VENKATA-RAMA-KRISHNA RAU v. BHUJANGA RAU.

whom alone the judgment relates. This is also clear from the fact that the general rule enunciated by the Subordinate Judge is expressly approved. The succession to a maiden daughter is the sole exception to the rule, and in all the other cases quoted, the question has been as to the succession to married daughter. It was expressly laid down in *Sengamalathammal* v. *Valayuda Mudali*(1) that the married daughter only took a life interest without power of alienation, and that, irrespective of the property being joint, the sister would succeed in preference to the husband; in other words, that the succession would go to the heirs of the mother. Taking this view, it is unnecessary to consider the validity of the will left by Ramayamma. The appeal fails and we dismiss it with costs.

APPELLATE CIVIL.

Before Mr. Justice Best and Mr. Justice Subramania Ayyar.

1895. April 18, 19. December 16.

VIRASANGAPPA SHETTI (PLAINTIFF), APPELLANT,

v.

RUDRAPPA SHETTI (DEFENDANT), RESPONDENT.*

Hindu law—Stridhanam—Inheritance by a grand daughter for a limited estate—Succession by heir of last full owner.

A Sudra (Lingayat) died in 1826 leaving his property to A, B and C, his daughters, who enjoyed it for some time jointly. In 1860 a settlement was made by (i) A, the sole surviving daughter, (ii) D, who was the daughter of B, and (iii) the present plaintiff, who was the only son of C, and also the stepson of D. Under the settlement two-thirds of the property was given to the present plaintiff and the rest was divided between A on the one hand and D and E on the other. E was the daughter of D. Subsequently D and E acquired A's share under a deed of gift dated 5th June 1863. D died in 1883. E had died previously, leaving the present defendant, her husband, and a daughter F, who died an infant unmarried in 1892. The plaintiff now sued to recover the property which had passed to the line of B:

Held (1) that the settlement of 1860 on its true construction gave to D and E a life interest only in the event of their having no descendants, but an estate of inheritance otherwise, and that that disposition was valid, and accordingly that in the event which happened they took a heritable estate;

(1) 3 M.H.C.R., 312.

* Appeal No. 136 of 1894.

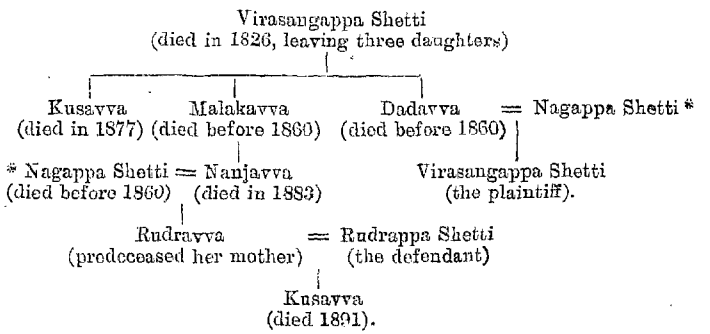
(2) that under the settlement of 1860 and the deed of gift of 1863 D and E took as joint tenants with benefit of survivorship, and not as tenants in common, and accordingly that D became sole full owner of the property on the death of E, whose husband thus acquired no title as her heir;

(3) that F inherited the property, but only for a limited estate, and that the plaintiff was entitled to succeed as heir to D, the last full owner.

APPEAL against the decree of O. Chandu Menon, Subordinate Judge of South Canara, in original suit No. 5 of 1892.

The plaintiff sued to recover property left by one Kusavva, who died an infant without issue in August 1891. The defendant was the father of the deceased.

The parties to this suit were Lingayats and Sudras. The facts of the case were admitted and are stated sufficiently for the purposes of this report in the judgment of the High Court. The relationship of the persons there referred to appears from the following table :—



The operative part of the settlement of 1860 (exhibit B), which was worded as the deed of Kusavva, though it was signed by Nanjavva and Virasangappa also, was as follows :—

"On account of the properties valued at Rs. 24,000 resolved to be given to the said Nanjavva and her daughter Rudravva, besides the movable property with Rs. 19,000 which was given to them on this date in the shape of gold, silver, bellmetal, copper and cash, I have given them out of my immovable property situated at Pejawar of Murned magane in Mangalore taluk, all the lands assessed at Rs. 424-2-4, fixing their value at Rs. 5,000, with the exception of land No. 5 called Kusavva : assessed at Rs. 26-11-7 and situated in Bolaur village—thus making up in all properties worth Rs. 24,000. And I have made over to the said Virasangappa Shetti all the other immovable and movable

VIRA-SANGAPPA SHETTI v. RUDRAPPA SHETTI.

properties, as also the garden with the storied house and out-houses therein, forming a portion of the garden No. 3 of Mangalore Kasba bázaar out of Virasangappa's warg assessed at Rs. 16 and situated to the south and east of the lane, with the exception of the house and garden situated in the north, purchased in auction and formerly occupied by a barber tenant, reserving to myself the garden and house now occupied by me and obtained by me on mulgeni from the Murgi Mutt people. Hereafter both parties should enjoy the respective lands allotted to them and pay the Government assessment thereof and conduct the suits, &c., regarding the respective properties in their possession. Virasangappa should conduct without any omission the panchaparva and other ceremonies of our family god at Kadamatt as they had been conducted hitherto since the time of our ancestors. Either party has no right to object that the allotment of the movable and immovable properties made by me is unequal. They must not through folly waste the properties allotted to their respective shares. Either party has no right whatever to alienate, either by sale or mortgage, the properties in their possession without the co-operation of the other except for the purpose of improvement. Virasangappa Shetti alone should pay the one year's interest on the debt of Rs. 700 due, and also the sum that may be found due to Nanaji Shetti on account of the articles purchased from his shop. Virasangappa Shetti should also pay the wages due, if any, to the Shanbhogue, the servants and the cooks, according to the account. Of the two parties, whichever has not got descendants (issue) should enjoy the property for life time only, and then the property should be enjoyed by the party having descendants. To this effect is the will executed."

The operative part of the deed of gift of 1863 (exhibit C) was as follows:—

"Because I was living with you up to this time and you were looking after my maintenance, and because you should hereafter also maintain me during the rest of my life-time and perform the customary obsequies and ceremonies after my death, I have made over to you by way of gift the aforesaid garden with the storied house therein now occupied by us and which had been obtained on Maulza (for value) mulgeni from the Murgi Mutt people on payment of Rs. 690, together with the five documents relating thereto, to wit . . . . . .

"You and your descendants, from generation to generation, shall enjoy (the same) and shall pay the annual mulgeni of Rs. 10 to the Murgi Mutt. To this effect is the gift deed executed by me out of my own free will."

The Subordinate Judge dismissed the suit. The plaintiff preferred this appeal.

Bhashyam Ayyangar and *Narayana Rau* for appellant.

Ramachandra Rau Saheb for respondent.

JUDGMENT.—One Virasangappa, who originally held considerable property, including that in litigation in the present suit, by his will dated 10th January 1826 devised it to his daughters Kusavva, Malakavva and Dadavva on terms and conditions which it is unnecessary to state fully. It is sufficient for our present purpose to say that he directed that the three ladies should live in union and enjoy the property jointly, and that, if they should find it inconvenient to do so, the same should be divided into four shares, of which Kusavva and Malakavva should each take one share and Dadavva and her husband the remaining two shares. Up to 1860 no separation took place, but in September of that year an arrangement was made, which was brought about by Kusavva, and to which all the descendants of Virasangappa that were then alive were parties, they being (i) Kusavva, the eldest daughter; (ii) Nanjavva, daughter of Malakavva, the second daughter, who had died before that time; (iii) Nanjavva's daughter Rudravva; and (iv) the plaintiff (appellant), the only son of Dadavva, the youngest daughter of the testator, she also having died before 1860. The arrangement was not a mere partition in accordance with Virasangappa's will, but a transaction which went beyond it, as the plaintiff thereunder got, as the representative of the third daughter's branch, more than two-thirds of the properties instead of half, which was his proper share under the will. Exhibit B, which evidences this transaction, after referring to the will of Virasangappa, the marriage of Dadavva, as the first wife of Nagappa Shetti, and, after her death, that of Nanjavva, daughter of Malakavva, as his second wife, the birth of children to him, viz., the plaintiff by Dadavva and Rudravva by Nanjavva, states that, for the prevention of disputes among the parties, it was agreed and arranged that, excepting a house and a garden obtained on mulgeni by the first daughter Kusavva and reserved to her, movables worth Rs. 19,000 and immovables valued at Rs. 5,000

VIRASANGAPPA SHETTI v. RUDRAPPA SHETTI.

were to be taken by Nanjavva and Rudravva, and that the rest of the properties was to go to the plaintiff. It also provides that whichever of these parties has no descendants should enjoy the properties allotted to him or her for life only, and then the same should go over to and be enjoyed by the party having descendants. Three years after this arrangement, Kusavva made a gift, under exhibit C, of the house and garden which she had reserved to herself, to Nanjavva and Rudravva. These properties, as well as those granted to them under exhibit B, were, on the death of Nanjavva, the survivor of the grantees, held by her granddaughter Kusavva till her death in 1892. The question at issue is, who is entitled to succeed to these properties left by the last-mentioned lady, she having died unmarried.

The plaintiff's case, as put before us, is as follows:—The grant under exhibit B was to Nanjavva alone, Rudravva her daughter being mentioned therein only to indicate that the estate granted was not a life estate, but one of inheritance. On Nanjavva's death, Kusavva, her granddaughter, inherited the property, Rudravva having predeceased Nanjavva. The interest taken by Kusavva in the property thus inherited by her was only a limited interest similar to that taken by a woman in an estate inherited by her from a male. Consequently on Kusavva's death, the succession should be traced from the last full owner Nanjavva, and there being no nearer heir than the plaintiff, he is entitled to the properties in question either as Nanjavva's co-wife's son or as her husband's sole sapinda, the defendant (respondent) Kusavva's father not being, as Nanjavva's son-in-law, entitled under the Hindu law to claim the same. Further, if it should be found that the grant under exhibit B was not to Nanjavva alone, but to her and Rudravva, as is contended on behalf of the defendant, even then the plaintiff is the party entitled. For in this case, as well as under exhibit C, Nanjavva and Rudravva took as joint tenants and consequently, on Rudravva predeceasing Nanjavva, the whole vested by survivorship in the latter to whom he is the heir.

The case for the defendant is that exhibit B conferred on Nanjavva and Rudravva only a life interest in the properties with remainder to their descendants. Kusavva as their descendant took not as Nanjavva's heir, but directly under the instrument as grantee. Consequently the succession is to be traced from her, and the defendant, her father, and not the plaintiff, is her heir. It

was also urged that, if the above contention be held to be unsustainable, and if it be found that Kusavva took only by inheritance, then the estate which she thus took was a heritable one and consequently the defendant succeeded to the same. Should this contention also fail, it was argued lastly that the plaintiff's claim should be held unsustainable so far at least as a moiety of the property granted under exhibit B as well as that given under exhibit C is concerned, inasmuch as Nanjavva and Rudravva took as tenants in common and the latter's share passed first to her daughter Kusavva and, even assuming this lady took only a limited interest under the law as contended by the plaintiff, it passed after her to the defendant, the last full-owner Rudravva's husband and heir.

In these circumstances the points which arise for determination are—

(i) As to exhibit B—

Was the grant to Nanjavva alone, or to her and Rudravva? Did the grantee or grantees take only an estate for life, or a heritable estate? If the grant was to both, did they take as joint tenants?

(ii) As to exhibit C—

Did the donees take as joint tenants?

(iii) If Kusavva took any property as Nanjavva's heir, what interest did she take as such heir?

Now as to the first point arising with reference to exhibit B, it is quite clear to us that the grant was not to Nanjavva alone, but to her and Rudravva. Exhibit B distinctly says so. And the evidence shows that the plaintiff as well as the other parties were also of that opinion. For, when some of the property set apart under exhibit B had to be mortgaged in 1878, the instrument of mortgage was executed by both Nanjavva and Rudravva as owners, and the plaintiff signed the instrument as a witness. We are unable, therefore, to uphold the plaintiff's contention with reference to this point.

Passing on to the next point, we have, after a careful consideration of the language of exhibit B and the circumstances in which it came to be executed, arrived at the conclusion that it gave a life-estate to Nanjavva and Rudravva only in the event of their having no descendants, but an estate of inheritance otherwise —a disposition perfectly valid in law (see Mayne's *Hindu Law*, 5th edition, paragraph 382, and the cases therein cited). And as they

VIRA-SANGAPPA SHETTI v. RUDRAPPA SHETTI.

had in Kusavva a descendant, their estate must be held to have been a heritable one to which Kusavva succeeded by inheritance. This was also the view taken in suit No. 33 of 1883 instituted by the present plaintiff against Kusavva and the present defendant whereby he sought to eject Kusavva on several grounds, one of them being that Nanjavva and Rudravva took only a life-estate. In dealing with this contention the Subordinate Judge who tried that suit found in unmistakeable terms that "Nanjavva and Rudravva jointly took an absolute estate." On appeal to this Court the learned Chief Justice (Sir Charles Turner) and Muttusami Ayyar, J., agreed with the Subordinate Judge as to the construction of the document in question, though it must be admitted that the passage in their judgment which immediately follows this expression of their concurrence with the Subordinate Judge is somewhat ambiguous. We think, however, that we are justified in holding that the learned Judges did not intend to lay down that Kusavva took directly under exhibit B, even if that document were susceptible of a construction different from that put upon it by us, as it is clear that, not having been in existence at the date of the instrument, she was precluded from so taking by the well-established rule of Hindu law that a grantee or donee must be a person capable of taking when the transaction begins to operate, and must, either in fact or in contemplation of law, be then in existence. We are confirmed in this view by the circumstance that in the concluding portion of the paragraph of the judgment wherein this question is discussed, the learned Judges speak of Kusavva "as entitled to *inherit* the property set apart for these ladies and their descendants by this instrument."

We must, therefore, hold that the interpretation put by the learned Judges upon exhibit B is in accordance with the view now adopted by us.

Coming now to the third point, we may conveniently consider together that and the question raised with reference to exhibit C. We think that the plaintiff's contention is sound. Considering that the manifest object of the arrangement under exhibit B was to secure the enjoyment of the properties to Nanjavva and Rudravva and their descendants, and in default of any such descendant, to the plaintiff and his descendants, it seems to us more likely that the intention was that, in the event of either of the female grantees dying in the life-time of the other, the share of the deceased should

pass to the survivor. (Compare *Vydinada* v. *Nagammal*) (1). We see nothing in the circumstances of the arrangement or the terms of the instrument to show that a tenancy in common was intended. Nor was it otherwise in the case of the gift under exhibit C. For considering that the donor was the very lady who brought about the arrangement evidenced by exhibit B, considering also that the donees were mother and daughter, and further that the donees were, as stated in the document itself, under an obligation to maintain the donor during the rest of her life-time, it appears to us that what was in the contemplation of the parties was a joint tenancy. If, on the other hand, it be supposed that they took as tenants in common, it might well have happened that Rudravva's share would, even in the life-time of the donor, have passed to a comparative stranger had she died leaving only her husband and no issue, she having, as a matter of fact, predeceased the donor. That a tenancy which might possibly result in such a devolution was intended seems to us improbable.

In our opinion, therefore, on Rudravva's death, her share in all these properties passed by survivorship to Nanjavva, who thus became the sole full owner of the whole estate, and it follows that the defendant's claim to a moiety on the ground that he is Rudravva's heir is unsustainable.

We have now to deal with the last point, which relates to the nature of the interest taken by Kusavva in the property in question. If she took a heritable estate, the plaintiff must fail; but if, on the other hand, she took a limited estate, he must succeed. The contention on his behalf is that she took only a limited interest, since in this Presidency property inherited by a woman even from another woman, is not the former's stridhanam, and since in stridhanam property alone a woman takes an estate of inheritance; and the contention on behalf of the defendant is that the property in question was Kusavva's peculiar property. In *Sengamalathammal* v. *Velayuda Mudali*(2) the question arose as to property which devolved upon a daughter from her mother, and it was held by Bittleston, C.J., and Ellis, J., that the estate did not become the daughter's stridhanam. On behalf of the defendant, however, we have been referred to the decision in C.M.A. No. 130 of 1890 (*Narasayya* v. *Venkayya*(3)) which no doubt is in the

(1) I.L.R., 11 Mad., 258. (2) 3 M.H.C.R., 312. (3) 2 Mad. L.J., 149.

VIRA-SANGAPPA CHETTI v. RUDRAPPA SHETTI.

defendant's favour. But we find that, though this case was distinctly before the Division Bench which decided *Mullangi Ammanna* v. *Chinna Kamayya*(1), yet it was there held that property to which a woman succeeds as the heir of another woman does not become the successor's stridhanam.

The learned vakil for the defendant strenuously maintains that the rule laid down in *Narasayya* v. *Venkayya*(2) referred to above is in accordance with the Mitakshara, the leading authority in this Presidency, and though the passage in section XI (2) of that work, which includes inherited property under the head of stridhanam, has been held not to lay down the law correctly as to property inherited by a woman from a male, yet there is no good ground for overruling its authority in respect of property inherited from a female. There would be some force in this argument if the view that, notwithstanding that the language of Vijnaneswara in the passage in question is broad and general, the author did not really intend to include in his description of stridhanam what passes by inheritance from a male to a female, were well founded. For in that case it might be urged with some show of reason that the authority of the Mitakshara on the point at issue now is not necessarily affected by the decision laying down that property inherited from a male is not stridhanam. But that view has been shown to be clearly erroneous by Messrs. West and Bühler (Digest, 3rd edition, pages 269 and 272), Dr. Gooroodas Banerjee (Marriage and Stridhanam, pages 283–7) and Dr. Jolly (Lectures on Hindu Law, pages 242–251). It is, therefore, difficult to see how Vignaneswara is still to be treated as an authority on the point under consideration, whilst, except in Bombay, the Courts, including the Privy Council, have unanimously declined to follow him as to property inherited from a male. Moreover, so far as this Presidency is concerned, the Courts, in thus rejecting Vijnaneswara's doctrine that the word '&c.' in the text of Yajnavalkya relating to what constitutes stridhanam includes property inherited, have not proceeded solely on the authorities peculiar to the Dayabhaga school, but have been influenced considerably by the fact that the Smriti Chandrika and Daya Vibhaga or Madhavyam have put an entirely different construction on the same word in the said text. Bittleston, C.J., and Ellis, J., in *Sengamalath-*

(1) Second Appeal No. 169 of 1893 unreported. (2) 2 Mad. L.J., 149.

ammal v. *Velayuda Mudali*(1) refer to and rely on the Smriti Chandrika as supporting their conclusion, and the Privy Council in *Mutta Vaduganadha Tevar* v. *Dorasinga Tevar*(2) observes "there are two commentaries which are received as authority in the Carnatic, the Smriti Chandrika and the Daya Vibhaga of Madhaviya, neither of which follow the cited passage of the Mitakshara in assigning to a woman as her stridhan property inherited by her." It will thus be seen that the contention that property inherited is not stridhanam, though opposed to the Mitakshara, is supported by two out of the three commentators accepted as high authorities in the southern or the Dravida school, and one of whom wrote several centuries after Vignaneswara.

Our attention was next drawn to the observations of Telang, J., in *Manilal Rewadat* v. *Bai Rewa*(3) on what has been called the doctrine of reverter. The learned Judge at p. 763 says with truth that "this doctrine of reverting to the heirs of the last male owner is one which is nowhere expressed, as far as we are aware in either the Mitakshara or the Mayukha." No doubt the circumstance thus alluded to by the learned Judge furnishes an excellent ground against the introduction of the doctrine of reverter in the provinces where the doctrine of the Mitakshara that inherited property is stridhanam is accepted to be law as it is in Bombay. But the argument has no force here, that doctrine not having been adopted by the Courts in this Presidency. And when once it is held that a woman inheriting property takes but a limited estate and does not become a fresh stock of descent, the doctrine of reverter is a necessary consequence, since inheritance must be traced from the last full-owner, whether such owner is a male or a female.

Following, therefore, the rule laid down by Bittleston, C.J., and Ellis, J., in *Sengamalathammal* v. *Velayuda Mudali*(1) so far back as 1867, and affirmed recently by the Chief Justice and Shephard, J., in *Mullangi Ammanna* v. *Chinna Kamayya*(4), we hold that Kusavva took only a limited interest in the property in question, and that on her death the plaintiff, as the heir of the last full-owner, is entitled to succeed to it.

The result is the plaintiff is entitled to the property left by Kusavva out of what was inherited by her from Nanjavva.

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(1) 3 M.H.C.R., 312. (2) L.R., 8 I.A., 99. (3) I.L.R., 17 Bom., 758.
(4) Second Appeal No. 169 of 1893 unreported.

VIRA-SANGAPPA CHETTI v. RUDRAPPA SHETTI

We must ask the Subordinate Judge to submit findings on the first, second and sixth issues. Further evidence may be taken on either side.

[After the Subordinate Judge had submitted the findings required, the Court passed a decree for the plaintiff.]

PRIVY COUNCIL.

P.C.* 1895. November 14.

MATHUSRI UMAMBA BOYI SAIBA AND OTHERS (PETITIONERS), APPELLANTS,

AND

MATHUSRI DIPAMBA BOYI SAIBA AND OTHERS (COUNTER-PETITIONERS), RESPONDENTS.

[On appeal from the High Court at Madras.]

Duration of receivership—Discretion of Court—Decree in accordance with judgment, section 206, Civil Procedure Code.

It is within the discretion of a Court appointing a receiver in a suit to order that the office should continue permanently after the decree when such continuance is necessary, or for so long as it may be so. A decree of the High Court declared it to be necessary that a permanent appointment should be made of a receiver and manager of the estate allotted by the Government to the family of the deceased Maharaja of Tanjore, and directed that fresh appointments to the receivership should be made from time to time as occasion might require during the life of the senior widow under whose management the estate had been originally placed and the lives of the co-widows surviving her, or for so long as the Court might consider necessary:

Held, that the decree directing the permanent receivership was not in variation of the judgment which it purported to follow, that the Court had a discretion to make such an order when necessary for the preservation of the estate; and that so doing was in accordance with the practice; there being nothing to prevent the Court from giving the management to the senior widow living at the time, if she should be fit to manage the estate on behalf of all interested in it.

APPEAL from an order (28th August 1893) of the High Court rejecting a petition for the amendment of a former decree (8th May 1868) of the same Court.

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* *Present:* Lords HOBHOUSE, MACNAGHTEN and MORRIS and Sir RICHARD COUCH.