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That might take place fifty years after Nagabhatta's death, and thus plaintiffs after more than sixty years might maintain that the alleged adoption was invalid or never took place.

But we have to administer the law as it is. We have held that in such a case as the present, article 118 of the Limitation Act does not apply. Under these circumstances I agree that we must confirm the order of the District Judge with costs.

Decree confirmed.

APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Ránade.

1895. *October* 14.

MOTILA'L LALUBHA'I (ORIGINAL DEFENDANT), APPELLANT, *v.* RATILA'L MAHIPUTRA'M (ORIGINAL APPELLANT), RESPONDENT.*

Hindu law—Mayukha—Widow—Widow's power to dispose of moveables bequeathed to her by her husband.

Held, that a widow in Gujarát under the law of Mayukha had power to bequeath moveable property taken by her under the will of her husband which gave her express power of free disposition.

Gaddádhar v. *Chandrabhágábái* (1) distinguished.

Per RA'NADE, J.:—There is a threefold distinction between the moveable and immoveable property, between title by bequest and a title by inheritance, and a distinction between the Mayukha and Mitákshara, which must be borne in mind before the rights of a widow in Gujarát, claiming under a will which gave her express powers of free disposition over the residue of moveable property, are negatived solely on the authority of the Full Bench decision quoted above. If Rewá Bái had made no disposition herself, the moveable property, in respect of which freedom of disposition had been allowed her, would have gone to the reversioner as her husband's heir.

CROSS appeals from the decision of Ráo Bahádur Lálshankar Umiáshankar, First Class Subordinate Judge of Ahmedabad, in Suit No. 82 of 1893.

The plaintiff sued as the reversionary heir of one Girjáshankar Govindrám to recover property in the hands of the defendant. Grijáshankar died in 1880, leaving three houses and considerable moveable property. His wife Bái Rewá and two daughters Muli and Pási survived him.

By his will he gave house No. 3 to his daughters who were to be the owners thereof, and to take possession after his death.

* Cross Appeals, Nos. 80 and 166 of 1894.

(1) I. R. R., 17 Bom., 690.

As to houses Nos. 1 and 2, the will directed them

"to be given to my daughters Muli and Pási, now alive, and to any third daughter I may hereafter have—to all these daughters or to such of them as may *then* (*te veld*) be alive. My wife Rewá shall herself live in these buildings during her life-time and take care of them, and after her death my said daughters are to take the said buildings. After the death of my wife my daughters are my heirs. I give these houses to them by way of inheritance."

The residue of his moveable property the testator gave to his wife with full discretion to deal with it in any way she might think proper.

The daughters Muli and Pási predeceased Rewá, leaving no issue. Rewá died on 25th January, 1893, leaving a will, dated December, 1892, whereby she bequeathed the whole of the property in her possession to the defendant, who was the husband of her predeceased daughter Muli.

On Rewá's death the present suit was filed by the plaintiff, who was the nearest kinsman and reversionary heir of Girjáshankar to recover his property from the defendant.

Defendant pleaded that he was entitled to the property both under the will of Rewá and of Girjáshankar.

The Subordinate Judge held that Rewá had no power to dispose of the property by will, and passed a decree for the plaintiff, awarding him possession of the property with the exception of a house which he found to be part of the *stridhan* of Bái Muli.

Both parties appealed to the High Court.

Ganpat Sadáshiv Ráo appeared for the defendant (appellant).

Branson (with him *Chitnis, Motilál and Malvi*) for plaintiff (respondent).

Their Lordships (Jardine and Ránade, JJ.) held, on the terms of the will,

(1) That Muli and Pási became the owners of house No. 3 on Girjáshankar's death.

(2) That Girjáshankar's will omitted to provide for the devolution of houses Nos. 1 and 2 in the event of all the daughters dying before Rewá, who had only a life-estate in them, and that on Rewá's death there was an intestacy as to these houses, and they passed to the plaintiff as reversionary heir.

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(3) As to the moveables, the Court held that Rewá took an absolute estate in the residue, and that she could dispose of it by will.

The following is an extract from Ránade J.'s judgment with reference to Rewá's power to dispose of the moveable estate.

RA'NADE, J.:— * * * The next point relates to the moveable property. The lower Court has held that Bái Rewá's power to dispose by will of the moveable property given to her by her husband's will was as restricted as her power to dispose of immoveable property, and it has accordingly awarded plaintiff's claim in regard to the whole of this large property, excepting a *kanti* of Rs. 500, some small silver ornaments, and old clothes, grain and sundry articles of small value. I am disposed to think that the decision of the lower Court on this point is not correct. It did not apparently consider the very detailed provisions of Girjáshankar's will, more especially paragraphs 10, 11 and 12 of clause 11. These paragraphs permit full discretion to Bái Rewá after carrying out the testator's wishes to make use of the residue in such manner as she might think proper for religious and charitable purposes, to make donations, and provide for the maintenance of her daughters and for other purposes. I do not attach much importance to the word *vagaire* in this place. There is similar freedom allowed to her about the ornaments valued at Rs. 500, and pots, &c., to give away such of them as she might think proper. The moveable property is stated to be worth Rs. 14,000 in all, out of which the testator directed Rs. 800 to be spent on his funeral, Rs. 500 on Pási's marriage, Rs. 1,200 for gifts to the daughters, Rs. 4,200 in charities, and Rs. 425 with ring and *kanti* in gifts to other relations. This leaves property worth Rs. 7,000 at the complete disposal of Bai Rewá.

It appears to me that the testator intended to place no restrictions upon the disposal of the moveable property that might remain with Bái Rewá, after she had carried out the dispositions in his will, which, as stated above, exhausted only half the moveable estate. This express power in Girjáshankar's will would validate Rewá's will so far as it related to the residue of moveable property. When such power of alienation is given, the widow can bequeath even immoveable property—*Seth Mul-*

chand v. *Bai Mancha*[1]; *Koonjbehari Dhur* v. *Premchand Dutt*[2]. The Courts have all along recognized a clear distinction between moveable and immoveable property to which a widow succeeds as heir to her separated husband. The authority of *Dámodar* v. *Purmánandás*[3], which decided that a widow takes absolutely property bequeathed to her by her husband, and may dispose of it by will, has no doubt been shaken by the Full Bench decision in *Gadádhar Bhat* v. *Chandrabhágábái*[4], but this last decision referred expressly to the case of property inherited by a widow from her husband, and cannot obviously have been intended to provide for the case of a testamentary bequest with such express powers as those noticed above in the will of Girjáshankar. The decision of the Judicial Committee, on which the ruling in *Gadádhar Bhat* v. *Chandrabhágábái*[4] was chiefly based, contains words of express reservation. In *Mussumat Thakoor Deyhee* v. *Rai Baluk Ram*[5] it is stated that although a widow, according to the Western schools, might have a power of disposing of moveable property inherited from her husband, all schools are agreed that she has no such power in regard to immoveable property, and that immoveable, as well as moveable, property, *if she has not otherwise disposed of it*, passes to the heirs of her husband. The words underlined mark the distinction which takes away the present case from the operation of the rule laid down in *Gadádhar Bhat* v. *Chandrabhágábái*[4].

Moreover, the case of *Gadádhar Bhat* v. *Chandrabhágábái*[4] deals with parties subject to the Mitákshara law, while the parties to the present suit are admittedly subject to the authority of Mayukha, which is more favourable to the removal of all restrictions on woman's property. In *Dámodar* v. *Purmánandás*[3] the parties were Gujaráti traders, residents of Bombay, and that ruling only gave effect to a long course of decisions commencing with *VinávakAnandráv* v. *Lakshmibái*[6], and coming down to very recent times, *Bechar Bhagvan* v. *Bái Lakshmi*[7], *Mayarám* v. *Motirám*[8],

(1) I. R. R., 7 Bom., 491.
(2) I. L. R., 5 Calc., 684.
(3) I. L. R., 7 Bom., 155.
(4) I. L. R., 17 Bom., 690.
(5) 11 Moore's I. A., 139 at p. 175.
(6) 1 Bom. H. C. Rep., 117.
(7) 1 *Ibid.* 56.
(8) 2 Bom. H. C. Rep., 313.

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Chandrábhágábái v. *Káshináth* (1), *Lakshmibái* v. *Ganpat* (2), *Balvantráv* v. *Purshotam* (3), *Tuljárám Morárji* v. *Mathurádás* (4), *Koonjbehari Dhur* v. *Premchand Dutt* (5), *Venkata Rama Rao* v. *Venkata Suriya Rao* (6), *Dalpat Narotam* v. *Bhagvan Khushál* (7), *Bhágirthibái* v. *Kahnujiráv* (8), *Bái Jamna* v. *Bháishankar* (9), *Harilál* v. *Pránvalavdás* (10). There is thus a threefold distinction, first, between moveable and immoveable property, secondly, between title by bequest and a title by inheritance, and thirdly the distinction between the Mayukha and Mitákshara, which must be borne in mind before the rights of a widow in Gujarát, claiming under a will which gives her express powers of free disposition over the residue of moveable property, are negatived solely on the authority of the Full Bench decision quoted above. If Rewá Bái had made no disposition herself, the moveable property, in respect of which freedom of disposition had been allowed to her, would have gone to the reversioner as her husband's heir under the authority of the rulings noticed above. But as she has disposed of it by her will, the reservation expressly recognized by the Privy Council decisions comes into play, and to that extent the Full Bench decision does not govern the present case.

The Court amends the decree of the Subordinate Judge of the First Class by confirming so much of the decree as awards to the plaintiff as residuary heir of Girjáshankar the houses specified in Girjáshankar's will, Exhibit 91, as houses Nos. 1 and 2, and by reversing so much of the decree as awards to the plaintiff any other of the property claimed. The Court now dismisses the suit except as to the above houses Nos. 1 and 2. As to the suit and Appeal No. 80 of 1894, the plaintiff to get costs throughout on the amount of the claim awarded, and to pay the costs of the defendant throughout on the amount of the claim rejected. Costs of Appeal No. 166 of 1894 on the plaintiff.

Decree amended.

(1) 2 B. H. C. Rep., 323.
(2) 4 B. H. C. Rep., 149 at p. 162.
(3) 9 B. H. C. Rep., 99 at p. 111.
(4) I. L. R., 5 Bom., 662.
(5) I. L. R., 5 Cal., 684.
(6) I. L. R., 1 Mad., 281; and I. L. R., 2 Mad., 333.
(7) I. L. R., 9 Bom., 301.
(8) I. L. R., 11 Bom., 285.
(9) I. L. R., 16 Bom., 233.
(10) I. L. R., 16 Bom., 229.