1888.

THE UNIVERSITY OF BOMBAY v. THE MUNICIPAL COMMISSIONER FOR THE CITY OF BOMBAY.

As to the Tower we think it must be regarded as it was intended to be, as an architectural building annexed to the Library and cannot, for the present purpose, be treated as distinct from it.

The question must, therefore, be answered in the affirmative.

Attorneys for the University :—Messrs. *Craigie, Lynch and Owen.*

Attorneys for the Municipal Commissioner:—Messrs. *Crawford, Burder, Buckland and Bayley.*

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Nánábhái Haridás.

1888. *June* 18.

HARILA'L HARJIVANDA'S (ORIGINAL DEFENDANT), APPELLANT, *v.* PRA'NVALAVDA'S PARBHUDA'S (ORIGINAL PLAINTIFF), RESPONDENT.*

Hindu Law—Inheritance—Moveable property inherited by a widow from her husband—Devolution of such property on the widow's death.

Moveable property inherited by a Hindu widow, if not disposed of by her, passes, on her death, to the next heirs of her husband, whether such property be regarded as her *Stridhan* or not.

Where the defendant claimed the property in dispute under the will of a Hindu widow, but kept back the evidence which would have clearly established that the mark purporting to be made by the widow, was really made by her or at her desire, and that at the time of the execution the nature and contents of the document were well known to her, the Court refused to act upon it.

APPEAL from the decision of Ráo Bahádur Motilál Lalubhái, First Class Subordinate Judge of Ahmedabad, in Suit No. 1194 of 1882.

One Hargovan Parbhudás died in March, 1880, leaving behind him a childless widow, Bái Harkor. She died in June, 1880.

Thereupon the plaintiff, who was the separated brother of Hargovan, sued to recover possession of the property, both moveable and immoveable, left by Hargovan and his widow, alleging that he was the heir of both.

* Appeal, No. 72 of 1885.

1888.

HARILÁL HARJIVANDÁS v. PRÁNVALAVDÁS PARBHUDA'S.

The defendants were the brothers of Bái Harkor. They claimed the property in dispute under two wills, one purporting to be executed by Hargovan, and the other by Bái Harkor. They also contended that the moveable property was the *stridhan* of their sister, to which they had a better right to succeed than the plaintiff.

The Subordinate Judge found that the alleged will of Hargovan was a fabrication, and that the will of Bái Harkor was obtained by fraud and undue influence, and was, therefore, invalid. He passed a decree awarding the plaintiff's claim.

Against this decree the defendants appealed to the High Court.

Gokaldás K. Párikh and *Govardhan and Tripati* for appellants.

Shántárám Náráyan for respondent.

SARGENT, C. J. :—The plaintiff in this case is a brother of one Hargovan Parbhudás, who died childless in March, 1880, leaving a widow, Bai Harkor. The defendants are Bái Harkor's brothers. She died in June, 1880, and the question that arises now between the plaintiff and the defendants is which of them is entitled to property left by Hargovan and Bái Harkor. The property consists of a house, some moveables, and outstanding debts.

The plaintiff claims the property as the heir of Hargovan and of his widow. The 1st defendant claims the same under two wills alleged to have been made, one by Hargovan and the other by Bái Harkor. The second defendant relies upon those wills, but denies possession of any of the property in dispute, and disclaims all right to it under them. We may, therefore, regard the suit as really one between the plaintiff and the first defendant.

The Subordinate Judge has found that Hargovan was divided in estate from his brother, the plaintiff, at the time of his death, and that the property in dispute was Hargovan's. This finding has not been impeached before us. As to the alleged wills the Subordinate Judge has come to the conclusion that Hargovan's will (Exhibit 157) is not genuine, and that Bái Harkor's (Exhibit 158) is invalid, having been obtained through undue influence. He has, accordingly, made a decree for the plaintiff.

The whole case thus turns upon the genuineness and validity of the two wills. We shall first consider briefly the nature of the evidence bearing on Bái Harkor's will (Exhibit 158), the defendant claiming especially under it, as executor and trustee. Some of the attesting witnesses, no doubt, depose that they attested it at Bái Harkor's request. The Sub-Registrar says he registered it in the presence of a woman who was identified to him by Chunilál as Bái Harkor. This Chunilál says he was present when the Sub-Registrar came to Bái Harkor, but does "not remember whether her will was read over at the time or not." The Sub-Registrar says he registered the document, but without making any inquiry. The attesting witnesses do not depose to any conversation with Bái Harkor, from which one might reasonably infer that she was aware of the nature and contents of that document. She was an illiterate woman, able neither to read nor write. It is written in the Gujaráti language, but is silent as to who wrote it. The writer is not called to depose at whose dictation, by whose order, or under what circumstances, it was written. It is not signed, but is marked with a cross. The entry relating to it describes it as Bái Harkor's, and purports to be in the handwriting of one Jethabhái Dayálji. This Jethábhái is not called as a witness. There is no evidence as to who made the mark, when, and under what circumstances. On the back of the document is an endorsement of acknowledgment of execution similarly marked. The entry relating to it purports to be in the handwriting of one Shankar Bápuji. But this Shankar Bápuji is not called as a witness. It would thus appear that the defendant, who propounded the document, chose to keep back the evidence, which, if the fact was so, would have clearly established that the cross was really made by, or at the desire of, Bái Harkor, and that at the time the nature and contents of that document were well known to her. Under these circumstances, we should not be justified in acting upon it—see *Hastilow* v. *Stobie*[1]; *Pearson* v. *Pearson*[2]; and *Morritt* v. *Douglas*[3].

In the view we thus take of Bái Harkor's will, it is unnecessary for us to express any positive opinion as to the genuineness of

(1) L. R., 1 P. & D., 64. (2) L. R., 2 P. & D., 451.
(3) L. R., 3 P. & D., 1.

1891.

HARILÁL HARJIVANDÁS v. PRÁNVALAVDÁS PARBHUDÁS.

Hargovan's will, (Exhibit 157), although, having regard to the evidence of the witnesses examined in the lower Court, and their respectable position in life, as well as to the marked resemblance between the signature to it and Hargovan's admitted signatures on two other documents in the case and also to our own translator Mr. Báláji's decisive opinion as to the identity of the writer of those signatures, we should probably be disposed, if it were necessary, to find in favour of its genuineness. We say it is unnecessary to express any opinion on that point, because whether it is genuine, or whether Hargovan died intestate, can make no difference in the result of this case. In either case the property came to Bái Harkor as Hargovan's heir, and she having died intestate, the only question that remains for us to decide is whether what she has left undisposed of goes to Hargovan's heir, the plaintiff, or to her own, the defendants.

This point, we find, has been already settled by the highest judicial authority in favour of the former. In *Mussamat Thakoor Deyhee* v. *Rai Baluk Ram*[1], their Lordships of the Privy Council, after reviewing various authorities on the subject, observe (at page 175): "The result of the authorities seems to be, that although according to the law of the Western schools, the widow may have a power of disposing of moveable property inherited from her husband, which she has not under the law of Bengal she is by one law, as by the other, restricted from alienating any immoveable property which she has so inherited; and that on her death the immoveable property, and the moveable, if she has not otherwise disposed of it, pass to the next heirs of her husband." And similarly they observe in a later case: "The preponderance of authority is certainly in favour of the proposition that, whether the widow has or has not the power to dispose of inherited moveables, they as well as the immoveable property, if not disposed of, pass on her death to the next heirs of the husband"—see *Bhugwandeen Doobey* v. *Myna Baee*[2]. Mr. Gokuldás has indeed argued that the moveable property which devolved upon Bái Harkor on her husband's death, and over which during her life-time she had full power of disposal must be regarded as her *stridhan*, and go to her heirs and not his upon her

(1) 11 M. I. A., 139. (2) 11 M. I. A., 487, at pp. 511-512.

death. But we are not prepared to accept this argument. He has not referred us to any case in support of it, and notwithstanding her power of disposal, while she lived, over the moveable property inherited from her husband its devolution upon her heirs on her death does not at all follow. Whether we take the expression *stridhan* in its technical and narrower sense as in the Mayukha[1], so as to exclude such property, or in its etymological and larger sense as in the Mitakshara[2], so as to include it, both the authorities agree as to how it should descend upon her death[3]. To satisfy the Mitákshara we would presume, in the absence of any evidence to the contrary, that the marriage in this case was in one of the four approved forms. Besides, this case comes from Gujarát, where the authority of the Mayukha prevails in case of real conflict between it and the Mitákshara.

We must, therefore, confirm the decree of the Subordinate Judge with costs, the correctness of his decision as to the value of the property not having been questioned before us.

(1) Ch. IV., Sec. X, pl. 1, 2. (2) Ch. I., Sec. XI, pl. 3, 4.
(3) Vyav. May., Ch. IV., Sec. VIII., pl. 1, 4; Mit., Ch. II., Sec. XI., pl. 11.

APPELLATE CIVIL.

Before Mr. Justice Birdwood and Mr. Justice Parsons.

BA'I JAMNA' AND ANOTHER, (ORIGINAL DEFENDANTS), APPELLANTS, *v.* BHA'ISHANKAR (ORIGINAL PLAINTIFF), RESPONDENT.*

1891. *April* 7.

Hindu Law—Inheritance—Widow's estate in moveables inherited from her husband—Liability of such property for her debts after her death.

Under the Hindu Law in force in the Presidency of Bombay, a widow inheriting from her husband, or a mother from her son, may have an absolute power of disposal over moveable property so inherited; but any undisposed of residue of such property reverts on her death to the estate of the last male holder, and passes as his property to his heirs. It is not, therefore, her personal property liable in their hands for her debts.

SECOND appeal from the decision of Ráo Bahádur Chunilál Máneklál, First Class Subordinate Judge of Ahmedabad, in Appeal No. 218 of 1889 of the District File.

* Second Appeal, No. 558 of 1890.