Before Mr. Justice Mitter, Officiating Chief Justice, & Mr Justice Maclean.

ANANDA BIBEE (PLAINTIFF) *v.* NOWNIT LAL AND ANOTHER (DEFENDANTS).* 1882 *August* 9.

Hindu Law—Inheritance—Mitakshara—Daughter-in-law.

Under the Mitakshara and usages obtaining in the district of Behar a daughter-in-law, whose husband has predeceased his father, is not in the line of heirs of her father-in-law.

Per MITTER, J.—A daughter-in-law, not being a joint owner with her father-in-law, cannot after his death take his estate by right of survivorship.

THIS suit was instituted on the 10th May 1879. The plaintiff, the widow of Mangli, who predeceased his father Gocul Chand, whose father Muni Lal was the son of one of two sisters Dukho Bibi and Sukho Bibi. The defendants were the representatives of Lal Bahadur and Ram Bahadur, the two brothers of Dukho Bibi and Sukho Bibi.

The plaintiff alleged that by a deed of gift, dated the 17th Magh 1195, F. S., (8th Feb. 1788) Lal Bahadur and Ram Bahadur had granted the ancestral property in dispute to their sister Dukho Bibi, and had put her in possession of it; that on her death Muni Lal had come into possession, and on his death Gocul Chand had come into, and held possession till his death in 1280 (1873); and that since then the plaintiff had been, and still was, in possession. That by an order, dated the 14th December 1878, in a mutation proceeding under Beng. Act VII of 1876, an application by her for the registration of her name as proprietor had been rejected, and the names of the defendants had been ordered to be registered.

She claimed that on her right as proprietor being established, her possession might be confirmed.

The plaintiff did not produce the deed of gift, but alleged that it had been fraudulently taken from her possession by the first defendant.

The defendants denied the gift set up, and the alleged wrongful

* Appeal from Original Decree No. 212 of 1880 against the decree of Baboo Koylash Chunder Mookerjee, Officiating Second Subordinate Judge of Mozufferpore, dated the 18th May 1880.

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abstraction of the deed. They alleged that possession of the land had never been parted with by their ancestors or by themselves, and also that Gocul Chand had been their servant. They further questioned the plaintiff's title as heiress of her father-in-law Gocul Chand.

Three issues were framed by the lower Court—

1*st.*—As to the plaintiff's right as heiress of her father-in-law.

2*nd.*—As to the truth of the alleged gift to Dukho Bibi and the abstraction of the deed.

3*rd.*—As to the plaintiff's possession and that of her ancestors.

Except as to the alleged abstraction of the deed of gift by the first defendant, the lower Court found in favour of the plaintiff on the second and third issues, but found against her on the first. The suit was therefore dismissed.

The plaintiff appealed to the High Court on the issue found against her, and the defendants filed a cross appeal.

Baboo *Guru Dass Bannerjee* and Baboo *Golap Chunder Sircar* for the appellant.

Baboo *Hem Chunder Bannerjee* and Munshi *Mahomed Yusoof* for the respondents.

The following judgments were delivered :—

MITTER, J., after referring to the facts and evidence, continued as follows :—

The possession of the disputed mouzah by Gocul Chand and his father is not therefore shewn by any evidence to have been permissive. Whether this possession was referable to the title derived under the alleged deed of gift to Dukho Bibi is not made clear upon the evidence. If the plaintiff's allegation of the abstraction of the deed of gift from her by the defendant No. 1 be not correct, then there is no evidence to connect the possession of Gocul Chand and his father with the title under the alleged deed of gift. The lower Court has rejected this part of the plaintiff's story. I see no reason to dissent from that opinion.

But although the title under the deed of gift is not proved, the possession of Gocul Chand and his father for more than

twelve years being established, and it being not shewn that that possession was with the permission of the defendants and their ancestors, it seems to me that we must hold that Gocul Chand had a good title to this property.

This brings us to the question of the Hindu law raised in the case, *viz.*, whether, after the death of Gocul Chand, the plaintiff can claim any right to the disputed property entitling her to the possession of it as against the defendants.

As to the question of possession after Gocul Chand's death it seems to me to be clear upon the evidence that it remained with the plaintiff till the Land Registration order was passed. The Sub-Judge says that the possession of the plaintiff "is not yet extinct;" but it is difficult to understand how it can be said, after the adverse order was passed under the Registration Act under s. 59, that the plaintiff's possession continued. The present suit may, under the Rulings of this Court, be considered as one for recovery of possession. Upon the face of the plaint it is clear that the plaintiff, at the time of the institution of the suit, could not have been in possession, and if she can make out her title she, in my opinion, would be entitled to a decree for possession.

As regards the title of the plaintiff derived from Gocul Chand it has been contended before us (1) that a daughter-in-law, under Mitakshara law, is entitled to inherit; (2), that, supposing that she is not in the line of heirs, the plaintiff is entitled to the property in dispute by right of survivorship, as she, during Gocul Chand's lifetime, was a member of a joint Hindu family with him; and (3), that, supposing that these contentions are not valid, the plaintiff having undoubtedly a maintenance charge upon the disputed property, is entitled to the possession of it, and to have her title declared as against the defendants, who have no sort of right to it.

We shall deal with these three questions in the order in which they have been raised before us.

On a careful examination of the digests of Hindu law which are considered of authority in the district from which this case comes, I am clearly of opinion that the daughter-in-law is not in the line of heirs at all.

The authorities most respected in Behar are the Mitakshara

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and the Viramitrodaya. It was contended before us that, according to the Mitakshara, a daughter-in-law is entitled to succeed as a gotraja sapinda. It has been settled now by more than one decision that the word sapinda is used by the author of the Mitakshara in the chapters on inheritance, in the same sense in which it is defined by him in the Achara Kanda, *i.e.*, in chapters on Rituals. See *Lallubhai Bapubhai* v. *Mankuvarbai* (1); also *Bharmangavda* v. *Rudrapgavda* (2); and *Umaid Bahadur* v. *Udoi Chand* (3). It has been contended that, according to this definition of sapinda, a daughter-in-law comes within that class, and that as the author of the Mitakshara in part II, chapter II, s. 5, page 1 lays down, "if there be not even brothers' sons, gotrajas share the estate. Gotrajas are the paternal grand-mother and sapindas and samanadakas"—all female sapindas succeed gotrajas. But this contention cannot be maintained in the face of paras. 3, 4 and 5 of the same section. Para. 3 says that on failure of the paternal grand-mother, the heirs are samana-gotraja sapindas; then in para. 4 the author thus explains the rule laid down above: "Here, on failure of the father's descendants, the heirs are successively the paternal grand-mother, the paternal grand-father, the uncles and their sons;" then para. 5 says: "On failure of the paternal grand-father's line, the paternal great grand-mother, the paternal great grand-father, his sons and their issue inherit. In this manner to seventh degree must be understood the succession of kindred belonging to the same family generally."

In these passages the author of the Mitakshara lays down a compact series of heirs from the father down to the issues of the great grand-father entitled to succeed as sapindas. There is no room for introducing the wives of the sapindas as heirs in this compact series. For instance, on the failure of the father's descendants, the paternal grand-mother succeeds. This being an inflexible rule, the wives of the father's descendants cannot have any place in the compact series of heirs from the father down to the grand-mother. If the contention under consideration were correct, then, in a competition between the paternal grand-mother and a brother's widow, the latter would be entitled to inherit, but in the

(1) I. L. R., 2 Bom., 388. (2) I. L. R., 4 Bom., 181 (3) I. L. R., 6 Calc., 119

face of the positive rule laid down in paragraph 4, a brother's widow cannot have any claim to inheritance in preference to the paternal grand-mother. The same observations will apply to the wives of the descendants of the paternal grand-father.

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But it has been contended that paragraphs 3, 4 and 5 cited above do not exhaust all the sapinda heirs; they only lay down that collaterals, who are the descendants of the father, grand-father, and great grand-father, two degrees removed, are entitled to the inheritance in the order laid down in them; and that the other sapindas would come in under the class gotrajas. The words "descendants and sons" used in these paragraphs have been held in the decision of Mr. Harrington, quoted in *Rutcheputty Dutt Jha* v. *Rajunder Narain Rae* (1), as used in their generic sense, meaning descendants generally. Mr. Harrington says: "The term *putra* or son, in the Mitakshara and its commentary the *Subodhene*, is frequently used as a generic term for male issue or descendant, and must be so construed in several parts of the Mitakshara, or the grandson, as well as the great grandson would be excluded from the immediate succession, though acknowledged in every system of Hindu law to represent their deceased father and grand-father, and entitled with sons to share the estate of a person leaving sons, grandsons, and great grandsons, the father of the grandson, and father and grand-father of the grandson being previously dead. This principle appears to be recognized in the Mitakshara and both its commentaries, in the third paragraph of the introductory section and notes referring thereto. (See page 238 of Mr. Colebrooke's Translation). In that paragraph, after stating that the 'wealth of the father, or of the paternal grand-father, becomes the property of his sons or of his grandsons in right of their being his sons or grandsons, and this is an inheritance not liable to obstruction,' it is immediately added, 'but property devolves on parents or uncles' brothers and the rest, upon the demise of the owner, if there be no male issue, and thus the actual existence of a son and the survival of owner are impediments to the succession, and on their ceasing, the property devolves on the successor, in right of his being uncle or brother;

(1) 2 Moore's I. A., 132.

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this is an inheritance subject to obstruction. The same holds good in respect to their sons and other descendants.' Here it is manifest the words translated 'male issue' and a 'son' were not meant to exclude grandsons before mentioned, and the two commentators agree in construing the last clause to intend 'the sons or other descendants of the son and grandson.' The same construction must, I think, be put on the words 'sons' and 'issue' (*putra* and *sunava*), in the 4th and 5th paragraphs of the fifth section, and second chapter of the Mitakshara, and this interpretation is indeed indicated by expressions in the same paragraphs, *viz.*,' on failure of the father's descendants' (santana), and 'on that of the paternal grand-father's line' (santana). To adopt the construction proposed by the appellant would be to cut off all the descendants below the grandson of the father, grand-father and every other ancestor, and would render nugatory the provisions in the Mitakshara, as well as in the other books of law which expressly state 'the succession of kindred belonging to the same family, and connected by funeral oblations to the seventh degree, or if there be none such, the succession devolves on kindred connected by libations of water, and they must be understood to reach to seven degrees beyond the kindred connected by funeral oblations of food, or else as far as the limits of knowledge as to birth and name extend.' (See Translation of Mitakshara, part II, chap. II, sec. V, paras. 5 and 6)."

If this be the correct meaning of the words, "sons and descendants" as used in paragraphs 3, 4 and 5, it is quite clear that they contain an exhaustive enumeration of all the sapindas, and the females, excepting those that are enumerated by name, would be necessarily excluded. But, according to the spiritual benefit theory, which, in the opinion of the author of the Viramitrodaya, determines the position of gotrajas and other heirs the words "sons or descendants" would include only grandsons and great-grandsons. According to Aparârka, a digest writer of later date than the Mitakshara, the word "sons or descendants" include only sons, grandsons and great-grandsons. See Tagore Law Lectures, 1880, p. 648. If this latter view be correct, then no doubt paragraphs 3, 4 and 5 cited above would not be an exhaustive enumeration of the sapindas. But the last words

of paragraph 5, *viz.*, "in this manner must be understood the succession of samanagotra sapindas," indicate the mode in which the list of enumeration is to be completed. If we are to complete the list by following that mode, then the wives of sapindas would have no place in that list.

Then again the author of the Mitakshara is a very strong advocate of woman's rights; he has gone to the length of laying down that where women inherit their right is absolute. If in his opinion the wives of sapindas were entitled to succeed, he would have certainly expressly indicated his opinion in the section treating of the succession of gotrajas.

There is one more consideration arising from the passages cited above, which, in my opinion, almost conclusively shews that it was not the intention of the author of the Mitakshara to confer any heritable rights upon female sapindas not specifically mentioned. It is thus an unmarried daughter of any ancestor within six degrees would be entitled to inherit as a sapinda according to the contention under our consideration. Thus, for instance, an uncle's unmarried daughter would be entitled to inherit in preference to a brother's great-grandson, and supposing she dies after marriage leaving a son, that son, who is merely a bandhu of the last male owner, would obtain the property, although there is a samanagotra sapinda in existence. This could never have been the intention of the author of the Mitakshara; because, according to the scheme of succession laid down by him, a bandhu has no heritable rights in the presence of a gotraja, however remote his connection may be with the deceased.

Then, again, a married daughter of a sapinda would not be in the line of heirs at all, because she would not be a samanagotra sapinda, neither would she come within the category of bandhus, because it is admitted that the class of heirs indicated by the term bandhu includes males only. It seems to me that it could not have been the intention of the author of the Mitakshara to make such a distinction between a married and an unmarried female sapinda relative. In the one case she would occupy a very high position in the line of heirs; in the other, she would be nowhere.

For these reasons it appears to me that, on the Mitakshara

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itself, there is no foundation for the contention that the wives of the sapindas are entitled to inherit as sapindas.

Whatever doubts there may be as to the validity of the contention under our consideration with reference to the Mitakshara, the Viramitrodaya is clearly against it. The author of the Viramitrodaya in chapter III, part 7, treats of the succession of gotrajas. He quotes paragraph 1, chapter II, section V of the Mitakshara as defining who the gotrajas are. Then he refers to the opinion of the authors of the Smriti Chandrika and Dayabhaga to the effect that the term gotraja is a compound denoting males only; then he controverts this opinion. Having controverted it he says: "According to the previously cited interpretation put upon the text of Sruti (therefore women are devoid of the senses, &c.) by the venerable Vidyaranga in that text Sruti does not refer to a prohibition of inheritance, and therefore no difficulty arises, nor is any explanation necessary. But it should be remarked that how can that interpretation be accepted when it is in conflict with the text of Baudhayana. Granting that the word Indriya does mean the Soma juice in conformity with the context, yet, inasmuch as there is an absence of another text declaring the incapacity of females to inherit, and as it is not possible for the present Smriti to be unsupported, and as therefore the inference of the existence of a prohibition is necessary to justify the assertion of a fact, *viz.* (that females are deemed incompetent to inherit), we should explain the present text just as in the instance, 'therefore an unknown embryo being killed (a man becomes) murderer of a Brahmana.'"

A few words of explanation are here necessary to explain the above passage. The text of Baudhayana, referred to above, is to the following effect: "A woman is not entitled to inherit, for thus says the Veda. Females and persons deficient in the organs of sense are deemed incompetent to inherit." This Vedic text Vidyaranya, a commentator on the Taittiriya Veda, interpreted in a different way, so that it would have no reference to inheritance.

Referring to this interpretation, the author of the Viramitrodaya says that this interpretation cannot be accepted, because it is in conflict with the text of Baudhayana. Then he argues that

supposing the interpretation of the Vedic text of Vidyaranya is correct, it must be presumed that there is another text in the Sruti justifying the exclusion of the females, for a text of Smriti must have a text of Sruti to support it. The existence of a text of Sruti in this instance must be presumed in the same way as in the instance of the text of Smriti to the effect, "therefore an unknown embryo being killed, &c., &c."

According to the opinion of Viramitrodaya, therefore, women are not generally entitled to succeed unless they are specially mentioned. A daughter-in-law is not one of these enumerated female heirs as given in the Viramitrodaya. The author of the Viramitrodaya expresses the same opinion in another passage, see page 174 of Baboo Golap Chunder Sirkar's translation. It is to the following effect: "As for the text of Sruti, *viz.*, 'therefore women are devoid of senses and incompetent to inherit,' and for the text of Manu based upon it, *viz.*, 'indeed the rule is that women are always devoid of senses and incompetent to inherit,' these are both to be interpreted to refer to those women whose right of inheritance has not been expressly declared." Then again in another passage in page 244, the author of the Viramitrodaya expressly lays it down that a daughter-in-law is only entitled to maintenance and not to inheritance. He says, "but the daughter-in-law and others (of the same sex) are entitled to food and raiment only, for the nearness as a sapinda is of no force when it is opposed by express texts. Since a text of the Sruti declares: 'Therefore women are devoid of senses and incompetent to inherit,' and a text of Manu founded upon it says, 'indeed the rule is that devoid of the senses, and incompetent to inherit, women are useless.' The conclusion arrived at by the author of the Smriti Chandrika, Haradatta and other southern commentators as well as by all the Oriental commentators, such as Jimatavahana, is that those women only are entitled to inherit, whose right of succession has been expressly mentioned in texts such as 'The wife and the daughters also, &c.,' but that others are certainly prohibited from taking heritage by the texts of Sruti and of Manu."

The learned pleaders for the plaintiff, appellant, further relied upon passages from Nirnaya Sindhu, Ballambhatta, Subodhini and

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Baijainti. In none of these works on Hindu law is there any authority for the broad contention that *all* female sapindas are entitled to inherit. All that can be said on their authority is, that some of them have enlarged the list of female heirs entitled to succeed. Of these the daughter-in-law is mentioned as one of the heirs in Baijainti, in Ballambhatta and Nirnaya Sindhu. This last mentioned work treats of Rituals, and is therefore hardly entitled to any authority on a question of inheritance. Kamalakura, the author of Nirnaya Sindhu, is also the author of Vivada Tandava, a treatise on the law of inheritance. In this latter work he in most emphatic words deprecates the heritable rights of women other than those expressly enumerated as heirs. See Tagore Law Lectures of 1880, page 664. Baijainti's and Ballambhatta's opinion being not in accordance with the usage obtaining in Behar and the North-Western Provinces, as will be shewn hereafter, cannot be followed in preference to the Vironiboddy.

Before examining the decided cases upon this point it may be noticed here that of the European text writers, Sir Thomas Strange, in Vol. I, page 146, lays down broadly that, "according to the general principles of Hindu law, the sex is not entitled to inherit except in a few specified instances." West and Buhler discuss this question, and are inclined to the opinion that, in countries governed by the Mitakshara law, wives of sapindas are entitled to inherit as sapindas.

As Smriti Chandrika and Dayabhaga are quite clear upon the point (*i.e.*, their opinion is against the contention of the appellant,) we shall not refer to any cases decided in accordance with these two digests. We shall not also refer to any Bombay cases, because the law upon the subject has now been settled in that Presidency by the decision of the Judicial Committee in the case of *Lallubhai Bapubhai* v. *Cassibai* (1). This last mentioned decision is entirely based upon the usage obtaining in the Presidency of Bombay. Their Lordships distinctly say that the Mitakshara is silent upon the point. They are also of opinion that the contention is not sound according to the Viramitrodaya.

Of the cases decided by this Court and the late Sudder Dewany Adawlut of Calcutta, we find instances in which the right of inheri-

(1) I. L. R., 5 Bom., 110.

tance of the wife of a deceased sapinda was not set up, although if it had been set up it would have materially affected the decision of the Court. For instance, in *Baboo Shewsahai Singh* v. *Balwunt Singh* (1), the competition to inheritance lay between a daughter's son and a daughter-in-law. The daughter-in-law's right was put upon the question of fact, whether or not her husband survived his father. Similarly in *Maharajah Ram Kissen Singh* v. *Rajah Sheonundun Singh* (2), the daughter-in-law's right was not set up. It is quite clear, if it could have been set up successfully in that case, the plaintiff would have been defeated, because he was a mere bandhu. In determining a question of usage, it seems to me that instances, where the particular usage in dispute was not set up, although it was of the utmost importance to set it up, are of great value. Such instances afford a very satisfactory basis for the conclusion that the usage in dispute is not really in existence. The Full Bench decision in *Lala Jot Lal* v. *Durani Kooer* (3), and the Full Bench case cited at page 669 of Tagore Law Lectures of 1880 by Baboo Raj Koomar Surbhadhikari, are also instances of this kind. The questions for decision in these cases were, whether the step-mother and the step-grand-mother were heirs according to the Mitakshara law. It was decided that they do not come within the purview of the texts relating to the succession of the mother and the grand-mother. It was not contended that, although they did not come within these texts, still they were entitled to inherit as sapindas.

In *Mussamut Soodeso* v. *Bishesshur Singh* (4) it was decided that a sister-in-law (deceased brother's widow) is not in the line of heirs according to the Mitakshara law. See also *Thakooranee Deo Koonwur* v. *Thakooranee Gumbheer Koonwur* (5). In *Mussamut Murachee Koour* v. *Mussamut Ootma Koour* (6), it was decided that a daughter is entitled to succeed in preference to a son's widow, who is only entitled to maintenance. In *Dilraj Koonwur* v. *Sooltan Koonwur* (7), it was held that a son's widow is not an heir according

(1) S. D. A. (1858) 490.
(2) 23 W. R., 412.
(3) B. L. R. Sup. Vol., 67.
(4) S. D. A., N. W. P., 1864, Vol. II, 375.
(5) S. D. A., N. W. P., 1864, Vol. II, 284.
(6) S. D. A., N. W. P., 1864, Vol. I, 171.
(7) S. D. A., N. W. P., 1862, Vol. I, 240.

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to the Mitakshara law. The last case upon the point is the decision of the Allahabad Court in *Gauri Sahai* v. *Rukko* (1). This case clearly lays down that, of the females, none but those that are specified by name are entitled to succeed. Against this consensus of opinion as expressed in these cases there is a solitary decision of the Court of the N. W. P., which may be considered to lend some support to the contention of the appellant. It is the case of *Mussamut Bhuganee Daiee* v. *Gopaljee* (2). The plaintiff in that case was the widow of the first cousin of the deceased proprietor, and the defendant was his great grand-father's great grandson. The plaintiff was joint in food with the deceased, while the defendant was separate from him. The case was decided in favor of the plaintiff on the ground of the right of survivorship. The Pundit, upon whose opinion it was decided, did not put the right of the plaintiff upon the ground of sapinda relationship. This case has no relevancy to the question now under consideration, because it did not uphold the plaintiff's right on the ground of sapinda relationship. On the other hand, the circumstance that the Pundit consulted did not base his opinion upon the ground of sapinda relationship, affords some grounds for the conclusion that the usage in question does not exist in these districts.

Therefore, applying the same test which was applied by their Lordships of the Judicial Committee in the case of *Lallubhai Bapubhai* v. *Cassibai*, (3) *viz.*, the test of usage, it seems to me that the contention of the appellant is not sustainable. For all these reasons I am of opinion that, according to the Mitakshara law and usage obtaining in the district from which this case comes, a daughter-in-law is not in the line of heirs at all.

The next contention is that the plaintiff in this case is entitled to succeed by right of survivorship. It has been said that she, while her father-in-law, Gocul Chand, was alive, was living with him as a member of a joint Hindu family, and therefore on his death she is entitled to the property left by him. It seems to me that this contention is wholly untenable. The foundation of the right of survivorship is joint ownership. In this case it cannot for

(1) I. L. R., 3 All., 45.
(2) S. D. A., N. W. P., 1862, Vol. I, 306.
(3) I. L. R., 5 Bom., 110.

a moment be contended that the plaintiff had any sort of ownership in the property in dispute during the lifetime of her father-in-law, Gocul Chand. This contention, therefore, in my opinion, fails.

Lastly, it has been urged that, as the plaintiff is entitled to her maintenance out of the property in dispute, and that as the defendants have no sort of right to it, she is entitled to have her right and possession confirmed as against them. But this argument proceeds upon the assumption that the defendants have no sort of right to the property in dispute. It seems to me that upon the facts admitted in this case, the defendants, as father's bandhus of Gocul Chand, are entitled to inherit the property left by him. According to the plaintiff, Muni Lal, the father of Gocul Chand, was the sister's son of Dukhoo, to whom the property in dispute was given by her brothers Lal Bahadur and Ram Bahadur. According to the defendants, Muni Lal was Dukho's own son. Whether the one or the other statement be correct, it is clear that Muni Lal was the sister's son of Lal Bahadur and Ram Bahadur. The defendants are the grandsons of either Ram Bahadur or of Lal Bahadur, therefore Muni Lal and the defendants are sapindas to each other. The defendants consequently being the father's bandhus of Gocul Chand in the absence of nearer heirs are entitled to the property left by Gocul Chand as his heirs. See *Umaid Bahadur* v. *Udoi Chand* (1). The plaintiff is certainly under the Mitakshara law entitled to maintenance out of the property left by Gocul Chand, but she has no title to the property as the heiress-at-law of her father-in-law.

The appeal must, therefore, be dismissed with costs.

MACLEAN, J., after referring to the facts and evidence, came to the conclusion that if the possession continued with the plaintiff's father-in-law and his father, the proprietary title was still in the defendants and their ancestors, and continued as follows:—

I would therefore reject the plaintiff's claim for a declaration of her title as proprietor. Neither do I think that she is entitled to a decree confirming her possession, inasmuch as (apart from the question as to the position of a daughter-in-law whose husband has predeceased his father) she has failed to prove her title.

(1) I. L. R., 6 Calc., 119.

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Upon the question so elaborately discussed, and depending on considerations of Hindu law, I shall say but little. In the view of the plaintiff's case which I have taken, the decision of the question is not necessary.

The claim of the plaintiff as daughter-in-law is founded upon the 5th section of the second chapter of part II of the Mitakshara: "If there be not even brother's sons, gentiles (gotraja) share the estate" and again V. 3; "on failure of the paternal grandmother the kinsmen sprung from the same family with deceased and connected by funeral oblations (samana gotraja sapinda) namely, the grandfather and the rest inherit the estate."

It is perhaps unnecessary to say that the wife must be recognised as samana gotraja sapinda. Sapinda because she and her husband are the generators of one body; sagotraja or samana gotraja because on her marriage she enters the gotra of her husband. The next step for consideration is, whether she inherits under the rule "to the nearest kinsman (sapinda) (male or female) the inheritances next belongs," Manu IX, 187.

We have express authority for the heritable right of the widow, daughter, mother, grand-mother, &c., (Mitakshara, Chapter II.) The commentaries of Kiseswara and Balambhatta make no distinction between males and females, both being included in gotraja. The latter, Balambhatta, assigns a specific place to the widow of a predeceased son, next after the paternal grand-mother. Nandu Pandita also (Vaijyanti) prefers the son's widow to the daughter; but at present we are not called upon to assign a place to the daughter-in-law, having merely to decide whether she is entitled to take property which her husband would have taken in preference to the male representatives of a remote branch (cognates). The author of the Viramitrodaya, referring to a text of Baudhayana, deduces from it that females as a class are not entitled to heritage. He accepts, however, the right of those expressly mentioned, but he expressly mentions the daughter-in-law as entitled to food and raiment only. At the same time he points out that the paternal grand-mother is not expressly mentioned any more than the wives of other gotraja sapindas by Jogeswara.

Upon such consideration, therefore, as I am able to give to the subject, it appears to me that we have three positions established:—

(1.) That while the grand-mother and great grand-mother, &c., only are expressly mentioned, the wives of other sapindas would also succeed.

(2.) That the Mitakshara does not exhaustively enumerate the sapindas.

(3.) That the son's widow is a gotraja sapinda.

But while effect is given to these propositions in the Bombay Presidency, it seems to be conclusively understood that up to the present day females, not expressly mentioned, have never been recognised (perhaps it may be said have seldom claimed to be recognized) as entitled to succeed in Benares and the western portion of the Lower Provinces. A case was recently before us in reference to other matters in which an examination of the facts will shew that the right of a daughter-in-law to succeed was raised but was rejected. The pundit's Vyavastha was opposed to the claim of the daughter-in-law as against that of the daughter's son, on consideration of Mitakshara law (A. O. D. 187-80). In *Gauri Sahai* v. *Rukko* (1) it is expressly noted that none but females expressly named can inherit, and the widow of a paternal uncle (a gotraja sapinda) is declared not to be an heir.

In *Ranee Pudmavati* v. *Baboo Doolar Sing*, (2) the widow of a deceased brother was defeated by gotraja sapindas of her husband and his brother (great grand-father's grandsons.) Perhaps this case is not clear authority, except as shewing that the widow of a brother *who predeceased* was not recognized in preference to other sapindas.

No case has been cited as directly supporting the plaintiff's claim, and under these circumstances, though decidedly inclined to view it with favour, I think that her success "would have such an effect in disturbing existing titles that it is safer not to run counter to that which appears to be the current of authority." The more so as my learned colleague comes to a conclusion which is opposed to the inclination I have in the plaintiff's favor. I concur in the order that the appeal should stand dismissed with costs.

Appeal dismissed.

(1) I. L. R., 3 All., 45. (2) 4 Moore's I. A., 259.