

STRAIGHT, J.—I concur with my Brother Oldfield that the petition of the 26th May, 1876, does not amount to, nor is it evidence of, any new contract in supersession of the decree of the 9th March, 1875. It is obvious that the decree-holder-respondent never intended to abandon his judgment-rights to execution, for after the arrangement had been made with the debtor-appellant, he applied for execution of *his decree* on the 26th May, 1878, and his present application of the 22nd March, 1881, is in similar terms. It is in this respect that the case in appeal before us is so clearly distinguishable from the Full Bench authority quoted at the hearing. The appeal should be dismissed with costs.

Appeal dismissed.

Before Mr. Justice Straight and Mr. Justice Tyrrell.

DANNO (PLAINTIFF) v. DARBO AND ANOTHER (DEFENDANTS)*

Hindu law—Mitakshara, ch. i, s. iii, v. 11, and ch. ii, s. xi, v. 13—Daughters, right of succession to father's estate—Meaning of "unprovided" for.

The estate of a deceased Hindu, governed by the law of the Mitakshara, was in the possession of one of his daughters, who was in poor circumstances. His other daughter, who was well off and possessed of property, claimed to share in such estate, contending, with reference to the law of the Mitakshara, that, as no provision had been made for her by her father, she was "unprovided" for, within the meaning of that law, and therefore entitled to share in such estate. *Held* that such expression must be construed irrespective of the sources of provision or non-provision.

ONE Anta, a Hindu, governed by the law of the Mitakshara, died possessed of certain land. He left a widow, Tulsha, and three daughters, Danno, Birji, and Darbo. Tulsha succeeded to such land on her husband's death. On her death, which occurred in October, 1879, Darbo, who resided with her, had her name recorded in respect of such land in the revenue registers. Subsequently, a person who held a decree against Tulsha caused a portion of such land to be sold in execution thereof, such portion being purchased by one Mannu. In January, 1881, Danno and Birji instituted the present suit against Darbo and Mannu in which they claimed possession of two-thirds of such land as heirs to their deceased

* Second Appeal, No. 735 of 1881, from a decree of H. G. Keene, Esq., Judge of Meerut, dated the 5th April, 1881, affirming a decree of Rai Bakhtawar Singh, Subordinate Judge of Meerut, dated the 14th February, 1881.

1882

GANGA
v.
MURLI DHAB,

1882

January 31.

1882

 DANNO
 v.
 DARBO.

father. The plaintiff Birji subsequently withdrew from the suit. The defendant Darbo set up as a defence to the suit that her father's estate devolved upon her, under the Hindu law of inheritance, she being in poor circumstances, while her sisters, the plaintiffs, were in affluent circumstances. For the purposes of this report it is not necessary to state the defence of the defendant Mannu. The Court of first instance framed as one of the issues for trial the following issue: "Is the plaintiff Danno in affluent, and Darbo in distressed, circumstances? Does the right under the principles of Hindu law to inherit the estate of the deceased father devolve upon Danno or Darbo, or do both of them possess equal rights?" The Court observed on this issue as follows: "It is proved from the evidence of the witnesses produced by the defendant that Darbo is not possessed of means, and has no landed estate or any lands in cultivation. From the evidence of the plaintiff's own witnesses it is clear that the land held by Danno forms the estate of her husband, although it is alleged by them that it is mortgaged. Birji in her petition states that Darbo is poor and indigent, and that Danno is in affluent circumstances. No evidence has been produced by the plaintiff to show that the defendant is possessed of means. From the documents filed by the defendant and the evidence of her witnesses, it is proved that Darbo, in consequence of her husband being in poor circumstances, lived with her mother. Under these circumstances the right to succeed to the possession of the estate of the deceased Tulsha, wife of Anta, devolves after her death upon the indigent daughter Darbo, and not upon the plaintiff Danno who is possessed of property." In accordance with these observations the Court of first instance dismissed the suit. On appeal by the plaintiff the lower appellate Court concurred in the views of the Court of first instance, observing as follows: "The definition of 'unprovided' or 'unendowed' is given in the Mitakshara, ch. i, s. iii, v. 11, to be 'destitute of wealth.' That term cannot be applicable to the appellant, whose own witnesses admit that she has land. They say that it is in possession of mortgagees, but of this there is no other proof. There is no mortgage-deed produced; and the *khewal* shows that the land is recorded as in her possession without mention of mortgagees or mortgage. On the other hand there is good and sufficient proof that the res-

pondent Darbo is indigent and dependent, and under the provision in question has the better claim."

1882

DANNO
v.
DARBO.

In second appeal the plaintiff Danno contended that the terms "enriched" and "unprovided," as used in the Mitakshara, meant "enriched" and "unprovided" for by the father, and as no property had been given to her by her father she was entitled to share in the property left by him with the defendant her sister.

Babu *Sital Prasad Chattarji*, for the appellant.

Munshi *Hanuman Prasad* and Pandit *Nand Lal*, for the respondents.

The judgment of the Court (STRAIGHT, J., and TYRRELL, J.) was delivered by

STRAIGHT, J.—The suit was in reality a contest between Danno the plaintiff and Darbo the respondent for possession of the estate left by their father Anta. It has been found as a fact by both the lower Courts that Darbo is in poor circumstances, whereas Danno is well off and possessed of property. The question then arises, is the provision of v. 13 of s. xi, ch. ii of the Mitakshara applicable to the case. We think it is, and that the expression "unprovided for," in contradistinction to the term "enriched," must be construed in the sense of "indigent," as opposed to "possessed of means," irrespective of the sources of provision or non-provision. The appeal is dismissed with costs.

Appeal dismissed.

Before Mr. Justice Straight and Mr. Justice Tyrrell.

MAHESH SINGH AND OTHERS (PLAINTIFFS) v. CHAUHARJA SINGH
(DEFENDANT).*

1882
February 3.

Mortgage—Usufructuary mortgage—Failure of claim to enforce lien—Compensation for breach of contract to give mortgagee possession.

A usufructuary mortgagee, the mortgagor having broken his agreement to give him possession of the mortgaged property, sued the mortgagor to recover the principal mortgage-money and interest by enforcement of lien. The property was not hypothecated as security for the mortgage-money. *Held* that it was inequitable to dismiss the suit for that reason, the defendant having been guilty of a breach of the contract of mortgage, for which the plaintiff was entitled to compensation;

*Second Appeal, No. 772 of 1881, from a decree of M. S. Howell, Judge of Jaunpur, dated the 1st April, 1881, reversing a decree of Pandit Soti Behari Lal, Munsif of Jaunpur, dated the 6th July, 1880.