of the application, the judgment and the decree. This proviso is apt to be overlooked, but it would provide a safegaurd against this if the Judge or Bench admitting a pauper appeal were to express and record very briefly the reasons for granting leave, so that the Bench before whom the appeal ultimately comes may have an assurance that the leave was properly given.

APPELLATE CIVIL.

Before Sir L. H. Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Batty.

1904.
April 12.

SHA CHAMANLAL MAGANLAL AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS, *v.* DOSHI GANESH MOTICHAND, DECEASED, BY HIS HEIRS MANEKCHAND GANESH AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Hindu Law—Gujarát—Father's father's sister's grandson—Mother's sister's son preferential heir—Moveables inherited by widow—Testamentary power of disposition—Mayukha.

In Gujarát a mother's sister's son is the preferential heir to a father's father's sister's grandson.

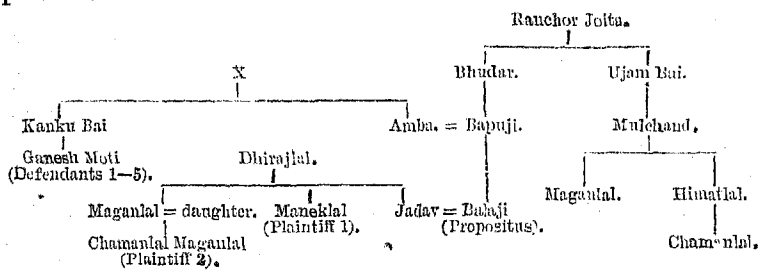
Under the Mayukha a widow has no testamentary power of disposition over moveables which have been inherited by her from her husband.

Gadadhar Bhat v. *Chandrabhagabai* (1) followed.

APPEAL from the decision of Karpurram M. Mehta, Second Class Additional Joint Subordinate Judge of Ahmedabad, in Original Suit No. 58 of 1901.

Question of preferential heirship according to Hindu Law.

The following genealogical table shows the relationship of the parties :—



* Appeal No. 70 of 1903.

(1) (1892) 17 Bom. 690.

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Balaji, the propositus, died in 1885-86, leaving him surviving a mother Amba and a widow Jadav. Amba and Jadav died in 1899-1900 at the interval of eight or ten months, the former dying before the latter. Amba had a sister Kanku. Ganesh Moti, father of defendants 1—5, was Kanku's son. He was alive when Jadav died. He was thus Balaji's first cousin (mother's sister's son). Magan was the grandson of Ujam Bai, Balaji's father's father's sister.

The plaintiffs alleged that Bai Jadav (who was the sister of plaintiff 1 and maternal aunt of plaintiff 2) made a will in their favour on the 20th September, 1899, and that on her death they came in possession of her property and books under the will, but did not get the ornaments pledged by her. Subsequently they having applied for a certificate under the Succession Certificate Act (VII of 1899), their application was opposed by Maganlal Mulchand, Chamanlal Himatlal and Ganesh Moti who made counter-applications. Thereupon a settlement was effected between the plaintiffs on one hand and Maganlal and Chamanlal on the other and under the settlement, which was dated January, 1901, the latter assigned to the plaintiffs all their rights as the heirs of the estate of Balaji and Bai Jadav for Rs. 1,500. According to the settlement the Court having passed an order granting the certificate to the plaintiffs, Ganesh Moti appealed and the Appellate Court reversed the order and directed that certificate be granted to Ganesh Moti. The plaintiffs thereupon brought the present suit (1) for a decree that Ganesh Moti, since deceased, father of defendants 1—5, was not the heir of Balaji Bapuji and his widow Bai Jadav; that the plaintiffs were the heirs of Balaji Bapuji and his widow Bai Jadav under the will of Bai Jadav and also under the assignment made by Maganlal and Chamanlal, who claimed to be the heirs of Bai Jadav, and that defendants 1—5 had no right to the estate; (2) for a decree directing the defendants to account for the outstandings realized by them; and (3) for a perpetual injunction restraining the defendants from disturbing their possession of the properties set forth in the plaint and from recovering further outstandings.

The defendants contended, *inter alia*, that the plaintiffs were not the heirs of Balaji; that they could not acquire any rights

under the will of Bai Jadav, who had no authority to will away her husband's estate; that Maganlal and Chamanlal were not the heirs of Balaji and consequently the plaintiffs acquired no right under the assignment.

The Subordinate Judge found that Bai Jadav's will was unauthorized and invalid; that Maganlal and Chamanlal were not Balaji's heirs; that the plaintiffs were not the heirs of Balaji and Bai Jadav, and that the plaintiffs were not entitled to any relief. He, therefore, dismissed the suit, holding that defendants 1—5 being the *Atmabandhus* of the deceased Balaji, they had a preferential right as Balaji's heirs to Maganlal and Chamanlal who were the *Pitribandhus* of the deceased.

Against the decree of the Subordinate Judge, the plaintiffs appealed to the District Court at Ahmedabad (Appeal No. 239 of 1902), but as the case involved purely a question of law and as another appeal between the same parties was pending in the High Court, the appeal in the District Court was transferred to the High Court at the instance of the applicants Shakra Nathu (defendant 9), and another in Civil Application No. 119 of 1903.

G. S. Rao, for appellant 1 (plaintiff 2).

L. A. Shah, for respondent 1 (defendant 1).

N. K. Mehta, for respondent 2 (defendant 6).

JENKINS, C. J.:—Two questions only arise on this appeal; 1st whether in Gujarát a mother's sister's son or a father's father's sister's grandson is the preferential heir, and 2ndly whether under the Mayukha a widow has a testamentary power of disposition over moveables which have descended to her from her deceased husband.

Both the competing heirs are *bandhus* and the text of the Mayukha by which the descent in this case is governed, is in these terms (see Mandlik's Hindu Law, pp. 82, 83):—

"In default of *Samanodakas* (come) the *Bandhus* (cognate kindred). They (are thus specified) in another *Smriti*: 'The sons of one's own father's sister, the sons of one's own mother's sister, and the sons of one's own mother's brother, are to be reckoned as *Atmabandhus* (one's cognate relations).

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The sons of the paternal grandfather's sister, the sons of the father's mother's sisters, and the sons of the father's mother's brothers, are known as the *Pitribandhus* (one's father's cognate kindred). The sons of one's mother's father's father's sisters, the sons of one's mother's mother's sisters, and the sons of the mother's mother's brothers, are known as *Matribandhus* (one's mother's cognate kindred).' Here (*i.e.*, among these) the order (of succession) is that stated (in the text).

"(If it be said) : 'As the right of the wife and all the rest to inheritance is derived from their relation to the deceased, so let (the right) of the *Bandhavas* be; what title then can the *Bandhavas* of the father or of the mother (of the deceased) have to the wealth? (The texts) beginning with *pituh pitri shwasu putrah*, &c. (the sons of the sister of the father's father, &c.) are only as (denotative of a class) showing the connection between a term and the objects denoted (by it), (and have) no reference to wealth.' The answer (to that) is that the showing the connection between terms and objects denoted (by them) is redundant; because, even without the said text, the word (*viz.*, *Bandhava*) in its primary sense would apply to (those enumerated as) the father's and mother's cognate relations, in the same way (as it does) to the maternal uncle of the father, the paternal uncle of the father, and the like. Hence the text is intelligible only by the acceptation of (the enumerated) paternal and maternal *Banahus* (cognates) as being *Bandhus* in reference to succession to property. In short, the same (reasoning) applies in regard to the rules for mourning and the like in reference to *Bandhus*."

We find here a threefold division into *Atmabandhus*, *Pitribandhus* and *Matribandhus*, and it is laid down in so many words that the order of succession is that stated in the text.

Three instances of each class are given, but it has been authoritatively decided that they are not exhaustive, but illustrative.

Among the relationships specifically mentioned are a mother's sister's son, and the father's father's sister's son, and of these the first is named in the text as an *Atmabandhu* and the second as a *Pitribandhu*.

If the order of succession is as stated in the text, then it would seem clear that the mother's sister's son is to be preferred; but Mr. Rao has argued that the father's father's sister's son and grandson are really *Atmabandhus* and as they come in on the paternal side, they are to be preferred, and he has adopted the reasoning expounded in Mr. Bhattacharji's interesting commentaries on Hindu Law.

But the point has been determined adversely to him by the Privy Council in *Muthusami Mudaliyar* v. *Simambedu Muthukumaraswami Mudaliyar*.[1] That no doubt was a decision under the Mitakshara, but, in our opinion, it is equally applicable to the order of succession laid down in the Mayukha.

The next question is as to a widow's powers under the Mayukha to bequeath by will moveables inherited by her from her husband, and here, we think, we are concluded by the decision of the Full Bench in *Gadadhar Bhat* v. *Chandrabhagabai*[2] where it was held that "the ruling of the Privy Council, that the property inherited by a widow from her husband devolves on his heirs at her death, must have effect given to it throughout the Presidency with regard to the devolution of the moveables so inherited." And as a necessary sequel it was determined that "the widow's power of alienation over the moveables cannot be regarded as including the power of willing them away at her death so as to displace the right of inheritance by her husband's heirs." That case no doubt came from Ahmednagar, but the reasoning on which it proceeds would equally apply to a case governed by the Mayukha, to which reference was actually made.

Therefore the decree must be confirmed with costs. There must be separate sets of costs.

Decree confirmed.

(1) (1896) 19 Mad. 405. (2) (1892) 17 Bom. 690 at p. 711.