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EMPEROR v. NABBU KHAN.

Mr. *C. Dillon*, for the applicants.

The Assistant Government Advocate (Mr. *W. K. Porter*), for the Crown.

BLAIR, J.—In this case the Magistrate in binding over a person to be of good behaviour under section 110 and other sections, in prescribing the class of sureties required, has limited them to residents in the Municipal borough of Mirzapur. Having regard to the ruling of the late Chief Justice Sir John Edge, reported in I. L. R., 20 All., 206, and several rulings of the Calcutta Court to which my attention has been called, I find myself unable to say that it is not in the power of the Court in ordering securities to be given to assign some geographical limit within which such sureties must reside. It is obvious that sureties from a remote spot would not be in a position to keep an eye on or exercise any control over a person bound over. I think, however, in this case for reasons put before me, that the narrowness of the limit might impose upon the person to be bound over an inability to find sureties at all, and he might therefore be sent to prison because such persons who might be willing to become his sureties live some short distance beyond the Municipal limits.

I therefore modify the order of the Magistrate by adding to the words "to the limits of Mirzapur Municipality" the words "or to some place in the immediate neighbourhood." Let the papers be returned.

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May 27.

APPELLATE CIVIL.

Before Mr. Justice Banerji and Mr. Justice Aikman.

SITA RAM (DEFENDANT) *v.* CHINTAMAN (PLAINTIFF).*

Hindu law—Maharashtra School—Succession—Place of daughter in the list of heirs.

Held, that according to the Maharashtra school of Hindu law the daughter is a preferential heir to the widow of a predeceased brother's son, or to the adopted son of such widow, where no authority for the adoption has been given by the deceased husband of the adopter. *Nihalchand Harakchand* v. *Hemchand* (1) referred to.

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* Second Appeal No. 43 of 1900 from a decree of R. Greeven Esq., District Judge of Benares, dated the 31st August 1899, reversing a decree of Kunwar Mohan Lal, Subordinate Judge of Benares, dated the 17th January 1899.

(1) (1884) I. L. R., 9 Bom., 31.

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THE facts of this case sufficiently appear from the judgment of the Court.

Pandit *Sundar Lal* and Pandit *Madan Mohan Malaviya*, for the appellant.

Babu *Devendra Nath Ohdedar* and Dr. *Satish Chandra Banerji*, for the respondent.

BANERJI and AIKMAN, JJ.—The suit out of which this appeal has arisen relates to certain money left in the firm of a banker of Benares by one Sita Ram Dikshit, a Marattha Brahmin governed by the Maharashtra school of Hindu law. He had two sons, Bishan Dikshit and Gobind Dikshit, both of whom pre-deceased him. Musammat Parbati is the widow of Bishan Dikshit, and Musammat Annapurna is the widow of Gobind Dikshit. Chintaman, the plaintiff, was, adopted by Musammat Annapurna after the death of her husband. Before that Musammat Parbati had adopted Sita Ram, the appellant before us, who is the son of Salu Bai, the daughter of Sita Ram Dikshit. Salu Bai is admittedly alive. Chintaman claims a half share of the money by virtue of his adoption by Musammat Annapurna.

The suit was dismissed by the Court of first instance, but decreed in appeal by the lower appellate Court. It is conceded that by virtue of the adoptions made by the two daughters-in-law of Sita Ram Dikshit, the adopted sons could inherit only such property as had vested in their adoptive mothers, the adoptions not having been made under the authority of their respective husbands. We have therefore to see whether any portion of the estate of Sita Ram Dikshit passed to Musammat Annapurna, the plaintiff's adoptive mother. It was contended on behalf of the defendant that Salu Bai the daughter of Sita Ram being alive, she was the heir to Sita Ram's estate, and that no part of that estate passed to any of the daughters-in-law of Sita Ram. In our opinion this was a valid contention. The learned Judge of the lower appellate Court was of opinion that under the Maharashtra law a daughter-in-law excludes a daughter, and the reason upon which the learned Judge came to that conclusion was that the daughter being a *bhinna gotra sapinda*, and the daughter-in-law a *gotraja sapinda*, the latter takes precedence over the former. The learned Judge is wrong in thinking that the daughter

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succeeds to her father by reason of her being a *bhinna gotra sapinda*. Under the Mitakshara and the Mayukha, which is the paramount authority in the Maharashtra school, the daughter has a fixed place in the order of succession. She comes immediately after the widow, and takes precedence over such *gotraja sapindas* as come after the brother's son. As Mr. Mayne observes at page 771 of his work on Hindu law, sixth edition:—"In Bombay the widows of *gotraja sapindas* stand in the same place as their husbands, if living, would respectively have occupied, subject to the right of any person whose place is specially fixed, as a sister, mother, or the like." The learned Judge has overlooked the important qualification set forth in the concluding portion of the sentence quoted above. We may also observe that the Bombay High Court has held in *Nihalchand Harakchand* v. *Hemchand* (1) that the sons of a separated brother inherit in preference to the widow of the son of an undivided brother, and the learned Judges remark:—"The members of the 'compact series' of heirs specially enumerated take in the order in which they are enumerated (Mayukha Chapter IV, sect. VIII, 18) preferably to those lower in the list, and to the widows of any relatives, whether near or remote, though where the group of specified heirs has been exhausted, the right of the widow, is recognised to take her husband's place in competition with the representative of a remoter line." This is a clear authority for holding that a daughter must have precedence over the widow of a deceased son who is not enumerated as one of the heirs and only comes in as a *gotraja sapinda*. The learned vakil for the respondent has referred to a passage in the Vaijayanti by Nanda Pandit as supporting the view of the learned Judge. We cannot regard that work as of any authority in comparison with the Mayukha, which, as we have said above, is the paramount authority in the Maharashtra school. He also cited to us a judgment of the Bombay Sudder Dewani Adalut of 1822. No reasons have been given in that judgment for the conclusion at which the Court arrived, nor is any authority cited.

The result is that the daughter of Sita Ram being alive, no portion of his estate vested in Annapurna, and by adopting

(1) (1884) I. L. R., 9 Bom., 31.

Chintaman the plaintiff she could convey to him no interest in Sita Ram's estate. We allow the appeal with costs, and, setting aside the decree of the lower appellate Court with costs, restore that of the Court of first instance.

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Appeal decreed.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Burkitt.

AMIR KAZIM AND ANOTHER (DEFENDANTS) *v.* DARBARI MAL AND OTHERS (PLAINTIFFS).*

1902 *May* 1.

Civil Procedure Code, section 316—*Execution of decree—Sale in execution—Time from which the auction purchaser's title accrues.*

When immovable property is sold in execution of a decree the title of the auction purchaser to mesne profits or possession does not accrue until the sale has been confirmed. *Gobind Ram* v. *Tulsi Ram* (1) and *Prem Chand Paul* v. *Purnima Dasi* (2) followed.

THE facts of this case sufficiently appear from the judgment of the Court.

Pandit *Sundar Lal*, for the appellants.

Pandit *Madan Mohan Malaviya*, for the respondents.

STANLEY, C. J., and BURKITT, J.—The facts of this case are few and simple. One Ganeshi Lal was the owner of a village called Benipur. He mortgaged 15 biswas of the village to the plaintiffs on the 21st of March, 1892. Subsequent to this mortgage the entire village was sold at the instance of a creditor under a simple money decree on the 21st of September, 1896, and was purchased by the defendant Lakhpat Rai. Subsequently, on the 27th of January, 1897, the mortgagees instituted a suit for the sale of the 15 biswas of the village on foot of the mortgage of the 21st of March, 1892, and to this suit they made Lakhpat Rai a party. A decree was passed on the 5th of May, 1897. Before, however, the decree was obtained, namely, on the 27th of April, 1897, Lakhpat Rai granted a lease of the village to the defendants, Amir Kazim and Mohan Lal, for a term of ten years, at a rent of Rs. 1,800, and under this lease the defendants went into possession. After the date of the lease, namely, on the 20th of September, 1897, the 15 biswas share of the village was sold in execution of the decree of the 5th of May,

* First Appeal No. 3 of 1900 from a decree of Lala Anant Prasad, Subordinate Judge of Moradabad, dated the 19th September, 1899.

(1) Weekly Notes, 1887, p. 217. (2) (1888) I. L. R., 15 Calc., 546.