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of Macnaghten, show clearly that the whole subject of pre-emption is very complicated, and a dispute such as this cannot be disposed of in a summary way by laying down a single general issue. I agree, therefore, with Mr. Justice Parsons in reversing the decree of the Assistant Judge and remanding the case for further inquiry after giving notice to both sides and laying down the proper issues.

Decree reversed and case remanded.

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Ranade.

1899.
December

CHUNILAL (ORIGINAL DEFENDANT No. 1), APPELLANT, *v.* BAI MULI (ORIGINAL PLAINTIFF), RESPONDENT.*

Will—Hindu will—Construction—Vested remainder—Words "málak and wáras."

A Hindu died, leaving a will which provided (*inter alia*) as follows :—

"After my death, my wife, if she be alive, is the rightful heir, and if she be not alive, and after the death of my wife, my daughter Bai Nathi is my rightful heir (*hakdár wáras*)" ..... "As to my daughter Nathi, whom I have, after the life-time of myself and of my wife, appointed heir to my property, and as to the surplus the heir to the same is my daughter Nathi."

The testator died in 1894; Nathi in 1895; and the wife in 1897. Thereupon the testator's step-mother claimed the property as his reversionary heir.

Held, that under the will Nathi took an estate vested in interest from the testator's death, which would pass to *her* heirs on her death, and the step-mother would have no title.

There is no real difference in the meaning of the words "*wáras*" (heirs) and "*málak*" (owner).

SECOND appeal from the decision of Ráo Bahádur Chunilal D. Kaveshvar, First Class Subordinate Judge of Ahmedabad.

One Bogaldas Girdhar died in 1894, leaving him surviving a widow Fulkore, a daughter Bai Nathi, and a step-mother (the plaintiff).

He left a will, which provided (*inter alia*) as follows :—

"As to the money, ornaments, and immoveable property and sundry sums of money which may remain after deducting the said

* Second Appeal, No. 451 of 1899.

expenses, to the same after me (*i.e.*) after my death, my wife, if she be alive, is the rightful heir, and if she be not alive and (that is to say) after the death of my wife my daughter named Bai Nathi is my rightful heir..... As to my one daughter Behen Nathi whom I have after the life-time of myself and of my wife appointed heir to the property remaining after the deduction of all the expenses, she has been married to Desai (Chunilal Vithaldas) bin Mahasukram of Kapadvanj, and as to the surplus which may remain out of the aforesaid property after deducting therefrom the expenses and outlays which I and my wife may make so long as we are alive, the heir to the same is my daughter Nathi."

Bai Nathi died in 1895.

On 7th August, 1896, Fulkore sold the house in dispute to the defendant. Fulkore died shortly afterwards.

In 1897 the plaintiff filed the present suit to have the sale to the defendant set aside and to recover possession of the house.

Defendant set up a *jus tertii*, contending that under Bogaldas' will the property had vested absolutely in Bai Nathi, and passed on her death to her husband, and that the plaintiff had, therefore, no title to the property.

The Subordinate Judge held that as Bai Nathi died before her mother, the bequest to her did not take effect, and that as the sale to the defendant was not made under a legal necessity, the plaintiff as a reversionary heir of Bogaldas was entitled to have it set aside and recover the property. He, therefore, decreed the plaintiff's claim.

This decision was upheld, on appeal, by the First Class Subordinate Judge A. P. His reasons were as follows :—

"Now the first point to be decided is whether Bai Nathi had a vested interest in her father's estate by the will, and whether it passed to her husband as her heir in preference to the plaintiff, her father's step-mother. The appellant's learned pleader has cited the case of *Lallu* v. *Jagmohan*[1]. It appears to me that the present case is not similar to the case cited; and the property was not vested in Bai Nathi on her father's death by the terms of the will made by her father. In the case cited

(1) (1896) 22 Bom., 409.

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the words of the will are, 'when I am not alive, my wife named Suraj is the owner of the property, and after her death, my daughter Mahalaxmi is the owner of that property.' The testator made his wife owner of his property on his death, and after her death the daughter Mahalaxmi owner of the same property. But here it is not. Here there is no word 'owner,' but the word used is 'heir.' * * * *

"Here the daughter was to take the property as heiress on the death of her mother in the same way as might have been the case if no will was made. Under the circumstances I hold that Bai Nathi took no vested interest by the terms of the will."

Against the decision defendant preferred a second appeal to the High Court.

Ganpat S. Rao for appellant:—The case of *Lallu* v. *Jagmohan*[1] is on all fours with the present. In that case, as in this, the testator gives a life estate to his wife, with remainder over to his daughter. The daughter takes a vested interest in the property from the testator's death, and though she died before the widow, the bequest to her did not lapse. Her interest passed on her death to her husband as her heir. There is no difference in meaning between the words "owner" and "heir."

Nagindas Tulsidas for respondent:—Both the lower Courts hold, on the construction of the will, that the intention of the testator was to give his wife and daughter the same estate which they would get under the Hindu law. The will leaves them in precisely the same position in which they would have been if the deceased had died intestate. That being the case, the daughter having died in the life-time of the widow, took no interest in the property which could pass to her husband. The words "owner" and "heir" do not bear the same meaning.

PARSONS, J.:—Bogaldas died in 1894, leaving a will in which the following declarations are made:—"After my death my wife, if she be alive, is the rightful heir, and, if she be not alive and after the death of my wife, my daughter Bai Nathi is my rightful heir (*hakdár wáras*)".....As to my daughter Nathi, whom I have, after the life-time of myself and of my wife, appointed heir to

(1) (1896) 22 Bom., 409.

my property and as to the surplus the heir to the same is my daughter Nathi." Nathi died in 1895, the wife died in 1897. The facts, therefore, are almost exactly the same as those in the case of *Lallu* v. *Jagmohan*[1], and, if that ruling is followed, the result would be that Nathi would take an estate vested in interest from the testator's death which would pass to her heirs on her death, and the plaintiff would have no title.

The Judge of the lower Appellate Court has, however, distinguished it on the ground that, in the will there dealt with, the word "owner was used, whereas in the will now under discussion the word "heir" is employed. We think that this is not correct. There is no real difference in the meaning of the words *málak* (assuming that that was the vernacular word translated owner) and *wáras* when they are used in the wills. The intention of the testator in each case to give his whole property to his wife for life and on her death to his daughter absolutely is clear, and we cannot hold that because in this case he has said they shall be heirs of the property, and not said they shall be owners, the intention fails.

For this reason we reverse the decree of the lower Appellate Court and dismiss the plaintiff's claim with costs throughout.

Decree reversed.

(1) (1896) 22 Bom., 409.

APPELLATE CRIMINAL.

Before Mr. Justice Parsons and Mr. Justice Ranade.

QUEEN-EMPRESS *v.* TYAB ALLI.*

19C
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Indian Arms Act (XI of 1878), Sec. 22—Master and servant—Master's liability for the criminal acts of his servant.

Where the manager of a licensed vendor of arms, ammunition and military stores sold certain military stores without previously ascertaining that the buyer was legally authorized to possess the same,

Held, that the licensee was liable to punishment under section 22 of the Indian Arms Act (XI of 1878), though the goods were not sold with his knowledge and consent.

* Criminal Appeal, No. 492 of 1899.