

HUTCHIN-  
SON, C.J.  
&  
PARKER,  
ACTING J.  
1904  
June 28

[HUTCHINSON, C.J. AND PARKER, ACTING J.]

ABDULLAH HUSSEIN,

Plaintiff,

v.

SELIM DILAVER,

Defendant.

EX-PARTE RATIB EFFENDI IRIKZADE.

JUDGMENT DEBT—EXECUTION AGAINST ARAZI-MIRIE OF DECEASED DEBTOR—  
LAW OF 15 SHEVAL 1288, SEC. 1—LAW 9 OF 1896, SEC. 8.

*D., who was indebted to R., died, leaving S. his heir. A. obtained a judgment for debt against S. and in execution of his judgment got an order for sale of Arazi-mirié which was registered in D.'s name. R. then sued the heirs of D., and got judgment for the amount of D.'s debt to him, and applied to stay the order for sale.*

HELD: that R. was entitled to priority.

APPEAL by Ratib Effendi against an order of the District Court of Papho.

The Plaintiff Abdullah Hussein obtained a judgment against the Defendant Selim Dilaver before the Village Judge of Papho for a small sum on the 31st January, 1903. In May, 1903, he took steps to enforce his judgment against certain Arazi-mirié which fell to the Defendant's share on the death of his father Dilaver; and on the 1st July, 1903, he obtained an order for sale of the Defendant's interest in that property in satisfaction of the judgment.

Dilaver owed Ratib a sum of money which was secured by mortgage of some other property. In April, 1903, Ratib procured the sale of the mortgaged property; but the proceeds were not enough to satisfy his mortgage, and on the 5th December, 1903, he applied to the District Court for and obtained a temporary order to stay the sale under the order of the 1st July. On the 16th December he obtained judgment in an action which he had brought against Selim and the other heirs of Dilaver for the payment of £36 4s. 2cp. (the balance of his mortgage debt) from the estate of Dilaver.

Upon the hearing of his application to confirm the temporary order for stay of the sale the District Court dismissed the application and discharged the temporary order.

Ratib appealed.

*G. Chacalli* for the Appellant.

*Pascal Constantinides* for the Plaintiff.

*Chacalli*: The Defendant inherited the land subject to the payment of his father's debt; and the Plaintiff is not entitled to have it sold, except subject to the payment of Dilaver's debt. Law of 15 Sheval 1288, Sec. 1; Law 9 of 1896, Sec. 8.