APPELLATE CIVIL.

Before Sir Charles Sargent, Knight, Chief Justice, and Mr. Justice Kemball.

DALPAT NAROTAM (ORIGINAL PLAINTIFF), APPELLANT, *v.* BHAGVA'N KHUSHA'L AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

1885.

January 7.

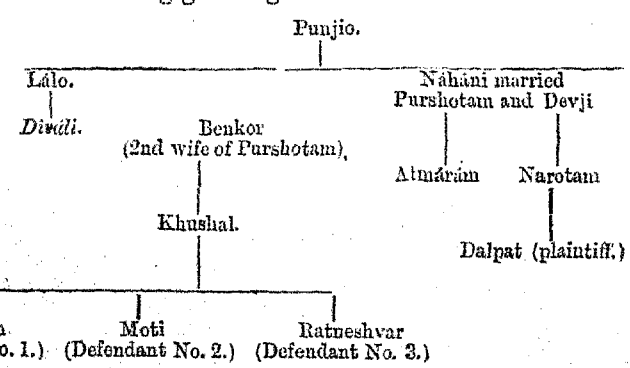
Hindu Law—Daughter—Inheritance—Devolution of property inherited by a daughter from her father—Stridhan.

Diváli, the daughter of one Lalo, died childless in 1866 possessed of certain immoveable property which she had inherited from her father Lalo. Lalo's sister Nahani had one son Atmarám by her first husband Purshotam. Purshotam had a second wife (Benkor) whose son Khushal was the father of the defendants. After Purshotam's death his widow Nahání married Devji by whom she had a son who was the father of the plaintiff. The plaintiff in this suit claimed to recover the property of Diváli from the defendants who had taken possession. He contended that the property having devolved on Atmarám through a female must continue to descend in that line and that he was entitled. The defendants claimed as heirs of Atmarám.

Held, that on Diváli's death Atmarám was the nearest *bandhu* relation both of Diváli and her father Lalo and consequently became full owner of the property. On Atmarám's death the defendants, as sons of his half brother Khushal, became his heirs and were entitled to the property.

THIS was a second appeal from the decision of E. Hosking, Acting Judge of the District of Khándesh, confirming the decree of Ráo Sáheb Chandulál Mathuradás, Second Class Subordinate Judge of Surat.

The plaintiff alleged that he and the defendants were related as shown in the following genealogical table :—



The property in dispute had belonged to Diváli the daughter of one Lalo. Lalo had a sister named Nahání. Nahání's first

* Second Appeal No. 382 of 1883.

1885.

DALPAT NAROTAM v. BHAGVÁN KHUSHÁL.

husband was Purshotam, by whom she had one son Atmarám. Purshotam had a second wife Benkor, whose son Khushal was the father of the defendants. After Purshotam's death Nahán married Devji by whom she had one son Narotam who was the father of the plaintiff. Thus Atmárám and the defendants' father (Khushal) were sons of the same father but of different mothers, while Atmárám and the plaintiff's father (Narotam) were sons of the same mother but of different fathers.

The plaintiff sued to recover possession of a house with rents and profits from the defendants. He alleged that the property belonged to Diváli, who had inherited it from her father; that Diváli died childless about 1866, and that he was her heir jointly with Atmárám, his father's half-brother, who managed it, giving to the plaintiff his share till his death, which occured about 1875; that on Atmárám's death the plaintiff became sole heir to the property of Diváli and that the defendants had wrongfully taken possession. The plaintiff prayed that the defendant should be ordered to give it up.

The defendants admitted the plaintiff's statements as to the relationship between the parties, but contended that Atmárám was the heir of Diváli; that Atmárám managed the property on his own account and appropriated the profits to himself without giving anything to the plaintiff, and that they were the heirs of Atmárám, in whom alone the property had last vested.

The Subordinate Judge held that the plaintiff was not the heir to either Diváli or Atmárám; that Atmárám was Diváli's heir, and that he had been in sole possession and management of the property on his own account and appropriated the profits arising out of it to himself without any division with the plaintiff. The District Judge confirmed the decree of the Subordinate Judge.

The plaintiff appealed to the High Court.

Inverarity with *Nagindás Tulsidás* for the appellant:—Atmárám was the eldest son of Naháni the sister of Diváli's father. I cannot contend that Atmárám did not succeed exclusively to Diváli's estate. But I submit that the plaintiff was the heir of Atmárám and not the defendants, the property having come to

1885.

DALPAT NAROTAM v. BHAGVÁN KHUSHÁL.

Atmárám through a female. *Laroo* v. *Sheo*[1] and *West and Bühler* (3rd edition) p. 495. As Atmárám and the plaintiff's father were uterine brothers the plaintiff and not the father of the defendants was the heir of Atmárám in respect of property which had been inherited by him from his maternal relative Diváli. The defendants are not related to Atmárám by blood, they being his father's second wife's grandchildren.

Branson, with him *Shivshankar Govindrám*, for the respondent.—Diváli married in one of the inferior or less improved forms common amongst the Shudras and the property must devolve on her heirs in her father's family and not on those in her husband's family. Strange's Hindu Law, Mayne's edition, 250. Diváli having inherited the property from her father it was her *stridhan* and must descend as such. The case of *Laroo* v. *Sheo* [1] is not supported by any authority. The observations in West and Bühler (2nd edition), pages 224, 225, and 226, support my contention that the defendants are the heirs of Atmárám, and not the plaintiff. With respect to property inherited by a female from a female, it has been decided that even if such property was *stridhan* in the hands of the last holder it would not be so in those of the next heir. Mayne's Hindu Law, pp. 643-644, para. 581.

SARGENT, C. J.—This suit raises the much-disputed question as to the devolution of property inherited by a daughter from a male. Till the decision of the Privy Council in *Mutta Vaduganadha Tevar* v. *Dorasinga Tevar* [2], where it is laid down distinctly that under the Mitakshara "a woman taking by inheritance from a male does not take a *stridhan* estate transmissible to her heirs," the doctrine of this Court was that a daughter inheriting from a male took an absolute estate transmissible to her heirs—*Haribhat* v. *Dámodarbhat* [3], *Bábáji bin Narayan* v. *Bálaji Ganesh*[4]. Since that decision, however, it would seem, as stated by the learned authors of West and Bühler's Hindu Law, p. 432 (3rd ed.), that "the heritage taken by daughters must in future be regarded as but a life-interest, whether with or without the extensions recognised in the case of a widow, except in cases governed by the

(1) 1 Borr. 80.
(2) L. R. 8 I. A. 92.
(3) I. L. R. 3 Bom. 171.
(4) I. L. R. 5 Bom. 660.

1885.

DALPAT NAROTAM v. BHAGVÁN KHUSÁL.

Vyavahara Mayukha." The present case, being one from Gujarat, is, by the established practice of this Court, governed by the Mayukha. Here again we meet with a difficulty arising from the ambiguity of the language used by Nilkantha. According to the construction placed upon Mayukha, ch. iv., sec. 10, sic. 26, by the Court of Appeal, consisting of Sir M. Westropp, C. J., and West, J., in *Vijiarangam* v. *Lakshuman* (1), the property would devolve on the woman's death on her sons, and the rest as if she were a male. Mr. Mayne, however, in his Treatise on Hindu Law, para. 530, dissents from this view of the passage. He says: "It is very questionable whether Nilkantha meant anything of the sort," and explains it as meaning that the estate "does not devolve according to the rule applicable to *stridhan* but is taken by such heirs, being sons or otherwise, as would have taken it if the accident of its falling to a woman had never occurred."

In the present case it is not material which view is adopted, as in either view on the death of Diváli (Narotam and Náháni being then dead), Atmárám, whether as father's sister's son or as sister's son, would be the nearest *bandhu* relation both of Diváli and her father. Atmárám thus became the full owner of the property on whose heirs it would devolve on his death, and these would clearly be the defendants who are the sons of his half-brother Khushál, whether according to the Mitákshara or Mayukha(2). We must, therefore, confirm the decree, with costs.

Decree confirmed.

(1) 8 Bom. H. C. Rep. 44 O. C. J.

(2) West and Bühler's Hindu Law, pp. 112 and 117.