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JAVERBHAI JORABHAI v. GORDHAN NARSI.

It follows that the plaintiff has a good claim for compensation under the covenant. But since the mortgage is void, the amount of the claim must, under the *Damdupat* rule, be limited to double the principal. There will therefore be a decree for the plaintiff for Rs. 400 with costs throughout and interest on judgment at 6 per cent. till realisation.

Decree varied.

J. G. R

APPELLATE CIVIL.

Before Mr. Justice Heaton and Mr. Justice Shah.

1915. *January* 8.

VITHAL RAMKRISHNA AND OTHERS (ORIGINAL DEFENDANTS), APPELLANTS, *v.* PRAHLAD RAMKRISHNA AND OTHERS (ORIGINAL PLAINTIFFS), RESPONDENTS.*

Hindu Law—Mitakshara—Partition by grandsons—Paternal step-grandmother entitled to a share.

According to the Mitakshara, the paternal step-grandmother is entitled to a share in the family estate when it is partitioned among her grandsons.

APPEAL from the decision of N. B. Majumdar, First Class Subordinate Judge of Dhulia.

Suit for partition.

The facts were that one Sitaram died leaving him surviving a son Ramkrishna by his first wife, and a widow Gangabai, his second wife. On Ramkrishna's death, two of his sons (plaintiffs) sued the other three (defendants) for partition of the family property.

The defendants contended *inter alia* that Gangabai (the paternal step-grandmother) was entitled to a share on partition of the property and was a necessary party to the suit.

* First Appeal No. 218 of 1912.

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The Subordinate Judge held that Gangabai was not a necessary party to the suit, on the following grounds :—

Mitakshara which is the authority followed in this part of the country says in Chapter I, section 7, verse 1 :—"Let the mother also take an equal share." It makes no mention of the grandmother. Yajnyavalkya Smriti, which is considered as the principal Smriti on Hindu Law on this side of India, refers in Chapter II, verse 123, only to the mother and does not mention the grandmother. Mayukha in Chapter IV quotes several Smrities in support of the mother's right to a share, and all of them excepting that of Vyasa speak only of the mother and not of the grandmother. Vyasa alone refers to the grandmother. But the author of Mayukha does not say that it was customary in his time to give a share to the grandmother. In West and Buhler's Digest of Hindu Law, p. 780, and foot-note (*c*) on p. 824, grandmother is stated to be entitled to a share, but no authority is quoted and no case cited in support of that opinion. Mr. Gharpure, in his work on Hindu Law, first edition, p. 139, says :—"Except in Bengal a grandmother is not entitled to a share."

Mr. Mayne's Hindu Law, paragraphs 479 and 480, relied upon by the defendants' Vakil, speak of the law that is followed in Bengal, namely Dayabhaga. The law followed in Western India is discussed in paragraph 478, but the author mentions only the mother and the step-mother but not the grandmother. There is thus no authority for holding that Gangabai is entitled to a share. Therefore, she is not a necessary party.

The property was accordingly ordered to be partitioned between the plaintiffs and the defendants.

The defendants appealed to the High Court, contending *inter alia* that Gangabai was entitled to a share and was a necessary party to the suit.

Nadkarni, with *P. B. Shingne*, for the appellants :—The right of the grandmother to a share on partition of the family property by the grandsons has been recognised by Vyasa and Brihaspati. The authority of Vyasa is acknowledged, for he has been cited frequently both in the Mitakshara and in the Mayukha. See also *Hunoomanpersaud Panday* v. *Mussumat Babooee Munraj Koonweree*[1]; Jolly's on Partition, page 54.

[1] (1856) 6 Moo. I. A. 393.

The Mayukha enlarges Vyasa's text and makes it to include "paternal step-grandmother": see Mandlik's Hindu Law, page 44. Madana, Madhava, Apararka, Shulapani and Ballambhatta all agree in giving an extended meaning to the term "*Mata*" (mother). See also Mandlik's Hindu Law, page 217: Jolly on Partition, pages 103, 137: Macnaghten, IV, 50. Even if the Mitakshara is silent on the point, the interpretation of Mayukha can be called in aid to supply the omission. See *Gojabai* v. *Shrimant Shahajirao Maloji Raje Bhosle*[1] and *Bai Kesserbai* v. *Hunsraj Morarji*.[2]

The grandmother is held entitled to a share on partition by the grandsons, under the Mitakshara (*Badri Roy* v. *Bhugwat Narain Dobey*[3]) and under the Bengal School: *Purna Chandra Chakravarti* v. *Sarojini Debi*.[4] The right has also been affirmed in the case of step-mother: see *Damodardas Manekbai* v. *Uttamram Manekbai*[5] and *Damoodur Misser* v. *Senabutty Misrain*.[6] In the former case the right of step-mother to a share is based on the text of Vyasa alone. By parity of reasoning, the grandmother should be regarded as having the right.

Gadgil, with *B. V. Desai*, for the respondents:—The present case is governed by the Mitakshara, which does not assign any share to the grandmother either expressly or by implication.

The text of Vyasa does not afford much help. It is difficult to ascertain its import in absence of context. All that the text means is that mothers and grandmothers are entitled to shares on partition as between themselves. See Ghose's Hindu Law, 2nd edition, page 289.

(1) (1892) 17 Bom. 114 at p. 118.
(2) (1906) 30 Bom. 431.
(3) (1882) 8 Cal. 649.
(4) (1904) 31 Cal. 1065.
(5) (1892)17Bom. 271.
(6) (1882) 8 Cal. 537.

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The text of Brihaspati does not afford any help. It is wrongly translated by Colebrooke. The expression "*Samansha Matarastesham*" is translated as "his mothers (*Matarah*) take the same share." The word "his" is said to refer to "father"; and thus the word *Matarah* is taken as referring to "father's mothers" or grandmothers. There is no word corresponding to "his" in the original text. The word "tesham" means "their" and not "his." It must refer to sons. So regarded the text means that "mothers having sons and those that are sonless (step-mothers) are declared to be equal sharers." See also Vivada Chintamani, Tagore's edition, page 240.

The step-mother was recognised as entitled to share not on the authority of Vyasa's text; but on the express provision in verses 115 and 123 of Yajnyavalkya's Smriti. See also Mitakshara's commentary on verses 135 and 136 of Yajnyavalkya. The authority of Vyasa has never been accepted by this Court. The decision in *Damodardas Manekdal* v. *Uttamram Manekdal*[1] rests primarily on the authority of the Mitakshara. See also *Jairam* v. *Nathu*[2]. The commentary of Ballambhatta is not accepted by this Court as authoritative: *Mulji Purshotum* v. *Cursandas Natha*[3] and *Bhagwan* v. *Warubai*.[4]

The grandmother has not been given a share in any reported cases in this Presidency. Her right, therefore, even if it existed in the time of Vyasa, has now become obsolete.

The case of *Purna Chandra Chakravarti* v. *Sarojini Debi*[5] is decided under the Dayabhaga School of Hindu Law. The cases of *Puddum Mookhee Dossee* v. *Rayee*

(1) (1892) 17 Bom. 271.
(2) (1906) 31 Bom. 54.
(3) (1900) 24 Bom. 563.
(4) (1908) 32 Bom. 300.
(5) (1904) 31 Cal. 1065.

Monee Dossee[1], *Radha Kishen Man* v. *Bachhaman*[2] and *Sheo Narain* v. *Janki Prasad*[3] are against the appellants. The cases of *Sibbosoondery Dabia* v. *Bussoomutty Dabia*[4] and *Badri Roy* v. *Bhugwat Narain Dobey*[5] are distinguishable.

C. A. V.

SHAH, J. :—The interesting question of Hindu Law argued in this appeal arises out of the following facts :— One Sitaram died leaving a son Ramkrishna and a widow Gangabai, the step-mother of Ramkrishna. Ramkrishna died in 1892 leaving three sons Vithal, Vishnu and Pandharinath by his first wife, who is dead, and two sons—Pralhad and Dinanath by his second wife Bai Parvati, who is alive. Pralhad and Dinanath with their mother Parvati sued the other three sons of Ramkrishna for a partition of the family estate. Among other things the defendants urged that Gangabai—their grandmother—was entitled to a share of the property, that she was a necessary party to the suit, and that the property in suit was acquired by Sitaram.

The learned First Class Subordinate Judge of Dhulia held that the grandmother was not entitled to any share in the property according to Hindu Law, and accordingly disallowed the objection. He decided the other issues in the suit, and passed a decree for the partition of the estate in favour of the plaintiffs. It was held that Bai Parvati was entitled to an equal share with the sons of Ramkrishna. The defendants have appealed against the decree and renewed their objection that Gangabai is a necessary party to the suit, as she is entitled to a share in the property in suit according to Hindu Law.

(1) (1869) 12 W. R. 409.
(2) (1880) 3 All. 118.
(3) (1912) 34 All. 505.
(4) (1881) 7 Cal. 191
(5) (1882) 8 Cal. 649.

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We have had the point argued without going into the other questions arising in this appeal. The argument has proceeded on the footing that the property in suit is ancestral family property (*i. e.* it was ancestral in the hands of Ramkrishna), and I have considered the question of law on that basis. I say nothing as to whether the whole property in suit was ancestral in the hands of Ramkrishna in fact or not.

The question whether Gangabai is a necessary party or not depends upon the view we take of her right to a share in the family property. The point that arises is whether a step-grandmother is entitled to a share in the family estate when it is to be partitioned among her grandsons. It is a point of first impression so far as Western India is concerned. The parties are governed by the Mitakshara Law.

Mr. Nadkarni, for the appellant, argues that the word *mata* used in Yajnavalkya's text (II. 123) is illustrative of a class and is not restricted to the natural mother according to its literal meaning. He relies upon the text of Vyasa, which is translated in Mandlik's Hindu Law, at page 44, as follows :—"The sonless wives of the father are declared equal sharers ; and so are all paternal grandmothers declared equal to the mother". It is also urged by him that the author of the Vyavahara Mayukha is in favour of allowing a share to the grandmother in accordance with Vyasa's text, and that, in the absence of any indication to the contrary in the Mitakshara the Vyavahara Mayukha should be read as supplementing the Mitakshara on the point.

On behalf of the respondents it is argued by Mr. Gadgil that there is no reason to attach any weight to Vyasa's text and that Nilakantha does not express any opinion in favour of that text in the Vyavahara Mayukha. He further relies upon the circumstance that there is no reported case in which the right of a grandmother to a

share in the property on a partition among her grandsons is recognised in this Presidency, and argues that her right, if any, has been obsolete long since.

I have carefully considered these arguments, and though the point does not appear to me to be free from difficulty, I am of opinion that the grandmother is entitled to a share in the ancestral estate on a division thereof among her grandsons.

In the first place, Vijnanes'wara himself does not limit the word *mata* to a natural mother, but gives an extended meaning to it by including all the wives of the father (*i. e.* step-mothers also). This is clear from the words used by him in introducing this part of Yajnavalkya's text: see Mitakshara, Chapter I, section VII, para. 1—Stokes' Hindu Law Books, p. 397. That is how these words of Vijnanes'wara have been interpreted by this Court in determining the right of a step-mother to a share in the estate on a division thereof among the sons. I am not unmindful of the alternative reading, which substitutes the word *Matuh* (of mother) for the word *patninam* (of wives) in the latter part of the introductory words. But even the use of the word *Matuh* there would make no difference in the meaning which Vijnanes'wara otherwise indicates fairly clearly.

Then comes the text of Vyasa the meaning of which is clear, and upon which the appellants naturally rely. The question is not about the meaning of the verse but about the effect to be given to it. Vijnanes'wara in his commentary on verses Nos. 4 and 5 of Yajnavalkya in the Achara Adhyaya points out generally the authority of the Smriti writers, and says that as each of the Smritis is authoritative, the points not mentioned in one may be supplied from the others, but if one contradicts the other there is an option. (एतेषां प्रत्येकं प्रामाण्येऽपि साकाङ्क्षाणामाकाङ्क्षा परिपूरणमन्यतःक्रियते। विरोधेतु विकल्पः ॥) I have

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stated the rule enunciated by Vijnanes'wara with the substance thereof in my own words. Yajnavalkya is silent as to the right of a grandmother, and it seems to me that Vyasa's text can be used to supplement Yajnavalkya's Smriti. Vyasa is unquestionably a Smriti-writer of authority and though we have not the advantage of reading his verse with reference to the context in the original Smriti, the full text of which is not available, there can be no doubt about the verse, which is quoted by other commentators. I do not consider it any strained application of the rule laid down by Vijnanes'wara to give effect to Vyasa's text as supplementing the rules laid down by Yajnavalkya. It seems to me that taking the Mitakshara by itself with the text of Vyasa it is difficult to say that Vijnanes'wara would not allow a share to the grandmother.

This conclusion seems to fit in with the scheme of the Yajnavalkya Smriti on this point. The wives get shares if the division takes place during their husband's life-time, they become entitled to shares equally with their sons, if the division takes place after their husband's death under verses 115 and 123 of the Vyavahara Adhyaya of Yajnavalkya, and there is nothing unreasonable or incongruous in their obtaining shares equally with their grandsons if the division happens to be effected by their grandsons.

It may be mentioned that the view, which I take of the Mitakshara on this point, is by no means singular. A commentator like Apararka on the Yajnavalkya Smriti comes to the conclusion that the word *mata* is to be taken as indicating step-mother and others and quotes Vyasa's text in support thereof: see Anandashrama Sanskrit Series, Vol. 46, p. 730. In the Balambhatti, which is a commentary on the Mitakshara, the same view as to a grandmother's right to a share is accepted.

I refer to these works as showing merely that the view I take of the Mitakshara is a reasonably possible view and not as suggesting that they ought to form a basis for adopting that view. In Bengal the same conclusion as to the right of the grandmother to a share under the Mitakshara is accepted; see *Badri Roy* v. *Bhugwat Narain Dobey*[1].

The fact, however, remains that Vijnanes'wara is silent as to the right of the grandmother. In such a case we can and must invoke the aid of the Vyavahara Mayukha and try to harmonise it with the Mitakshara if and so far as it may be reasonably possible to do so.

This brings me to the Vyavahara Mayukha. On a careful perusal of Chapter IV, section IV, paragraphs 18 and 19 (Stokes' Hindu Law Books at page 52 or Mandlik's Hindu Law at page 44), it is clear that Nilakantha brings in the step-mother and the grandmothers on the authority of Vyasa's text. I am unable to accept the suggestion made on behalf of the respondents that Nilakantha simply quotes the text of Vyasa but expresses no opinion of his own. The verse is introduced to point out the share of the step-mother and the grandmother, and at the end the author says that by the word *sarvah* (all) even paternal step-grandmothers are included. It is true that Nilakantha does not in terms indicate his approval of Vyasa's rule; but I think it is clear from the context that he favours Vyasa's view, and apparently quotes Vyasa to justify the inclusion of step-mothers and grandmothers. At least it is safe to say that Nilakantha does not bring in the step-mother except under the authority of Vyasa, and to that extent Nilakantha has been understood by this Court as confirming the Mitakshara view in the case of *Damodardas Maneklal* v. *Uttamram Maneklal*[2]. I consider

[1] (1882) 8 Cal. 649. [2] (1892) 17 Bom. 271 at p. 287.

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it reasonably possible to harmonise the Mayukha and the Mitakshara on this point and I think that ought to be done.

The only argument of some weight that remains to be noticed is that the right of the grandmother is obsolete. This argument is based upon the absence of any reported case recognising the right of the grandmother. This argument was used when the question as to the step-mother's right to an equal share with the sons came to be considered for the first time. Sir Charles Sargent, C. J., however, rejected it, and it seems to me that his observations on this point in the case of *Damodardas Maneklal* v. *Uttamram Maneklal*[1] apply with greater force to the case of a grandmother. In Western India the right of a mother to a share on a partition after the death of the father is not treated as obsolete, and I see no reason to suppose that the right of the grandmother is any more obsolete than that of the mother. I am unable to see any valid reason for refusing to recognise the one while recognising the other.

Mr. Gadgil has relied upon the case of *Sheo Narain* v. *Janki Prasad*[2] in support of his argument. It is not necessary to examine the reasons given by the learned Judges in support of the conclusion they arrived at as they expressly declined to consider such a case as we have to decide. They observed as follows after referring to the text of Vyasa :—"Therefore, if in any case the grandmother would be given a share, it would be in the event of a partition between sons after the father's death. On this point we express no opinion, as the case before us is not one of partition after the father's demise."

It follows, therefore, that Gangabai, the step-grandmother, is entitled to a share in the family estate with

(1) (1892) 17 Bom. 271 at p. 287. (2) (1912) 34 All. 505.

her grandsons, and is a necessary party to the partition suit. The plaintiffs should be allowed to join her as a defendant now.

I do not wish to say anything as to the extent of her share, as the point is not argued, and as it is not desirable to deal with it in the absence of the grandmother. The determination of the extent of a grandmother's share may present difficulties according to the varying conditions, under which the partition may come to be effected. But, in my opinion, this is a simple case of its kind and need not present any difficulty.

The result, therefore, is that the decree of the lower Court is reversed and the case sent back to the lower Court for disposal according to law, after Gangabai has been joined as a defendant.

All costs to be costs in the suit.

HEATON, J. :—I agree.

Decree reversed.

R. R.

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Batchelor.

THE DAMODAR MOHOLAL GINNING AND MANUFACTURING COMPANY, LTD. (ORIGINAL OPPONENTS), APPLICANTS, *v.* NAGINDAS MAGANLAL (ORIGINAL PETITIONER), OPPONENT.*

1915. *January* 15.

Costs—Taxation—Application by a person for being registered as a share-holder in a Company—Indian Companies Act (VI of 1882), section 254—High Court Rules, Rule 704—High Court Manual of Circulars, Chapter VIII.

To regulate costs incurred in obtaining an order from the District Court to register the applicant as a share-holder of a Company, recourse must be had to the High Court Manual of Civil Circulars, 1912, Chapter VIII, and not to High Court Rules (Original Side), Rule 704 framed under section 254 of the Indian Companies Act (VI of 1882).

* Application No. 240 of 1914 under the extraordinary jurisdiction.