1892.

NABÁB MIR SAYAD ÁLAMKHÁN v. YÁSINKHAN.

SARGENT, C. J.:—Supposing the deed not to have been executed at all, as the Subordinate Judge has found, the period for recovering possession by the minors would not run until the possession by the manager became adverse, and that would not be until the manager distinctly repudiated the management. Again, if it was executed by the ladies only, article 144, and not 91, of the Limitation Act would apply. See *Sikherchand* v. *Dulputty*(1) and *Bhagvant Govind* v. *Kondi valad Muhádu*(2). And even if the minors, whose names appear on the deed, actually executed it, still as the defendant did not get into possession under it, and only uses it to defend his position, article 91 would not apply, on the authority of *Boo Jinatboo* v. *Sha Nagar Valab Kánji*(3). Therefore, in any case the suit would not be barred, and the decree must, therefore, be confirmed, with costs.

Decree confirmed.

(1) I. L. R., 15 Calc. 253. (2) I. L. R., 5 Calc., at p. 370.

(3) I. L. R., 14 Bom., 279.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Telang.

1892. *October* 19.

MANILA'L REWADAT (ORIGINAL DEFENDANT), APPELLANT, *v.* BA'I REWA (ORIGINAL PLAINTIFF), RESPONDENT.*

Hindu law—Inheritance—Stridhan, devolution of—Woman's estate apart from stridhan, devolution of, according to Mayukha—Property inherited by a woman from a male owner—Property not of the class called "stridhan proper"—Reversion on her death to heir of last male owner—Theory of such reverter not to be extended to stridhan—Meaning of expression "sons and other heirs" used in Mayukha, Ch. IV, Sec. 10, pl. 26—"Sons and the rest," meaning of—Decree for maintenance obtained by wife against her husband—Appeal by husband against decree—Death of wife pending appeal—Daughter to be legal representative of the deceased for the purpose of the appeal—Practice—Procedure.

In cases to which the Vyavahára Mayukha is applicable, a woman's daughter and not her husband is the heir to her property, although not of the kind belonging to the class of '*stridhan* proper.'

The doctrine that property which has been inherited by a woman should revert on her death to the heirs of the last male owner is not to be extended to the devolu-

* Appeal No. 27 of 1891.

. the heirs to the woman herself, though

hapter IV, section 10, placitum 26 of grandsons and great-grandsons," and the n placita 14, 23 and 24 means "daughters and n "sons, grandsons and great-grandsons."

nich does not class as woman's property in the technical a the rest" take precedence over the "daughters and the rest." ns and daughters the heirs to "*stridhan* proper" and "*stridhan* are identical, save that as between male and female offspring the latter have a preferential right as regards "*stridhan* proper," while the former have a similar right as to "*stridhan* improper."

The author of the Mayukha, like the author of the Mitákshara, does not regard the enumeration of specific kinds of *stridhan* in the old Smriti texts as exhaustive. He includes under the name all that by law becomes the property of the woman, only (unlike the author of the Mitákshara) he distinguishes the specific kinds enumerated in the texts from those which are not so enumerated for purposes of inheritance. In doing this it seems quite reasonable to lay down that, as regards that class of property which is emphatically woman's property being expressly so named by the old sages, the female offspring should take precedence over the male; while as regards that which is not such, the general preference given to male offspring over female by Hindu law should have effect. On the other hand there is no obvious reason why in the case of collateral relations any similar distinction should be maintained between the two classes.

Under the rule of succession above stated, the woman is recognized as a fresh source of devolution. It is to be remembered that the property with which the rule in question deals, is not merely that which the woman obtains by inheritance, but may include that which has never belonged to her husband or any other relation, either on the husband's or the father's side, but is her own original acquisition. Such property is the woman's property; it is not the husband's property. Why, then, should it go on her death to any one except to those who are the woman's heirs, and how can the rule about the last male owner be made applicable to such property at all?

A Hindu wife obtained a decree against her husband for maintenance. He appealed, and while the appeal was pending the wife died, leaving two daughters. The question then arose whether her husband or his daughters should represent the deceased in the appeal.

Held, that the daughters of the deceased were the legal representatives for the purposes of the appeal.

THIS was an appeal from an order passed by E. M. H. Fulton, District Judge of Ahmedabad.

The plaintiff sued her husband to recover arrears of maintenance and to obtain an order for future maintenance for herself and two minor daughters, Diváli and Rukmini. The Subordi-

892.

ANILÁL EWADAT v. J REWA.

nate Judge awarded the claim, arrears and to continue to pay rate.

The defendant appealed, and pendin recovered the amount of the maintenance execution of the decree. Before the appeal can the plaintiff (respondent) died. The appellant (def applied to have her (the respondent's) surety placed on the as her representative, but the application was refused.

The appellant then applied to place on the record the names of the respondent's two daughters as her representatives on the ground that they were entitled to succeed to her *stridhan*, if any. This application was also refused, the Judge being of opinion that under the Mayukha, which was the authority applicable to this case, the daughter inherited the *stridhan* of the mother only when it belonged to one of the six classes specially mentioned, and that the right to maintenance, which was the alleged *stridhan* in this case and which was the subject of the appeal, did not belong to any of those classes and, therefore, did not descend to the daughters, but to the husband. In his judgment he said:—

"Before the hearing of the appeal which her husband had brought she (Bái Rewa) died. He then applied to have her surety made respondent for the purpose of carrying out the appeal, but the application was refused * * *

"He has now applied to enter the names of the deceased's minor daughters on the ground that they are entitled to succeed to her *stridhan* if she has any. It is not, however, alleged in the application that any such *stridhan* exists. In Gujarát, according to the Mayukha, the *stridhan* to which a daughter is entitle in preference to other heirs is the sixfold property speciall enumerated. In respect of other property, the husband and r the daughters are the heirs, the presumption being (in the abse of allegation or proof to the contrary) that the marriage was in of the approved forms. The subject-matter of this suit, nam money to which the wife may have been entitled as mainten is property of that other kind of which the husband is the

The daughters, therefore, are not the legal representatives of the wife for the purposes of this suit."

The defendant appealed against this order.

Gokuldas K. Párekh for the appellant:—The Judge was wrong in holding that the daughters are not the legal representatives of the deceased with respect to the property in dispute. The sum awarded for the maintenance of a female may or may not be included in the category of *stridhan* technically so called; still it is *stridhan*, and being *stridhan* the persons entitled to succeed to it are her heirs and not the heirs of her husband—Vyavahára Mayukha, Ch. IV, sec. 10, pl. 24—28. The Mayukha is not quite explicit on the point. For the purpose of determining what is meant by the expression "legal representative" of a female, the passages from the Mitákshara and the Mayukha bearing on the point may be read together.

Chimanlál H. Setalvad for the minor respondents (the daughters):—We rely upon *Vijiárangam* v. *Lakshuman*[1]; West and Bühler, pp. 150, 151; Banerji's Law of Marriage and Stridhan, p. 443. The words in the Mayukha are *putrádayah* (sons and others), that is, sons and other heirs succeed in the case of a non-technical *stridhan*. This excludes the idea of daughters coming in. There is a distinction as to succession in the case of a technical *stridhan* and non-technical *stridhan*. The amount of *stridhan* being not a technical *stridhan*, the daughters cannot succeed. In the present case there being no sons, the husband is the heir of the deceased. The daughters being expressly excluded by the expression *putrádayah*, they cannot succeed under the rules relating to non-technical *stridhan*, but they may come in as heirs to such property under the general law relating to inheritance if there is no other heir in existence.

TELANG, J.:—The question which directly arises in this case is as to the person entitled to represent a deceased woman in an appeal filed by her husband against a decree for maintenance obtained by her. The right to such representation would depend on the right of inheritance. And the maintenance money being admitted on both sides not to be of the class called "*stridhan*

(1) 8 Bom. H. C. Rep., O. C. J., 244.

1892.

MANILÁL REWADAT v. BÁI REWA

proper" by the Vyavahára Mayukha, which is the authority applicable to the case, the question to be decided assumes this form: Is the husband of a deceased woman, or her daughter, the preferential heir, according to the Vyavahára Mayukha, to that woman's property, not being property of the kind which classes as "*stridhan* proper"?

The solution of this question depends on the true construction of the Vyavahára Mayukha, Chapter IV, section 10, placitum 26[1], a passage which must be at once admitted to be extremely obscure, and which two of our most important text books on Hindu law have proposed to interpret in two absolutely irreconcileable ways. In West and Bühler's Digest, pp. 150-1, the opinion expressed on the point is identical with that which in *Vijiárangam* v. *Lakshuman*[2] West, J., put forward when he spoke as follows in regard to the construction of that passage: "Inherited property, Nilakantha says, though it is *stridhan*, not being one of those kinds of *stridhan* for which express texts prescribe exceptional modes of descent, goes, on the woman's death, to her sons and the rest, as if she were a male, and this too notwithstanding her having left daughters (Vyav. May., Ch. IV, sec. X, pl. 26). The passage which sets forth this doctrine being somewhat obscure in Mr. Borradaile's translation, it may be as well to say that its true purport is this:—"It is clear

(1) Placita 24 and 26 of the chapter of the Mayukha referred to run as follows:—

24. This right of inheritance, of daughters and the rest, in the mother's property, exists only in the wealth given before the nuptial fire (Adhyagni), and in the bridal procession, (Adhyávahanika) and the other (kinds) above recorded in the texts (paras. 1-2-3) specifying woman's property; for, if relating to all wealth in which their mother has any property, it would go to set aside those texts (limiting it to six.)

The right of the daughters and their issue, confined to the six kinds of property.

26. However, the text of Yájnavalkya, "Let sons divide equally both the effects and the debts, after (the demise of) their two parents": relates to (what is) acquired by the act of partition and the like with the exception of that declared in the above texts (as woman's property). From this it is clear that, if there be daughters, the sons or other heirs even succeed to the mother's estate, distinct from that part before described (as woman's property.)

Woman's property is an exception to the general right of sons. CLIX.

(2) 8 Bom. H. C. Rep. (O. J.), at p. 260.

that although there be daughters, the sons or other heirs still succeed to the mother's estate, so far as it is distinct from the part already described (as subject to peculiar devolution under texts applicable to particular species of *stridhan*").

On the other hand, Mr. Mayne says that "it is very questionable whether Nilakantha meant anything of the sort," and he states his own interpretation of Nilakantha's views in the following words:—The meaning of this appears to me to be, "the mother's estate does not descend according to the rules 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. Where, therefore, the property had come to the mother from a male, it would return to the heirs of that male." On the best consideration that we have been able to bestow on this subject, we have been compelled to come to the conclusion, that neither of these interpretations of the Vyavahára Mayukha is correct.

Dealing first with Mr. Mayne's view, we confess, we are unable to see in the opinion of Nilakantha anything whatever to show that he regarded the devolution of property on a woman as an "accident," or that he adopted the doctrine that on that accident ceasing by the death of the woman, the property should revert to the heirs of the last male owner. This doctrine of reverting to the heirs of the last male owner is one which is nowhere expressed, as far as we are aware, in either the Mitákshara or the Mayukha. It appears to be a doctrine of Jimutavahana. And although, in consequence, probably, of the early Privy Council decisions pronounced in Bengal cases having been applied to cases arising in other provinces, this theory of reverting has been authoritatively laid down in one or two other instances, we do not think that it is necessary or allowable to introduce that conception into the theory of *stridhan*, without some basis for it being found in the original authorities. We are not aware of any such basis. On the contrary, we are of opinion that Nilakantha, at all events, discards that conception in one passage in clear and express terms. In Chapter IV, section 10, placitum 28, in dealing with the devolution of *stridhan* in default of the

1892.

MANILÁL REWADAT v. BÁI REWA.

husband, Nilakantha states the view of the Mitákshara, which might be supposed to be that it goes to the husband's relations as such, and then proceeds to point out that such a supposition would be incorrect, and finally lays it down that the Mitákshara must be construed in a sense identical with his own opinion, which is that the heirs to succeed are the heirs to the woman herself, though her heirs in the husband's family. He expressly refers to the general rule laid down by Manu in Chapter IX, placitum 187, and deduces from it the conclusion, that it is propinquity to the deceased which creates the right to take the property of the deceased. It appears to us that this conclusion and the grounds on which it is rested are alike inconsistent with the theory propounded by Mr. Mayne. Again, it is to be remarked that, on Mr. Mayne's construction, as far as we are able to make it out with precision, the phrase used by Nilakantha "the sons or other heirs," which Mr. Mayne paraphrases by "such heirs, being sons or otherwise," is not to be understood as expressing the relationship to the "mother" whose estate is in question, but to a previous male holder. Unless this is so, we cannot perceive how the theory of a reverter can be spelt out of the passage under discussion. But if this is the true interpretation of Mr. Mayne's view, we are bound to say that it is, in our opinion, entirely inconsistent with the actual language here used by Nilakantha, which necessarily requires that the relationship of "daughters" on the one hand and of "sons or other heirs" on the other, must be traced to the same propositus, *viz.*, the "mother" whose estate is in question. Further, it is not unworthy of note, that, *as expressed*, this rule of Nilakantha, on Mr. Mayne's construction as above interpreted, can only apply where a woman has succeeded by inheritance to the property of a previous holder, to the exclusion of the other "heirs, being sons or otherwise" of such previous holder. But ordinarily the only case in which such an exclusion of sons, &c., by a female heir would occur, would be in the case of property descending, as *stridhan* for example, to one woman from her mother or grandmother. If there are other cases, they must be very rare indeed. If so, this passage affords an extremely narrow foundation, if it affords any foundation at all, for a rule about a reverter to the

heirs of the last *male* holder. On such grounds as these, we are unable to accept the interpretation put by Mr. Mayne on the passage under consideration.

As regards the other interpretation, it must be observed, in the first place, that we are told in the Digest itself, that how the rule "is to be worked out in detail is not laid down." And obvious that at the very outset we are encountered by a difficulty. The list of heirs referred to for the purposes of the rule comprises a widow. When, therefore, the rule is to be applied to a female propositus, a modification of this becomes absolutely essential, and the suggestion has then to be made, that that word should be taken to signify the analogous relationship, and must be held to mean "husband" for the purposes of this adaptation of the rule. This, we confess, appears to us to be a great difficulty, and we are unable to recall any similar case of the use in any of our books of a class name with the word "*adi*," &c., where any similar modification is found to be necessary. Secondly, it is to be noted, that the words "as if she were a male" are *not* Nilakantha's. We presume that they are introduced as explanatory of the phrase "the sons and the rest," which is understood as referring to the whole group of heirs of a separated male householder from "sons" down to the end of the so-called "compact series." We shall, in the sequel, show that it is unnecessary to interpret the words "the sons and the rest" with reference to the list of heirs of a separated householder. But here we may point out one slight difficulty in addition to that already indicated in the way of that interpretation. The whole succession of heirs comprised under that phrase is not, in fact, grouped together as one class by the Vyavahára Mayukha in the place where it is first laid down for its principal and direct purpose. The lineal male descendants, who come at the head of that line of succession, are dealt with separately and by themselves under the head of unobstructed heritage, which is laid down as a separate branch of heritage. The succession of a widow and the subsequent heirs is dealt with separately under the head of obstructed heritage, and in the Vyavahára Mayukha itself these two parts of the line of succession are separated by a discussion of questions connected with partition and with impartible pro

1892.

MANILÁL REWADÁT v. BÁI REWA.

perty. We do not think this circumstance to be by any means conclusive, but we think it is of some importance in deciding whether, as supposed, Nilakantha had in mind an ideal group which he has not himself described or treated of as one integral group anywhere else.

We think that, looking at the whole course of the discussion of which Chapter IV, section 10, placitum 26, forms a part, the phrase "sons and the rest" has really a much narrower scope and extent than is attributed to it in the interpretations proposed by Mr. Mayne and in West and Bühler's Digest. The phrase appears to us to mean "sons, grandsons, and great-grandsons" and no more. From placitum 13 of section 10 the discussion commences with respect to succession to a woman's property. And down to placitum 27 various points relative to such succession as between the offspring of the deceased woman *inter se* are considered. In some cases, it is said the male offspring or sons inherit jointly with the female offspring; in others the latter entirely exclude the former; in still others, the former exclude the latter. This will be seen to be the main topic discussed in the placita referred to. Doubtless some minor matters are also considered. But that is the main point. And after exhausting that part of the discussion, Nilakantha, in the later placita from placitum 27 onwards, proceeds to deal with the rights to woman's property of other heirs than the lineal descendants, male or female, of the deceased woman. It seems to us that this general view of the scope of the different parts of the section under consideration shows that the phrase referred to is probably confined in its intention to the limits above indicated. An examination of the placitum in detail supports that conclusion. Placitum 13, adverting to two particular species of *stridhan*, lays it down that the woman's "children" succeed to it. Down to placitum 16 this general rule is explained and certain distinctions and modifications are stated. In placitum 17 a rule is laid down about another of the specific classes of *stridhan*, giving it to the unmarried daughter alone. In placitum 18 all classes of woman's property other than those specifically provided for in the previous placita are dealt with, and said to go to the daughters. The subsequent placita down to placitum 25 state the necessary

details connected with that topic, and in placitum 25 it is distinctly pointed out that all these rules relate to *stridhan* technically so called. In placitum 26 woman's property not of the technical class is dealt with, and it is said that here the sons and the rest take it even if there are daughters. Placitum 27 then proceeds to give the rules regarding the devolution where there is no offspring of either sex; thus further implying what has been already shown, that the previous placita were intended to deal only with the respective rights of offspring male or female, where they exist.

Again, if we look at the use of the word "*adi*" in the course of this discussion, we shall find the same conclusion strengthened. In placitum 14 we have the phrase "daughters and the rest;" in default of them we are told sons are to succeed. Clearly the word *adi* there must, in our opinion, be limited to the issue of the daughters in the sense elsewhere explained. In placitum 23, we have the phrase "daughters and the rest" again; and again it can, we think, be only interpreted in the limited sense here indicated. We have in the same placitum the phrase "sons and grandsons and the rest take the property," and the authority cited for the proposition only refers in terms to "sons." It seems, therefore, to follow that the phrase there can only mean "sons, grandsons and great-grandsons." Again, in placitum 24 we have "daughters and the rest" once more. And the context shows that that means daughters and their issue as contrasted with sons, grandsons and great-grandsons. Lastly, we have "sons and the rest" in placitum 26. And we can see no reason why the phrase should be construed differently from "sons, grandsons and the rest" in placitum 23, while on the other hand the whole context, we think, requires that construction to be adopted.

Again it is to be observed that the rule under consideration is deduced by the author of the Mayukha from the text of Yajnavalkya quoted in placitum 26, in which only sons are named. That text, in its application to the estate of the father, is quoted by the Vyavahára Mayukha at Chapter IV, section 4, placitum 17 (Stokes, page 52). That passage occurs in the section relating to unobstructed heritage, and is, therefore, confined to the rights of the lineal male descendants—sons, grandsons and great-grand-

1892.

MANILÁL REWADAT v. BÁI REWA.

sons. It has no connection there with the succession of the heirs comprised in the "compact series" beginning with the widow. That circumstance also appears to us to afford some indication of the limits within which the meaning of the word *adi* in placitum 26 must be confined.

It would thus appear, that in the passage under consideration, what Nilakantha intends to lay down is that as regards property which does not class as woman's property in the technical sense, the "sons and the rest" take precedence over "the daughters and the rest." The question, however, remains as to who are the other heirs to such property, failing both sons and daughters. On Mr. Justice West's construction, no doubt, as well as on Mr. Mayne's, no such question would arise, as the whole of the series of heirs defined elsewhere are thereby held to be the series of heirs to a deceased woman. But on the construction now put forward, it seems to us the answer to the question above formulated must be, that the heirs to *stridhan* proper and *stridhan* improper are identical, save that as between male and female offspring the latter have a preferential right as regards *stridhan* proper, while the former have a similar right as to *stridhan* improper. It must be admitted, no doubt, that there is some little difficulty created in the way of the adoption of this view, by the circumstance that the Vyavahára Mayukha in dealing with the later stages of the devolution only mentions *stridhan* proper, whereas on this view one would expect that he should there mention both classes of *stridhan*. This is true, but we think the difficulty is not insurmountable in the case of a work constructed as the Mayukha is, when it is remembered that the author's aim throughout is to evolve his propositions from the texts of older writers. In this particular case, for instance, while it is true that in placitum 27 the rule laid down relates in terms only to *stridhan* proper, though on the view here expressed it is really intended to apply to both classes of *stridhan*, still that circumstance may be said to be to some extent explained by this, that that placitum is only a reproduction of a text of Yajnavalkaya with a short introductory comment of Nilakantha's, and no more. As Nilakantha understood that text only to refer to *stridhan* proper, he could only use it as an authority for a proposition

limited to that class. And if he does not go on at the same time to point out that that proposition should also be applied to *stridhan* improper, this is probably because he must have supposed that as he was laying down no other rule about it, this general rule must be treated as applicable; and further because he probably thought that he had to all intents and purposes already indicated that the difference between the lines of inheritance to the two classes of *stridhan* was limited to the one point already mentioned by him in that connection. Independently of these considerations we think that as we have here to find out a rule for the devolution of one class of *stridhan*, where no express rule is stated in distinct terms, it is more likely that the author intended it to be found in the rule laid down as regards another species of the same genus of property, especially as all the species of that genus are dealt with in one and the same section, than that he intended to refer us for guidance to a rule laid down as regards an entirely different kind of property, the succession to which is laid down in an entirely different section of the work, and laid down in a manner which, without modification, is admittedly not applicable to the species of property here under consideration. If the latter rule was intended by Nilakantha to be applied in this case, we think we might fairly expect that to be stated much more explicitly than it has been in fact in the passage under discussion.

On general grounds, too, we think it may be said that the rule, as now stated, is in harmony with the doctrines of the Mayukha. The author of that work, like the author of the Mitákshara, declines to look upon the enumerations of specific kinds of *stridhan* in the old Smriti texts as exhaustive. He includes under the name all that under the law becomes the property of the woman[1]; only, unlike the author of the Mitákshara, he distinguishes the specific kinds enumerated in the texts from those which are not so enumerated, for purposes of inheritance[2]. In doing this, it seems quite reasonable to lay down that as regards that class of property which is emphatically woman's

(1) Ch. IV, sec. 10, pl. 2. See Stokes, Hindu Law Books, p. 98.

(2) Stokes, p. 104 (pl. 24); and Stokes, p. 105 (pl. 26), where a word in the original is omitted in the translation: see Mandlik's Mayukha, p. 97.

1892.

MANILA'L REWADAT v. BA'I REWA.

property, being expressly so named by the old sages, the female offspring should take precedence over the male; while as regards that which is not such, the general preference given to the male offspring over female by Hindu law should have effect. On the other hand, there is no obvious reason, why in the case of collateral relations any similar distinction should be maintained between the two classes. Of course, if the woman whose property is in question is not to be treated as a fresh source of devolution at all—which is Mr. Mayne's view as regards *stridhan* improper—all these considerations are beside the question.

But, apart from the points already discussed, we confess it seems to us that once we recognise the woman's ownership in the property in the way it is recognised by Nilakantha, it is a matter of course recognising her as a fresh source of devolution, unless some powerful considerations can be urged on the other side. We can see none such here, but rather the contrary. For it must be remembered that the property with which the rule in question deals is not merely that which the woman obtains by inheritance, but may include that which has never belonged to her husband or any other relation either on the husband's or the father's side, but is her own original acquisition[1]. Such property is the woman's property; it is not the husband's property. Why, then, should it go on her death to any one except to those who are the woman's heirs? And how can the rule about the last male owner be made applicable to such property at all?

On these grounds we are of opinion that the daughters of the deceased Bái Rewa are her legal representatives for the purposes of this appeal, and that, therefore, the order of the Court below should be reversed and the appeal remanded for disposal by the lower Court. Costs to abide the result.

Order reversed.

1) Ch. IV, sec. 10, pl. 3—12; Stokes, pp. 99—102.