1904.

HANSRAJ LAKHMIDAS v. LALJI ANANDJI.

this clause imposes an obligation upon the mortgagor to pay over to the mortgagee the balance in reduction of principal and interest.

We, therefore, think that the decree of the lower Court cannot be sustained, that it must be reversed and the case sent back for decision on the merits.

The appellant to get his costs of the appeal.

*Decree reversed.*

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## APPELLATE CIVIL.

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

1904.
*March* 30.

SAKUBAI, WIDOW OF VINAYAK RAMKRISHNA (ORIGINAL PLAINTIFF), APPELLANT, *v.* GANPAT RAMKRISHNA (ORIGINAL DEFENDANT), RESPONDENT.*

*Civil Procedure Code (Act XIV of 1882), section 592, proviso—Pauper appeal—Leave—Reasons for granting leave to be recorded.*

In granting leave to appeal as pauper the Court should be careful to see that the proviso to section 592 of the Civil Procedure Code (Act XIV of 1882) is satisfied.

The Judge or Bench admitting a pauper appeal should 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.

APPEAL against the decision of A. G. Bhave, First Class Subordinate Judge of Poona, in Original Suit No. 242 of 1901.

Admission of appeal *in formâ pauperis*.

The plaintiff sued the defendant, who was the brother of her deceased husband, to recover various sums on account of her maintenance, the value of her *stridhan* ornaments, which, she alleged, were in defendant's possession, expenses of pilgrimage and house accommodation. The claim was valued at Rs. 16,800 and there was a prayer in the plaint that the plaintiff's maintenance should be made a charge on the family estate in the defendant's possession.

* Appeal No. 128 of 1903.

1904.

SAKUBAI v. GANPAT.

The defendant stated (*inter alia*) that he was willing to make a suitable provision for the plaintiff.

The Subordinate Judge passed a decree as follows:—

The decree will be that the defendant do pay to the plaintiff a quarterly allowance of Rs. 120 as a provision for her maintenance and sufficient accommodation in the family house for her residence during her life-time, or in the alternative Rs. 5 monthly as house-rent, and further he shall pay to her arrears of maintenance from 1st January, 1901, to this date at the rate of Rs. 10 per month. The plaintiff's maintenance shall be a charge on a sufficient portion of defendant's immoveable property which shall be specifically ascertained in execution proceeding, the plaintiff not having given sufficient description of it in the plaint. The rest of the plaintiff's claim is rejected.

The plaintiff appealed *in formâ pauperis* and the Court (Crowe and Aston, JJ.), in admitting the appeal passed the following order:—"Leave to appeal *in formâ pauperis* granted. Appeal admitted."

*G. S. Rão* appeared for the appellant (plaintiff).

*Setalvad* (with *M. B. Chaubal*) appeared for the respondent (defendant).

During the hearing of the appeal, the parties came to a compromise and consequently the appeal *in formâ pauperis* was allowed to be withdrawn and the following judgment was delivered by

JENKINS, C. J.—In reference to the withdrawal of this appeal we bear in mind the apparent omission of the admitting Court to observe the provisions of section 592 of the Civil Procedure Code and in particular of the proviso to that section which makes it imperative on the Court "to reject the *application* unless upon a perusal *thereof*, and of the *judgment* and *decree* against which the appeal is made, it sees reason to think that the decree appealed against is contrary to law or to some usage having the force of law, or is otherwise erroneous or unjust."

That proviso is a very necessary safeguard introduced by the Legislature for the benefit of litigants who find themselves opposed by paupers, and in our opinion the Court should be careful to see that the proviso is satisfied. It is to be noticed that the Court must come to its conclusion upon a perusal only

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.

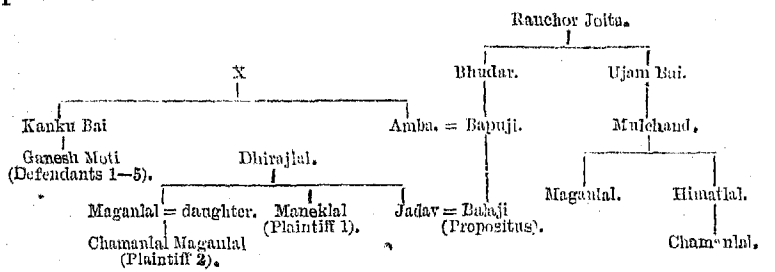
Under the Mayukha a widow has no testamentary power of disposition over moveables which have been inherited by her from her husband.

*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.