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From what has been said it follows that, on the death of Avalvahu, the widow of Vandravan, his sisters Ratan and Ládkuver, and not his step-mother Hassibái or his uncle's widow the plaintiff, succeeded to the immoveable property, the subject of this suit; and that, on the deaths of Ratan and Ládkuver, they were respectively succeeded by their respective husbands, Lákmidas Kaliánji and Láldás Dhársi. The plaintiff, therefore, did not, on the death of Hassibái, acquire any right to the immoveable property of Vandravan, and, therefore, has not any right to maintain this suit. Having regard, however, to the suppression, by all of the parties to the proceedings at the testamentary and intestate side of the Supreme Court, of the existence of the sisters of Vandravan and their husbands, and to the very peculiar circumstances of the lease taken by Inderji Narsi, we, while reversing the decree of the Court of first instance, direct the parties to this suit respectively to bear their own costs of the suit and of this appeal.

Decree reversed.

Attorneys for the appellant.—Messrs. *Mulji and Bomanji.*

Attorneys for the respondents.—Messrs. *Bálkrishná and Bhagwándás.*

APPELLATE CIVIL.

Before Sir M. R. Westropp, Kt., Chief Justice, and Mr. Justice Kemball.

September 16.

LAKSHMI (ORIGINAL PLAINTIFF), APPELLANT, v. DA'DA' NA'NA'JI AND RA'DHA'BA'I (ORIGINAL DEFENDANTS), RESPONDENTS.*

Hindu law—Sister's right of succession in preference to step-mother or paternal first cousin.

Under the Hindu law, as prevailing in this Presidency, a full-sister is the heir of her deceased brother, in preference either to his step-mother or paternal first cousin.

Vináyak A'nandráv v. Lakshmibái (1) and Sakhárám v. Sitábái (2) followed.

THIS was a special appeal from the decision of H. J. Parsons, Senior Assistant Judge of Sholápur, reversing the decree of Láalshankar Umiáshankar, Subordinate Judge at Pandharpur.

* Special Appeal, No. 344 of 1875.

(1) 1 Bom. H. C. Rep. 117; S. C. Moo. Ind. App. 516; S. C. 3 Calc. W. R. (P.C.) 41.

(2) I. L. R., 3 Bom. p. 353.

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The plaintiff Lakshmi brought this suit for a declaration that she was the heir of her step-daughter-in-law Jánki, and, as such, was entitled to her property. The plaint stated that the cause of action arose on the 11th October 1873, when Jánki died.

The facts of the case are briefly these: The plaintiff's husband Rámchandra and Náná were full-brothers, but divided in interest and separate from each other. Rámchandra died in 1860, leaving behind a son Lakshman and a daughter Rádhábái (both by his first wife who predeceased him) and his second wife Lakshmi, the plaintiff. Lakshman was a minor at the time of his father's death, and Dádá, the son of Rámchandra's divided brother Náná, was appointed his (Lakshman's) guardian and administrator of his property, under a will left by Rámchandra. Lakshman died in 1870 without issue, leaving him surviving his widow Jánki, his sister Rádhábái, and his step-mother, the plaintiff Lakshmi. Jánki succeeded to the estate of her husband, and held it till her death in October 1873. On Jánki's death the plaintiff applied to the District Court for a certificate of heirship. Her application was opposed by Dádá, and the District Judge rejected it, referring her to the Civil Court to establish her right as heir. She, therefore, brought the present suit for a declaration of her right as heir to Jánki. The suit was originally filed against Dádá alone; but Rádhábái was subsequently joined as co-defendant, at her own request, under section 73 of Act VIII of 1859. It appeared that, after her husband's death, the plaintiff Lakshmi lived separately from her step-son Lakshman and his wife Jánki, and was provided with maintenance by Dádá as Lakshman's administrator.

Dádá and Rádhábái contended that they were entitled to the property in dispute, each to the exclusion of the other and the plaintiff. The other allegations in their written statements are not material.

One of the issues raised by the Subordinate Judge was, which of the parties was Jánki's heir according to Hindu law. After taking the evidence offered by the parties, he, on the 14th June 1875, made a decree in the plaintiff's favour, declaring her right to be the heir of Jánki, and that, as such, she was entitled to Jánki's property.

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In appeal, which was preferred by Dádá alone, the Assistant Judge raised only one issue, viz., is the respondent (Lakshmi) entitled to the property in suit as heir of Jánki? He found this issue in the negative, and dismissed the plaintiff's claim.

The plaintiff Lakshmi preferred a special appeal to the High Court. The point argued in special appeal was, which of the rival claimants had the right of succession.

The Honourable Ráo Sáheb V. N. Mandlik appeared for the appellant.

Shántáram Náráyan and *Bhairarnáth Mungesh* appeared for respondent No. 1.

Ghanasham Nilkanth Nádkarni appeared for respondent No. 2.

In the course of the argument the following authorities were cited :— Vyav. Mayukha, ch. iv, sec. 4, pl. 19 (Stokes' Hindu Law Books, p. 52) ; Mitákshara, ch. i, sec. 7, pl. 1 (Stokes' Hindu Law Books, p. 397) ; Macnaghten's Principles of Hindu Law, p. 50 (2nd ed.) ; 2 Colebrooke's Digest, Bk. V, ch. ii, verse 85, p. 285 (Madras edition, 1865) ; 2 West and Bühler, Intro., p. 34 (1st ed.) ; Mitákshara, ch. ii, sec. 3, pl. 3 (Stokes' Hindu Law Books, p. 442) ; Dayakrama Sangraha, ch. vi, pl. 23 ; ch. vii, pl. 3 and 7 (Stokes' Hindu Law Books, pp. 512, 513) ; Dayabhaga, ch. iii, sec. 2, pl. 30 (Stokes' Hindu Law Books, p. 231) ; 1 Strange's Hindu Law, p. 144 ; Elberling, para. 174, p. 77 ; 1 Morley's Digest, para. 136 and note, p. 323 ; *Lálá Joti Lál v. Mussámat Duráni Kower* ⁽¹⁾ ; *Mussámat Thákoor Deyhee v. Rái Báluk Ram* ⁽²⁾.

The judgment of the Court was delivered by

WESTROPP, C. J.—Dhondi died, leaving two sons, Rámchandra and Náná, who were separate in estate. Rámchandra married twice. Both of his wives were named Lakshmi. By Lakshmi, the first wife (who predeceased him), he had a son, Lakshman, and a daughter, Rádhabái, the second defendant. By Lakshmi, the second wife, he had not any issue. He died, leaving his son Lakshman, his daughter Rádhabái, and his second wife Lakshmi, surviving him. His son Lakshman (who had succeeded to his estate) died

(1) Beng. Full Bench Rulings (1862), p. 67.

(2) 11 Moore's Ind. App. 139.

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in 1870 without issue, but leaving surviving him a widow Jánki, and his sister Rádhábái, and step-mother Lakshmi the second. Jánki having succeeded to the estate of her deceased husband Lakshman, died in October 1873, and was survived by her sister-in-law Rádhábái, and her husband's step-mother Lakshmi the second, and also by the first defendant Dádá, who was son of Náná (the separated brother of Rámchandra). Consequently, Dádá was paternal first cousin of Lakshman. Dádá was also executor of the will of Rámchandra, and had been guardian of Lakshman in his minority. The questions in the present suit, which was instituted by Lakshmi, the second wife of Rámchandra, are whether she, on the death of Jánki, Lakshman's widow, succeeded to the property of Lakshman, or whether Rádhábái, as his sister, or Dádá, as his paternal first cousin, has a better claim.

The Subordinate Judge of Pandharpur went into several other questions, which it is not necessary that we should consider. On the question of inheritance he treated the property as the *stridhan* of Jánki, and being of opinion that her heir, and not the heir of Lakshman, was to be sought, he by a process of reasoning, which it is unnecessary to state, held that the plaintiff, Lakshmi the second, was the heir of Jánki, and he made a decree declaratory of her title.

The Senior Assistant Judge at Sholápur reversed that decree. He rightly looked for the heir, not of Jánki, but of Lakshman (11 Moore's Ind. App. 139), and held that Rádhábái, his sister, should be preferred to his step-mother, the plaintiff. He also seemed to be of opinion that Dádá, as paternal first cousin of Lakshman, should be preferred to his step-mother, the plaintiff. Whether in this latter supposition he was right or not, it is unnecessary for us to consider.

Vináyak A'nandráv v. Lakshmibái ⁽¹⁾, which applies to this Presidency at large ⁽²⁾, settles the priority of the sister over the first cousin, and, therefore, Rádhábái must be preferred to Dádá. And in *Kesserbái v. Valab Ráoji* ⁽³⁾, decided to-day by Sir

(1) 1 Bom. H. C. Rep. 117, 126.

(2) *Sakhárcím v. Sitábái*, Ind. L. R., 3 Bom. 353.

(3) *Supra*, p. 188.

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Charles Sargent and myself, we, following a case in West and Bühler⁽¹⁾, have held that even a half-sister is to be preferred in this Presidency to a step-mother, in which ruling my brother Kemball concurs. It follows, *à fortiori*, that the full-sister, such as Rádhábái is, must be preferred to the step-mother. It is unnecessary to repeat here the authorities and reasons given in *Kesserbái v. Valab Ráoji*.

We affirm the decree of the Senior Assistant Judge, and direct the plaintiff Lakshmi to pay the costs of this appeal.

Decree affirmed.

(1) West and Bühler (2nd ed.), pp. 185, 186 ; 1 West and Bühler (1st ed.), 154, 155.

APPELLATE CIVIL.

Before Sir M. R. Westropp, Kt., Chief Justice, and Mr. Justice Kemball.

September 16.

BIRU (ORIGINAL DEFENDANT No. 2), APPELLANT, v. KHANDU (ORIGINAL PLAINTIFF), RESPONDENT.*

Hindu law—Sister's right of succession.

Under the Hindu law, a sister succeeds as heir to the estate of her deceased brother, in preference to his cousin on the paternal side one degree removed.

Krishnáji v. Pándurang (12 Bom. H. C. Rep. 65) referred to and distinguished.

THIS was a special appeal from the decision of H. J. Parsons, Senior Assistant Judge at Sholápur, reversing the decree of G. A. Mánkar, Subordinate Judge at Mádhe.

Khandu brought this suit against (1) Jivubái, (2) Biru Sadu Padvalkar, and (3) Gopálá, in the Court of the Second Class Subordinate Judge at Mádhe, and sought to recover, among other things, possession of half of two fields (Survey Nos. 82 and 95) situated in the village of Avandi, in the District of Sholápur. He stated in his plaint that he and one Kushába were cousins-german ; that Kushába died, leaving a son by name Genu, who succeeded to his father's share in the fields in dispute, and held it till his death ; that Genu's widow, Jivubái,

* Special Appeal, No. 345 of 1875.