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suit; but we think the suit should be governed by art. 145. By s. 29, "at the determination of the period hereby limited to any person for instituting a suit for possession of any land, his right to such land shall be extinguished." The right may be enforced so long as the remedy by suit for possession is not barred, and the law of limitation for a suit for possession of immoveable property should govern the suit for the declaration or enforcement of the proprietary right, the latter being substantially a suit for possession in the fullest sense, *i. e.*, holding and dealing with the property as owner. In this view the suit is not barred. Nor are we of opinion that arts. 14 and 15 apply, there being no decree or order which it was incumbent on plaintiff to have set aside within one year. The defendants as purchasers are in no better position to defend this suit than those from whom they purchased; the objection on this point therefore fails; and we are shown no grounds for interference in second appeal with the finding of the Courts on the question of title. The appeal fails and is dismissed with costs.

Appeal dismissed.

Before Mr. Justice Pearson and Mr. Justice Oldfield.

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June 2

GAURI SAHAI AND ANOTHER (PLAINTIFFS) *v.* RUKKO (DEFENDANT).*

Hindu Law—Mitakshara—Inheritance—Females.

According to Mitakshara Law none but females expressly named can inherit, and the widow of the paternal uncle of a deceased Hindu, not being so named, is therefore not entitled to succeed to his estate.

THE facts of this case are sufficiently stated for the purposes of this report in the order of the High Court remanding the case.

Munshi *Hanuman Prasad*, Pandit *Bishambhar Nath*, and Mir *Zahur Husain*, for the appellants.

Pandit *Ajudhia Nath* and Babu *Jogindro Nath Chaudhri*, for the respondent.

The order of remand of the High Court (PEARSON, J., and OLDFIELD, J.,) was made by

* First Appeal, No. 83 of 1879, from a decree of Maulvi Sami-ul-lah Khan, ubordinate Judge of Moradabad, dated the 24th June, 1879.

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—RI SAHAI v. UKKO.

OLDFIELD, J.—This is a suit in respect of the right of inheritance to the property left by one Gulzari Mal. He died it is alleged six years before the suit was instituted, leaving him surviving a widow, Gaura, and mother, Parbati, both since deceased. The plaintiff Bhagwan Das is one of two sons of the sister of Gulzari Mal's father, and both sons are represented in this suit by Bhagwan Das and Gauri Sahai plaintiffs. The respondent in this appeal is Rukko, defendant, who lays claim to the property, and asserts that the house in suit was bought by her husband Ajudhia Prasad on the 14th June, 1849; that the shop was mortgaged to her; and that the cash claimed was a sum belonging to her husband; and she disputed plaintiffs' right, contending that she has a better right of inheritance, she being the widow of Gulzari Mal's paternal uncle. Other persons were also joined as defendants, namely, Sundar Lal, a minor represented by his guardian; he set up a title by adoption from Gulzari Mal; and Munna Lal and Chandra Sein; the former alleged that he was a brother of Gulzari Mal's father, and the latter called himself a nephew of the same.

The Subordinate Judge has found that the plaintiffs Bhagwan Das and his brother are the sister's sons of the father of Gulzari Mal, namely, Shib Sahai, and as such are among the heirs of Gulzari Mal, ranking as *bandhus*; he disallowed the relationship of the other defendants except Rukko, holding they do not prove their allegations so as to show they are among the heirs, but as between plaintiffs and Rukko, he holds that the latter is the nearest heir, and entitled to succeed in preference, and he bases this finding on a decision of the Bombay High Court in *Lallubhai Bapubhai* v. *Mankuvarbai* (1) and a decision of this Court in *Bhuganee Daiee* v. *Gopalji* (2).

The plaintiffs have appealed and we have only to do with the claim as between them and Rukko. In the absence of nearer heirs the plaintiffs being or representing the father's sister's sons of Gulzari Mal will succeed as *bandhus*; and the main question raised in this appeal is whether Rukko, being the widow of Ajudhia Prasad, Gulzari Mal's paternal uncle, is to be regarded as amongst the

(1) I. L. R., 2 Bom. 388. (2) S. D. A., N.-W. P., 1862, vol. i, 306.

heirs and a nearer heir then the plaintiffs Bhagwan Das and his brother. An analogous question was decided in the judgment of the Bombay High Court (1) on which the Subordinate Judge relies. The plaintiffs in that case were on the extreme verge of *sapinda* relationship from the testator, and the question was whether the defendant, who was the widow of the first cousin of the testator on the paternal side, and therefore a much nearer *gotraja-sapinda* of the testator than plaintiffs, was entitled as such widow of a paternal first cousin to be regarded as a *gotraja-sapinda* of the testator, and if she be so did she stand next in rank to her husband Ganga Das. It was held that the widow was a *gotraja-sapinda* of her husband's first cousin, and took rank next after her husband among the heirs. The decision was based on the interpretation of the texts in the Mitakshara in respect of the succession of *gotraja-sapindas* being held to include females, and the admittedly received opinion of the Bengal and Madras schools, that female succession is confined to those females expressly named among the heirs, was not allowed to be the law of the Bombay Presidency. The learned Judges based their decision on the Mitakshara and Vyavahara Mayukha with advertence also to the customary law in the Bombay Presidency. It will be seen that precisely the same principles are in question in the case before us.

We think it, however, unnecessary to discuss the question so fully argued in the judgment of the Bombay Court whether the wife of a *gotraja-sapinda* is to be held under Mitakshara to be a *gotraja-sapinda*, as we are of opinion that, looking to the received interpretation of the law and the customary law prevalent in this part of India, none but females expressly named as heirs can inherit. The Mitakshara is the law which governs this part of the country, but the commentary on it of Mitra Misra in Vira Mitrodaya is also of great weight and authority. Admittedly that author has interpreted the law to the effect that the admission of the widow and certain others depends on express texts while females generally are excluded from inheriting. At page 527, West and Bühler, 2nd ed., (translation of Vira Mitrodaya) is this passage: "But a daughter-in-law and the other (female relations) receive merely food and

(1) I. L. R., 2 Bom. 388.

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raiment, because their nearness (to her mother-in-law) as a Sapinda relation has no force, it being opposed by special texts. For the Veda (declares) : —'Therefore women have no right to use sacred texts or to a share,' and Manu gives, in confirmity with that (passage), the following text:—'Women have no right to use the sacred texts and no right to a share, they are (foul like) falsehood. That is a settled rule'. Besides the established doctrine of the Southern lawyers such as the author of the Smriti Chandrika, and of all the Eastern lawyers, of Jimutavahana and the rest, is, that those women only have a right to inherit whose claim has been particularly mentioned in special texts, such as :—'The wife, and the daughters likewise, &c.,' but that (all) others are prohibited from receiving shares by the (above quoted) texts of the Veda and of Manu." There is a note by West and Bühler objecting to the above passage on the ground that the author of Vira Mitrodaya has possibly misquoted the text of Manu, in which it is alleged the word "adayah", "have no right to a share", is not to be found. There is also a passage in Vira Mitrodaya cited in the judgment of the Bombay Court (1) and to be found in West and Bühler, 2nd ed., p. 177, in which the author relies on a passage of Baudhayana interpreting the Vedic text for the exclusion of females,—"A woman is not entitled to inherit; for thus says the Veda, females and persons deficient in an organ of sense (or a member) are deemed incompetent to inherit."

It is contended that the proper translation of the Vedic text should be, "Women are considered disqualified to drink the *soma* juice, and receive no portion (of it at the sacrifice)," a translation given in West and Bühler, 2nd ed., p. 178. Referring, however, to the learned Judge's judgment and the note in West and Bühler, 2nd ed., p. 178, Mitra Misra appears to have considered this alternative interpretation and to have rejected it, asserting that supposing that the word "*indriya*" in the original means *soma* juice, yet the word "*adáyádátva*" in itself is sufficient to imply a prohibition to inheritance of women. Whatever force the objections taken to the interpretation placed on the Vedic text by the author of Vira Mitrodaya may have, we consider that we are bound to accept as law the law of inheritance founded on that interpretation. The rule laid

(1) I. L. R., 2 Bom. 388.

down by the Judicial Committee of the Privy Council in *Thakoorain Sahiba* v. *Mohun Lall* (1) isone which should guide us here. Their Lordships observed with reference to a particular construction advanced by counsel: "Were the arguments in favour of the construction which Mr. Piffard would put upon the Mitakshara far stronger than they really are, their Lordships would nevertheless have an insuperable objection, by a decision founded on a new construction of the words of that Treatise, to run counter to that which appears to them to be the current of modern authority. To alter the law of succession as established by a uniform course of decisions, or even by the *dicta* of received Treatises, by some novel interpretations of vague and often conflicting texts of the Hindu Commentators, would be most dangerous, inasmuch as it would unsettle existing titles." We have not only the view of the author of Vira Mitrodaya, but of Smriti Chandrika, ch. IV, pl. 4:—"Accordingly Bhaudhayana commencing with 'A woman is entitled' proceeds 'not to the heritage, for it is stated in Cruti that females and persons deficient in an organ of sense or member are deemed incompetent to inherit';" and in chap. XI, s. 1, pl. 56, the above prohibition is said to refer to "females other than *patni* and the like, whose competency to inherit has been expressly provided for."

We thus find that the disputed interpretation of the Vedic text has received the authority of the authors of Vira Mitrodaya, Smriti Chandrika, and others, and the principle of the general exclusion of females from inheritance has been affirmed by writers on Hindu Law—Cole. Dig., bk. V., ch. VIII., pl. 413, and pl. 434, note; 2 Str. H. L. 167; 2 Macn. H. L. pp. 82, 229; 1 Macn. Princ. and Prec. H. L. p. 26; Mayne's H. L 449—and is admittedly accepted in Bengal and Madras; and we believe there can be no doubt that the customary law of this part of India excludes females not expressly named as heirs from inheritance and the course of decisions of our Courts has been generally in accordance with that rule. However, but few cases have been reported.

There is the case referred to by the Subordinate Judge—*Bhuganee Daiee* v. *Gopalji* (2)—and noticed in the Bombay Court's decision. The decision in that case proceeded entirely on the *vyvastha* of the

(1) 11 Moore's Ind. App., 386. (2) S. D. A., N.-W. P. 1862, vol. i, 306.

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law officer, and the case is meagrely reported and the precise grounds of the decision do not appear.

In another case decided by this Court not reported to which our notice has been drawn, one of two widows of the same husband was allowed to succeed to the *stridhan* of the other widow, on the ground that she was a *sapinda* of her husband's; that case, however, is not altogether in point.

On the other hand we find two decisions of the Sudder Dewany Adawlat, North-Western Provinces, to the effect that the Hindu Law does not recognise the widow of a brother of a deceased person to be one of his heirs,—*Soodeso* v. *Bisheyshur Singh* (1) and *Deo Koonwur* v. *Gumbheer Koonwur* (2)—and in another case—*Deenanath* v. *Sohnee* (3)—it was held that a niece in her own right or even in right of her son is not among the heirs of the last male owner of the property under Hindu Law. This decision appears to have proceeded on the ground that a female not expressly named among the heirs could not be classed among the *sapindas* or *samanodakas*. The above decisions were in cases governed by the Mitakshara.

The above are the only decisions by the Sudder Dewany Adawlat or High Court of these Provinces which have come to our notice.

In a case governed by the Mithila Law it was held by the Judicial Committee of the Privy Council that the childless widow of the deceased's elder brother has no right to succeed.—*Pudmavati* v. *Doolar Singh* (4).

In *Lala Jotee Lall* v. *Dooranee Kooer* (5) the Calcutta Court decided that a step-mother cannot take by inheritance from her step-son: that was a ruling under the Mitakshara as the law prevalent in Mithila.

The same Court held in *Ram Dyal Deb* v. *Magnee* (6) that a sister cannot inherit as heir to her brother, and in *Radha*

(1) S. D. A., N.-W. P., 1864, vol. ii, p. 375.
(2) S. D. A., N.-W. P., 1864, vol. ii, p. 284.
(3) S. D. A., N.-W. P., Jan. to May, 1866, p. 65.
(4) 4 Moore's Ind. App., 259.
(5) W. R., Sp. N., 173.
(6) 1 W. R. 227.

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Pearee Dossee v. *Doorga Monee Dossia* (1) that a brother's son's daughters are not heirs according to Hindu Law; and in *Gunga Pershad Kur* v. *Shumbhoonath Burmun* (2) Mr. Justice Mitter remarks that the succession of females according to Hindu Law is quite exceptional and is not founded on the ordinary rule of spiritual benefit. On a full consideration of the question we are of opinion that the defendant is not among the heirs of the deceased Gulzari Mal. We remand the case in order that the Subordinate Judge may try the issue whether the property in suit forms the estate of Gulzari Mal or defendant-respondent is entitled to it in her own right or in that of her husband.

Before Mr. Justice Pearson and Mr. Justice Straight.

1880
June 21.

GOPAL (PLAINTIFF) *v.* UCHABAL AND OTHERS (DEFENDANTS.)*

Suit for arrears of rent—Determination of Title—Res judicata—Act XVIII of 1873 (N.-W. P. Rent Act), ss. 93, 95, 148—Act X of 1877 (Civil Procedure Code), s. 13.

The question whether the parties to a suit in a Court of Revenue for arrears of rent stand in the relation of landlord and tenant is one which it is necessary for such Court to try incidentally for the purpose of disposing of such suit, but not one which such Court has special jurisdiction to determine, and its determination of that question is not that of a competent Court. Consequently, where a Court of Revenue determines in such a suit, that the parties do not stand in such relation, such determination does not bar the party alleging that the parties do stand in such relation from suing in the Civil Court to establish such relation.

THE plaintiff in this claimed a declaration that certain land was his "hereditary holding" and was not the "cultivatory holding" of the defendant Uchabal, the suit being instituted in the Court of the Munsif of Jaunpur. He stated the following particulars regarding his claim: "The claim is that the land in suit is the hereditary holding in possession of the plaintiff: the defendants have cultivated the same as under-tenants for ten years: they do not hold the land by right of cultivation, nor have they any right in it: in the suit brought by the plaintiff against the defendants

* Second Appeal, No. 206 of 1880, from a decree of Babu Kashi Nath Biswas, Subordinate Judge of Jaunpur, dated the 1st December, 1879, affirming a decree of Pandit Soti Behari Lal, Munsif of Jaunpur, dated the 8th February, 1879.

(1) 5 W. R. 131. (2) 22 W. R., 393.