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argument cannot affect the general view of the case, and certainly cannot apply to the town of Ahmedabad, which, it is not denied, is within the Daskroi Táluka.

The only other argument which it seems necessary to notice is that Bombay Act III of 1876 cannot be meant to apply to towns, because the order passed by the Courts is, by section 17, to be carried out by the village officers, and such officers do not exist in towns. Whether it is a fact that those officers do not exist in all towns, cannot now be decided; but it is admittedly a mere supposition in regard to Ahmedabad, and the argument does not, in my opinion, really affect the point at issue. It may be a question to be decided by Government whether, supposing that there is not the requisite machinery in any particular town for working the Act, that town should be excluded from the jurisdiction of the Mámlatdár's Court; but it cannot affect the jurisdiction which is, I believe, conferred on the Courts generally in the territorial limits which have been assigned to them.

I, therefore, hold that in the present case the Mámlatdár's Court had jurisdiction in regard to the house in question. The rule, consequently, must be discharged with costs.

Rule discharged with costs.

APPELLATE CIVIL.

Before Mr. Justice Pinhey and Mr. Justice F. D. Melvill.

BHARMANGAVDA' (PLAINTIFF), APPELLANT, *v.* RUDRAPGAVDA' AND ANOTHER (DEFENDANTS), RESPONDENTS.*

December 8.

Hindu law—Inheritance—Widow's estate—Right of widow to dispose by will.

By Hindu law the widow of a collateral does not take an absolute estate in the property of her husband's *gotraja sapinda*, which she can dispose of by will after her death.

THIS was a second appeal from the decision of M. H. Scott, Judge of Dhárwár, reversing the decree of Ráo Bahádur G. G. Phatak, Subordinate Judge (First Class) of Dhárwár.

* Second Appeal, No. 318 of 1879.

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The plaintiff alleged that he was the adopted son of one Kenchowá, the widow of one Nilapgavdá, who was the grand-nephew of Ráyangavdá, the last male proprietor in his family; that on the death of Ráyangavdá the property devolved on his widow Bálowá, on whose death in 1863 it passed—wrongfully as the plaintiff alleged—to the defendant; that Kenchowá was the rightful heir of Bálowá, and that she (Kenchowá) had not only adopted the plaintiff, but had also made a will devising her property to him, and under both these titles he claimed to recover moveable and immoveable property now in the possession of the defendant. The defendant disputed the adoption as well as the will, and set up his own independent title.

The question of the alleged will was not discussed by the Judges of the inferior Courts. The Subordinate Judge held the plaintiff's adoption proved; the District Judge that it was not. The former, therefore, allowed the claim, but the latter rejected it. The plaintiff appealed.

Macpherson, with him *Shámráv Vithal*, for the appellant.—The District Judge has recorded no distinct finding on the point of adoption, and the reasons he has given for an unfavourable opinion on the subject, are not sufficient. [PINHEY, J.—We are of opinion that he has found the adoption not proved, and that he was justified in arriving at that conclusion.] I will then rely on the point that Kenchowá, as the widow and *gotra sapinda* of Ráyangavdá, could devise his property to the plaintiff, as she has done. I submit that the rule of Hindu law is that a woman by inheritance takes not a qualified, but an absolute, estate, the cases in which she takes a qualified estate being exceptions. In the present case Kenchowá should be regarded as taking, not as a widow, but as a *sapinda* taking an absolute estate: *Lakshmibái* v. *Jayrám Hari and others* [1], *Bhúskar Trimbak Achárjá* v. *Mahádev Rámji and others* [2], *Vijyárangam* v. *Lakshman* [3]. The District Judge should be directed to find whether the will by Kenchowá, set up by the plaintiff, is proved.

Farran, with him *Ghanasham Nilkanth*.—The policy of the Hindu law is to exclude females from inheritance. They only

(1) 6 Bom. H. C. Rep. 152 (A.C. J.) (2) 6 Bom. H. C. Rep. 1 (O. C. J.)
(3) 8 *idem* 244 (O. C. J.)

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come in exceptionally under the authority of the Vyaváhára Mayukha. It is unnecessary to direct any inquiry as to the genuineness of the will, for, even if genuine, it would be invalid. Kenchowá never had possession of the property which the plaintiff seeks to recover; but, even if she had, she could not devise it away to a stranger. It has been established beyond all doubt that a widow takes only a limited estate (*Narsáppá Lingáppá* v. *Sakhárám Krishna*(1)), and this is only the result of the more general rule excluding females from inheritance : *Bhau Nánáji Utpat* v. *Sundrábái*,(2) *Lallubhái Bápubhái* v. *Mánkuverbái*(3). No case has been cited, nor any reason assigned, why a widow should be superseded by the widow of a first cousin or any other collateral relative. In Bengal even a daughter takes a limited estate. Therefore, neither on the ground of adoption nor of the will is the plaintiff entitled to succeed.

The judgment of the Court was delivered by

PINHEY, J.—This action was instituted by plaintiff to recover certain property, viz., eighteen patels' *judi inám* fields and a house at Baligati in the Dhárwár District, two buffaloes and a cart, and mesne profits of the land for three years, of which the defendant Rudrapgavdá in 1863 wrongfully took possession, on the death of Bálowá, the widow of Ráyangavdá, the last surviving male member of the family. Plaintiff claimed as the adopted son of Kenchowá, widow of Nilapgavdá, a collateral relative of Bláowá's husband, who, moreover, had made plaintiff her heir by a will executed in his favour.

The defendant Rudrapgavdá resisted the claim on the grounds that the plaintiff was not the adopted son of Kenchowá ; that the property in suit did not belong to the persons through whom plaintiff claims, and that Bálowá's husband held the *vatan* property as defendant's agent, and paid *judi* as such.

The First Class Subordinate Judge at Dhárwár rejected the plaintiff's claim to mesne profits, and to the bullocks and cart, and from this part of his decree no appeal was preferred ; but the

(1) 6 Bom. H. C. Rep. 215 (A. C. J.) (2) 11 Bom. H. C. Rep. 272.
(3) I. L. R. 2 Bom. 438.

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Subordinate Judge awarded plaintiff's claim to the lands and house in the plaint mentioned, on the grounds that the plaintiff was adopted by Kenchowá as the son of her deceased husband Nilapgavdá; that this property belonged to Ráyangavdá, and was not held by his or defendant's agent, and that it was held by his widow Bálowá until her death in 1863.

The defendant Rudrapá dying, his sons and heirs, the present respondents, appealed to the District Court at Dhárwár, and that Court (M. H. Scott, District Judge) holding that, although it was proved that Ráyangavdá had undoubtedly held the property as proprietor and not as defendant's agent, it was not proved that plaintiff was the adopted son of Nilapgavdá, reversed the decree of the Subordinate Court, and rejected the claim with costs.

In second appeal to this Court it has been argued for the plaintiff (1) that the District Court did not find with sufficient distinctness against the *factum* of plaintiff's adoption, and if such finding be sufficiently distinct, it is based on reasons which are bad in law; and (2) that, even if plaintiff's adoption by Kenchowá be held not proved, still he would be entitled to succeed in this suit under the will which is expressly mentioned in the plaint as a ground of action.

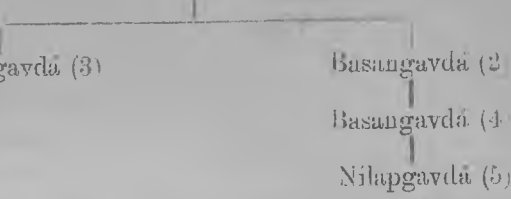
At the hearing of the appeal we orally informed the counsel for the parties that we had no hesitation in overruling the first of the above objections, as the District Judge had in his judgment distinctly recorded on the second issue laid down, (viz., is plaintiff the adopted son of Nilapgavdá, and is the adoption valid?) "I find on the second issue in the negative," and the reasons which he gave for arriving at this decision were undoubtedly good in law, viz., that although the Subordinate Judge had found the plaintiff's adoption proved by the exhibit 31 and witnesses 27, 28, 38 and 39, he (the District Judge) could not hold the adoption proved by this evidence, because the recital, in the will, of the fact of plaintiff's adoption, by Kenchowá, seven or eight years before, does not prove the adoption, and the evidence as to the genuineness of the will was unsatisfactory; and the oral evidence as to the adoption, easily procured in such a case and difficult to contradict when the fact to be proved is placed so far back as in this case, ought not to be

allowed to outweigh the following facts, viz.,(1) no deed of adoption was executed, although the property was considerable; (2) although plaintiff is said to have been adopted in 1864, Kenchowá, in a statement (exhibit 10) made by her before the Mámlatdár in that year, declared that her husband had left no heirs, and that she, as his widow, was his sole representative; she said nothing either of her having adopted the plaintiff or of her having received from her husband authority to adopt a son; (3) in 1867, when she filed a suit against the present defendant, she did not say that she had adopted a son, nor was this objection taken by the other side; and, lastly, (4) although the plaintiff's natural father is a patel, he took no care to have the property in suit entered in his son's name in the revenue accounts. The District Judge might well have held that the cumulative force of these objections was sufficient to prevent his holding the adoption of plaintiff proved by the evidence which had satisfied the Subordinate Judge, and we so informed the parties at the hearing.

On the second issue raised for the appellant, however, we reserved our judgment, viz., whether the plaintiff is entitled to succeed in this suit by virtue of the will (exhibit 31) of Kenchowá.

Ordinarily it would have been more regular to have had the genuineness of the will established (especially as the District Court, without recording a distinct finding on this point, seemed to be inclined to the opinion that the genuineness of the will was not established) before proceeding to determine the capacity of Kenchowá to pass the property in suit by will to the plaintiff; and it will still be necessary to have this issue of fact determined in the Court below, if we find that Kenchowá was clothed with such capacity. But as the counsel who appeared for the parties came ready prepared to argue the point, and were anxious that this Court should decide wether Kenchowá was or was not competent to will away the property in suit, we allowed the argument to proceed; and the point that we have now to decide, therefore, is—supposing the will to be a genuine will—does the property in suit pass under it to the plaintiff?

The family tree, agreed to by the parties, is as follows:—



Nilapgavdá (5) predeceased his father Basangavdá (4), leaving as his widow Kenchowá, who is said to have executed the will; neither Nilapgavdá (5) nor his father Basangavdá (4) ever held possession of the property in suit. The last male member of the above family who held the property was Ráyangavdá (3). From Ráyangavdá it passed to his widow Bálowá. On the death of Bálowá it was taken possession of by the defendant Rudrapgavdá, a distant member of the family, and it has remained in the possession of Rudrapgavdá and his sons ever since. In 1867, Kenchowá commenced a suit for the recovery of the property from Rudrapgavdá, but the suit never proceeded to trial, and was withdrawn by Kenchowá. The question to be determined may be, therefore, thus stated:—Could Kenchowá, the widow of a collateral relative of Ráyangavdá, and a widow who never was seized of the estate, pass the estate of Ráyangavdá, by her will, to the plaintiff, a stranger (albeit he is a distant relation of the family)? In our opinion she could not. We will leave out of consideration the fact that Kenchowá was never seized of the estate, not because we consider it by any means an unimportant fact, if its consideration was necessary for the determination of the question we are considering, but because we can decide the question the same way without considering it, and this point was not argued at the bar.

The original rule of Hindu law, we take it, is that women generally are excluded from inheritance: *Bhau Náváji Utpat* v. *Sundrábái* [1] and *Lallubhai Bápubhai* v. *Mánkuverbái* [2], and the reason for this will be obvious to those who know anything of the history of Hindu institutions. The first innovation on this rule was the admission of a daughter to inherit, and she was assigned only the last place in the line of succession, and this only to save escheat to the Sarkár, or, as we call it, the

(1) 11 Bom. H. C. Rep. 272. (2) I. L. R. 2 Bom. 438.

Crown. Further relaxations of the rule have been recognized by our Courts on the authority of texts in the Mitákshara and the Mayukha; but we are not prepared to go beyond the decisions. The last quoted case is an authority for the proposition that a wife is a *gotraja sapinda* of her husband, and on his death will take an estate, as his heir, in preference to certain more remote relations, that is, before the male representative of a remoter branch. The case of *Vijyárangam* v. *Lakshman* [1] is an authority for the proposition that all property acquired by a woman by inheritance becomes her *stridhan*, and states the rules that regulate its subsequent devolution according to the texts of the Mitákshara and Mayukha respectively; and *Lakshmibái* v. *Jayrám Hari* [2] is an authority for the proposition that the wives of all *gotraja sapindas* and *samanodakas* have rights of inheritance co-extensive with those of their husbands immediately after whom they succeed. But in none of the cases above cited do we find authority for the proposition that the estate inherited by a wife or widow is an absolute estate, alienable by will to a stranger. A sister, taking as heir to her brother, takes his property with an absolute power of disposition over it: *Bhaskar Trimbak Acharyá* v. *Mahádev Rámji* [3]; but a man's widow admittedly takes only a limited estate,—that is, an estate limited to her life, and so also a mother inheriting from her son: *Narsapá Lingápá* v. *Sakhárám Krishna* [4].

There is, so far as we know, and we have been through the cases carefully, no authority for the proposition that the widow of a collateral takes an absolute estate in the property of her husband's *gotraja sapinda*, which she can dispose of by will after her death. And if it were necessary to consider the question, it would, we think, be still less a reasonable proposition that a widow of a collateral who had never been seized of the estate could will it away.

We, therefore, hold that Kenchowá could not have left the property in suit by will to plaintiff, even if the will be genuine, and, therefore, we are of opinion that the decree of the District Court should be confirmed with costs.

Decree confirmed.

(1) 8 Bom. H. C. Rep., (O. C. J.,) 244.
(2) 6 Bom. H. C. Rep., (A. C. J.,) 152.
(3) 6 Bom. H. C. Rep., (A. C. J.,) 215.
(4) 6 Bom. H. C. Rep., (O. C. J.,) 1.