — *for Appellant.*

G. K. Chitale and C. H. Patwardhan — *for Respondent.*

Judgment.—At Kasbe Mirajgaon in the District of Ahmednagar there is a devasthan of Shri Gopal Krishna Maharaj belonging to the family of the respondent. The respondent Vishnu had two brothers, Maharudra and Ramkrishna. Ramkrishna filed Suit No. 271 of 1881 in the Court of the First Class Subordinate Judge of Poona for a partition of the family property, and the decree in that suit provided that the property endowed to the deity and its management were vested in the family, that their vahiwatdars were not competent to alienate it in any way and that the vahiwat should be made by the three brothers by annual turns. Maharudra died in 1889 when it was his turn to make the vahiwat and after his death his widow Prayagbai was in vahiwat during his turn. She died without any male issue and the appellant, who is the son of her daughter, is her heir. When his turn of vahiwat came, he filed this darkhast to execute the partition decree against the respondent and claimed the right of vahiwat. The respondent contended that as he belonged to a different family, he had no right to inherit the vahiwat or the management of the property of the family deity. The lower Court upheld the contention and dismissed the darkhast on the strength of the principle laid down in the ruling in 28 Bom L R 463.[1] That was a case of a private deity where certain property was granted in inam to the deity and the management was vested in a family,—the vahiwatdar not being competent to alienate it, and it was held that the vahiwat in the grant was meant to be assigned to the family of the grantee, and the moment any descendant passed out of the family, as for example by adoption or by marriage, the right ipso facto ceased. It was not contended that females were debarred from exercising the right to the property or the right to the vahiwat of the property of the devasthan; but if the intention of the grantor was to keep the vahiwat in the family, then the females who left the family and their descendants could not claim to become vahitwatdars by inheritance.

It is however pointed out that the decree under execution in this case specifically provides in para. 8 that Vishnu Sakharam Naik and Vinayak Vithal Naik, who are strangers to the family, should keep supervision as to whether or not the plaintiff and the defendants in that suit incur expenses as agreed and whether or not they properly maintain and manage the devasthan property and that in case they mismanage the devasthan and do not incur the necessary expense, then the whole of the property of the devasthan should be taken from their possession and that the aforesaid two persons should go on incurring the expenses according to the list of the devasthan expenses annexed to the application. This contemplates that a stranger to the family was competent under certain circumstances to manage the devasthan and perform the worship and hence the inference which was drawn from the condition of inalienability in 28 Bom L R 463,[1] should not be drawn from the wording of the decree under execution. But the appellant claims to inherit the property as of right even though the members of the family have not been guilty of mismanagement. The contingency contemplated in para. 8 of the decree has not arisen and even in that case the two persons named have a right to supervise and see that the property is properly managed. This does not come in the way of the inference to be drawn from the condition of inalienability laid down in para. 7 of the decree. There is hardly any distinction between the facts in 28 Bom L R 463[1] and this case, and I hold that the appellant is not entitled to inherit the management of the deity and the devasthan property. The appeal is therefore dismissed with costs.

N.S./R.K. *Appeal dismissed.*

1. Ranchhod v. Bai Jayanti, (1926) 13 A I R Bom 309=95 I C 85=28 Bom L R 463.