1886.

AMARCHAND v. SAVALYA.

Mahadev B. Chavbal for *Dhondu M. Sanzgiri* appeared for the opponents (defendants) to show cause:—Section 15, clause (*b*), of the Mámlatdár's Act is applicable to the present case. It shows that the plaintiff can succeed only if the defendant is in possession or enjoyment by a right derived from the plaintiff. Defendants Nos. 1 and 2 derived their right from their father. Therefore the plaintiff cannot succeed against them in the present suit. The suit is wrongly framed. The plaintiffs ought to have proceeded against defendant No. 3 alone. Bhagu's heirs, that is, defendants Nos. 1 and 2, are not plaintiffs' tenants.

FARRAN, C. J.—The Mámlatdár is in error in supposing that he has no jurisdiction against heirs. If heirs succeed to their father's rights under a lease, the jurisdiction of the Mámlatdár arises on the determination of that lease against such heirs just as though the original tenant were then alive. The rule must be made absolute. Costs to be costs in the cause.

Rule made absolute.

APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Ranade.

1896.

February 20.

MADHAVRAM MUGATRAM (ORIGINAL PLAINTIFF), APPELLANT, *v.* DAVE TRAMBAKLAL BHAWANISHANKAR AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Hindu law—Inheritance—Succession—Widow—Widow's estate—Heirs after widow's death—Female heirs—Widow of gotraja sapinda—Stridhan.

Narotam and Harjivan were divided brothers. Harjivan died first, leaving a son named Tulsidas. Narotam afterwards died childless, leaving his widow Jasoda, who took possession of Narotam's property. Tulsidas died childless, leaving only his widow Bai Mani, who succeeded to the property on Jasoda's death. After the death of Bai Mani the plaintiff, who was the son of Tulsidas's sister, sued to recover the property from the defendants, who were distant *samanodaka* relations of Narotam. It was contended on the plaintiff's behalf that, on Jasoda's death, Bai Mani took the property as her *stridhan* acquired by inheritance, and that the plaintiff as *bandhu* of her husband Tulsidas was heir to Bai Mani, who died without issue.

Held, (confirming the decree dismissing the suit) that on Jasoda's death (Narotam and Harjivan being divided), Bai Mani succeeded to the property as a *gotraja sapinda*, being the widow of Tulsidas, the nephew of Narotam. As such she took only a life-interest in the property, and had no absolute interest in it as in her *stridhan* proper.

* Second Appeal, No. 76 of 1895.

1896.

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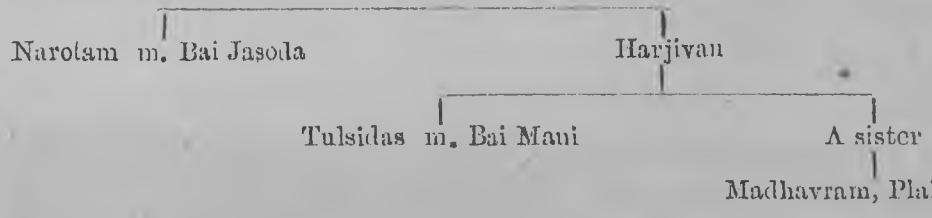
In the Presidency of Bombay female heirs who by marriage enter into the *gotra* of the male whom they succeed (including widow, mother, grandmother, the widow of a *gotraja sapinda*, &c.), take only a widow's estate in property which they inherit from the last male owner. Whether the estate inherited by these female heirs is called their *stridhan* or not, their restricted rights over it are admitted by all schools.

SECOND appeal from the decision of R. S. Tipnis, Assistant Judge, F. P., of Surat, at Broach, in Appeal No. 73 of 1891.

The following table shows the relationship of the parties :—



Narotam and Harjivan were divided brothers. Narotam was the owner of the immoveable property in dispute.

Narotam, who survived Harjivan, died childless, leaving him surviving a widow named Jasoda, who succeeded to his property, and a nephew Tulsidas, the son of Harjivan. Tulsidas died, leaving him surviving his widow Bai Mani. To this Bai Mani Jasoda devised the property in suit. Bai Mani in turn by will bequeathed the property to defendants Nos. 5 and 6, who were the *gotraja samanodaks*, being descendants of an ancestor of Narotam several degrees removed.

The plaintiff was the son of Harjivan's daughter, Tulsidas' sister, and thus a *bandhu* of Narotam.

He brought this suit to recover possession of the property from defendants, alleging that it had belonged to Tulsidas Harjivandas; that on his death it came into the possession of his heiress and widow Bai Mani; that Bai Mani died on 3rd September, 1889; that he (plaintiff) being the son of Tulsidas' sister was the next heir according to the custom of the Bhargava Brâhmin caste; that Bai Mani had only a life-interest in the property; that if Bai Mani had executed any will, it was invalid and illegal; and that he (plaintiff) was entitled to the property as heir.

Defendants replied that Tulsidas was never the owner of the property in dispute; that on the death of the original owner

Narotam, his widow Jasoda succeeded to his estate; that she made a will bequeathing the houses to Bai Mani; that Bai Mani thus became the owner; that Bai Mani by will appointed defendants Nos. 1 to 4 her trustees to dispose of her property; that by this will she had given the property to her *pitráis*, defendants Nos. 5 and 6; that according to custom and law the *pitráis* (paternal kindred) of Tulsidas were the heirs and not the plaintiff; and that Bai Mani being the absolute owner had a right to dispose of the property by will.

The Subordinate Judge of Broach found that Bai Mani had no authority to dispose by will of the property in dispute. He also found that the plaintiff was the heir of Tulsidas, observing:—

"Thus, it is satisfactorily proved that according to the prevailing custom of the Bhargava Bráhmin caste the plaintiff Madhavram is the proper heir to inheirit the property of his maternal uncle Tulsidas and his widow Bai Mani, after their death, in preference to their *pitrái* Tuljaram and Kakubhai, defendants Nos. 5 and 6."

He, therefore, passed a decree in favour of the plaintiff, awarding him possession of the property claimed.

In appeal the Assistant Judge, F. P., at Broach reversed this decree and dismissed the suit.

From this decision plaintiff preferred a second appeal to the High Court.

Vasudev Gopal Bhandarkar for *Daji Abaji Khare*, for the plaintiff-appellant.

Gokaldas Kahandas Parekh, for respondents (defendants).

The following authorities were cited during the course of argument:—*Vinayak* v. *Lakshmibai*(1); *Pranjivandas* v. *Devkuvarbai*(2); *Mayaram* v. *Motiram*(3); *Bakubai* v. *Manchhabai*(4); *Jamiyatram* v. *Bai Jamna*(5); *Lakshmibai* v. *Ganpat Moroba*(6); *Bhaskar* v. *Mahadev*(7); *Narsappa* v. *Sakharam*(8); *Lakshmibai* v. *Jayram*(9); *Vijiarangam* v. *Lakshuman*(10); *Kotarbasapa* v. *Chanverova*(11);

(1) 1 Bom. H. C. Rep., 117, O. C. J.
(2) 1 Bom. H. C. Rep., 130, O. C. J.
(3) 2 Bom. H. C. Rep., 313, A. C. J.
(4) 2 Bom. H. C. Rep., 5, A. C. J.
(5) 2 Bom. H. C. Rep., 11, at p. 15, A. C. J.
(6) 5 Bom. H. C. Rep., 128, O. C. J.
(7) 6 Bom. H. C. Rep., 1, O. C. J.
(8) 6 Bom. H. C. Rep., 215, A. C. J.
(9) 6 Bom. H. C. Rep., 152, A. C. J.
(10) 8 Bom. H. C. Rep., 244, O. C. J.
(11) 10 Bom. H. C. Rep., 403.

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West and Bühler, pp. 145, 151, 157, 518 and 519; Vyavahára Mayukha, Ch. IV, S. 6, Pl. 26, Pl. 28, Pl. 30; *Lallubhai* v. *Mankuvarbai*(1); *Haribhat* v. *Damodarbhat*(2); *Sakharam* v. *Sitabai*(3); *Dhondu* v. *Gangabai*(4); *Biru* v. *Khandu*(5); *Vithaldas* v. *Jeshubai*(6); *Bhagirthibai* v. *Baya*(7); *Babaji* v. *Balaji*(8); *Bulakhidas* v. *Keshavlal*(9); *Dalpat* v. *Bhagvan*(10); *Bai Narmada* v. *Bhagvantrai*(11); *Muttu Vaduganadha Tevar* v. *Borasinga Tevar*(12); *Mussamat Thakoor Deyhee* v. *Rai Baluk Ram*(13); *Jankibai* v. *Sundra*(14); *Rindabai* v. *Anacharya*(15); *Harilal* v. *Pranvalavdas*(16); *Manilal* v. *Bai Rewa*(17); *Chunilal* v. *Itchachand*(18); *Motilal Lallubhai* v. *Ratilal*(19).

RANADE, J.:—The contest for succession to the two houses in dispute in this case lies between the appellant (plaintiff), who is a *bandhu* (sister's son) of deceased Tulsidas, and respondents (defendants) Nos. 5, 6, who are distant *samanodak* agnate relations of the same Tulsidas, and of his uncle Narotumdas.

This Narotumdas was the original owner of the two houses. He had a brother named Harjivan, who died before Narotum, and Tulsidas was Harjivan's son. Narotum's widow Jasoda gave the two houses in dispute by her will to Tulsidas, and on Tulsidas' death during Jasoda's life-time, she made a second will in favour of Bai Mani, widow of Tulsidas. Bai Mani in her turn made a will in favour of respondents Nos. 5, 6, and appointed the other respondents as trustees.

Plaintiff was Harjivan's daughter's son, and as such, relying chiefly on a caste custom, he brought his suit to recover possession of the two houses in respondents' possession. In this suit, plaintiff claimed to be Tulsidas' heir as *bandhu* in preference to respond-

(1) I. L. R., 2 Bom., 388.
(2) I. L. R., 3 Bom., 171.
(3) I. L. R., 3 Bom., 353.
(4) I. L. R., 3 Bom., 369.
(5) I. L. R., 4 Bom., 214.
(6) I. L. R., 4 Bom., 219.
(7) I. L. R., 5 Bom., 264.
(8) I. L. R., 5 Bom., 660.
(9) I. L. R., 6 Bom., 85.
(10) I. L. R., 9 Bom., 301.
(11) I. L. R., 12 Bom., 505.
(12) L. R., 8 I. A., 99.
(13) 11 M. I. A., 139.
(14) I. L. R., 14 Bom., 612.
(15) I. L. R., 15 Bom., 206.
(16) I. L. R., 16 Bom., 229 and 230.
(17) I. L. R., 17 Bom., 758.
(18) P. J., 1893, p. 88.
(19) *Ante* p. 170.

ents Nos. 5, 6, who were distant *samanodak* agnates. The respondents denied the alleged custom, and claimed to be heirs under the general Hindu law, as also owners of the property under Bai Mani's will. The Court of first instance found that the alleged custom was proved. It also found that Narotum and Tulsidas were united in interests, and that, on Jasoda's death, Bai Mani was under the general law Narotum's heir, in right of being Tulsidas' wife, and finally that plaintiff was Tulsidas' heir. Setting aside Bai Mani's will in respondents' favour, it passed a decree affirming plaintiff-appellant's rights.

In appeal, the Assistant Judge did not decide the issue about the alleged custom, but he held that Narotum and Tulsidas were separated in interests, and that Bai Jasoda and after her Bai Mani succeeded only to a widow's estate in the property which devolved on Bai Mani's death to the respondents as heirs of Narotum, the last male owner, both Jasoda's and Mani's wills being inoperative and invalid. Plaintiff was no way related to Narotum, and his claim was accordingly thrown out.

In the appeal before us, appellant's pleader gave up the original contention by which he sought to establish his right over the property under a special custom as *bandhu* and heir of Tulsidas. It was urged that Bai Mani was the last full owner, and the houses belonged to her as her *stridhan* acquired by inheritance, and as such the appellant as *bandhu* of Tulsidas was heir to Bai Mani, who died without issue. The ruling in *Manilal* v. *Bai Rewa*[1] was cited as the chief authority in support of this contention.

By reason of this change of front it becomes necessary to inquire whether the property in dispute was Bai Mani's *stridhan* in the sense that heirship would have to be traced to it through Bai Mani and her husband Tulsidas, and a special rule of succession would apply excluding the respondents Nos. 5, 6, and giving preference to the appellant as being Bai Mani's heir on account of his being Tulsidas' *bandhu* under the general law. On a careful consideration of the authorities cited on both sides, I feel satisfied that the appellant's contention cannot be upheld.

(1) I. L. R., 17 Bom., 758.

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Independently of the objection that this claim is opposed to the right set up in the plaint, and that on which the parties joined issue in the lower Courts, there is the consideration that it seeks to re-open a question which has been satisfactorily settled by a long course of decisions, solely on the authority of a ruling which has no direct application to the circumstances of the present case. Accepting the finding of the lower appeal Court on the point of the separation of interests, it is clear that Bai Mani succeeded to the property on Jasoda's death as a *gotraja sapinda*, being the widow of the nephew of Narotum. A *gotraja sapinda* widow succeeding to any property under the circumstances stated above takes only a widow's interest in the property and has no absolute interest in the same as in her *stridhan* property proper. As observed by Mr. Mayne in his work, paragraph 569, "In this Presidency the Courts divide female heirs into two classes : (1) those who by marriage enter into the *gotra* of the male whom they succeed, and (2) those who are of a different *gotra* or who upon marriage become of a different *gotra*." The difference between the two schools relates chiefly to the extent of the rights of this second class ; among which may be mentioned the daughter, sister, niece, grand-niece. As regards the first class, which includes widow, mother, grand-mother, the widow of a *gotraja sapinda*, &c., they only take a widow's estate in property which they take from the last male owner, husband, son, &c. Whether the estate inherited by these female heirs is called their *stridhan* or not, their restricted rights over it are admitted by all schools.

A long course of decisions has established this distinction. The earliest case where it was formally recognized and acted upon is *Lallubhai* v. *Mankuvarbai*[1], which ruled that in this Presidency the wife is a *gotraja sapinda* of her husband, and in the absence of specially designated heirs succeeds as heir to a separated *sapinda* in the same way as her husband would have done. The daughter-in-law's right to succeed after the death of the widow without issue was upheld in *Vithaldas* v. *Jeshubai*[2]. (See also *Lakshmibai* v. *Jayram*[3].) The distinction between the two classes of female heirs noticed above was solemnly affirmed in *Babaji* v.

(1) I. L. R., 2 Bom., 388. (2) I. L. R., 4 Bom., 219.
(3) 6 Bom. H. C. Rep., 152.

Balaji[1]. As regards the daughters, their rights have all along been held to be absolute—*Haribhat* v. *Damodarbhat*[2]; *Bulakhidas* v. *Keshavlal*[3]; *Jankibai* v. *Sundra*[4]. So also the sister's absolute right has been upheld in *Vinayak* v. *Lakshmibai*[5]; *Dhondu* v. *Gangabai*[6]; *Biru* v. *Khandu*[7]; *Bhagirthibai* v. *Baya*[8].

Some doubt has been thrown upon the correctness of these rulings, so far as parties subject to the Mitákshara law are concerned, in *Dalpat* v. *Bhagvan*[9], but it leaves the authority of the Mayukha untouched. The restricted character of the estate taken by a widow and a mother or grandmother or *gotraja sapinda* female heir, is best illustrated by the rulings in *Pranjivandas* v. *Devkuvarbai*[10], *Narsappa* v. *Sakharam*[11] and *Sakharam* v. *Sitabai*[12].

The two classes of female heirs being thus distinctly marked, it is clear that Bai Mani as a widow of a *gotraja sapinda* could not take the inherited property in dispute as her *stridhan* in the full sense so as to devolve it on her decease to her heirs in place of the heirs of the last male owner. Both Courts have held that her alienation of it was invalid. This follows as a corrolary from the rulings of the Privy Council in *Mussamat Thakoor Deyhee* v. *Rai Baluk Ram*[13] referred to in *Harilal* v. *Pranvalavdas*[14], and *Mutta Vaduganadha Tevar* v. *Dorasinga Tevar*[15] referred to in *Dalpat* v. *Bhagvan*[9].

The only authorities to the contrary are the ruling in *Vijiarangam* v. *Lakshuman*[16], and the ruling chiefly relied on by the appellant's pleader in *Manilal* v. *Bai Rewa*[17]. In this last case the property in dispute was arrears of maintenance due to a wife from her husband, while the authority of the ruling in *Vijiarangam's case* has been considerably modified by subsequent decisions. There was no dispute in the first case about inherited immoveable

(1) I. L. R., 5 Bom., 660.
(2) I. L. R., 3 Bom., 171.
(3) I. L. R., 6 Bom., 85.
(4) I. L. R., 14 Bom., 612.
(5) 1 Bom. H. C. Rep., 117.
(6) I. L. R., 3 Bom., 369.
(7) I. L. R., 4 Bom., 214.
(8) I. L. R., 5 Bom., 264.
(9) I. L. R., 9 Bom., 301.
(10) 1 Bom. H. C. Rep., 130.
(11) 6 Bom. H. C. Rep., 215.
(12) I. L. R., 3 Bom., 353.
(13) 11 M. I. A., 139.
(14) I. L. R., 16 Bom., at p. 232.
(15) L. R., 8 I. A., 99.
(16) 8 Bom. H. C. Rep., 244.
(17) I. L. R., 17 Bom., 758.

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property, and the opposing claimants were the daughters and husband of a deceased woman. I do not think that this authority has any application to the circumstances of the present case. The Assistant Judge appears, therefore, to have correctly decided the present case when he rejected the appellant-plaintiff's claim.

It is admitted now that no heirship can be traced through Tulsidas by reason of plaintiff's being his *bandhu*, as Tulsidas was separated and never succeeded to the property. It, therefore, does not seem necessary to remand the case back to the lower Court for a finding on the issue about the alleged custom.

I would accordingly confirm the decree and reject the appeal with costs.

JARDINE, J. :—The facts to which this Court has to apply the law are the following. Narotam and Harjivan were divided brothers, and Narotam was the owner of the houses, the property in suit. Narotam, who survived Harjivan, died childless, leaving him surviving a widow named Jasoda, and a nephew Tulsidas, the son of Harjivan. Tulsidas died, leaving him surviving a widow Bai Mani. To this Bai Mani Jasoda devised the property in suit. The defendants Nos. 5 and 6 are *gotraja samanodakas*, being descendants of an ancestor of Narotam several degrees removed. The plaintiff is the son of Harjivan's daughter, Tulsidas' sister, and thus a *bandhu* of Narotam. He sued for the houses, averring that they had belonged to Tulsidas. The Assistant Judge has found to the contrary that the last male owner was Narotam. The Assistant Judge dismissed the suit on the ground that at Hindu law the *samanodakas* and not the *bandhu* of Narotam are entitled.

Mr. Wasudev Gopal Bhandarkar argued here that the houses became the *stridhan* improper of the childless widow Mani, as would follow from the *dicta* of Telang, J., in *Manilal* v. *Bai Rewa*[1], and that the same *dicta* showed that in default of children the heirs would be the same as the heirs to *stridhan* proper among whom the husband's sister's son is placed in the Vyavahára Mayukha, for which we were referred to West and Bühler, 519.

I agree with Mr. Justice Ranade that we cannot treat these *dicta* as equal to a decision, and that we ought not to go contrary

(1) I. L. R., 17 Bom., 758,

to the decisions such as *Harilal* v. *Pranvalavdas*[1], which restrict the widow's dominion over immoveable property inherited from a husband.

As the Assistant Judge has found as a fact that the houses never were the property of Tulsidas, there is no reason for requiring a finding on the issue as to the special custom of the Bhargava Brhâman caste alleged by the plaintiff whereby he says a sister's son is treated as a nearer heir than relatives connected by descent from a remote common ancestor such as the defendants Nos. 5 and 6. The Court confirms the decree with costs.

Decree confirmed.

(1) I. L. R., 16 Bom., 229.

APPELLATE CIVIL.

Before Sir C. Farran, Kt., Chief Justice, and Mr. Justice Parsons.

GAMBHIRMAL AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS, *v.* HAMIRMAL (ORIGINAL DEFENDANT), RESPONDENT.*

1896. *Februar*

Partition—Maintenance—Mortgage—Assignment of the mortgaged property as maintenance of a widow—Subsequent redemption of the mortgage—Widow entitled to the redemption money.

A field held in mortgage by the family of the parties was assigned to a widow in the family for her maintenance when the family divided. The mortgage money was subsequently paid into Court in pursuance of a decree for redemption.

Held, that it was clear on the assignment that the widow was entitled to the money just as she was entitled to the field, *i. e.*, to the usufruct of it for her life.

SECOND appeal from the decision of A. Steward, District Judge of Ahmednagar, reversing the decree of Ráo Sáheb K. S. Risvadkar, Subordinate Judge of Párner.

Three undivided brothers, Hamirmal, Gambhirmal and Gulabchand, held certain land as mortgagees. One of them (Gulabchand) died, leaving a widow Rupabai, and on partition of the family property between the two surviving brothers, the mortgaged land was given to the widow Rupabai as her maintenance. In the year 1890 the mortgagor sued to redeem the mortgaged land, and obtained a decree for redemption on payment of

* Second Appeal, No. 525 of 1895.