Chandavarkar, J. said: "If once it is conceded that a half-sister is a *gotraja sapinda* she stands nearer to the propositus in the line of heirs than a paternal uncle."

Order accordingly.

G. B. R.

APPELLATE CIVIL.

Before Mr. Justice Beaman and Mr. Justice Hayward.

BHAGWAT BHASKAR KORANNE (ORIGINAL PLAINTIFF), APPELLANT, *v.* NIVRATTI SAKHARAM BHADULE AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

1914. *August* 20.

Hindu Law—Debts—Widow—Duty of widow to pay her husband's debts even though time-barred—Widow not bound to pay debts repudiated by her husband in his life-time.

Under Hindu Law, a widow is under a pious obligation to pay her deceased husband's debts, even though they may be time-barred; but she is not bound to pay debts which her deceased husband had repudiated before his death.

SECOND appeal from the decision of G. K. Kanekar, First Class Subordinate Judge with appellate powers at Sholapur, confirming the decree passed by L. K. Nulkar, Second Class Subordinate Judge at Pandharpur.

Suit to recover possession of land.

One Appa was the original owner of the land. He sold it to Ramchandra in 1869. At the same time, the latter passed a *kararpatra* that if Appa repaid Rs. 600 in six annual instalments of Rs. 100 each, he would reconvey the land to Appa.

In 1883, Appa's heirs sued Ramchandra's son Dattatraya to redeem the land, alleging that the *kararpatra* was a mortgage. Dattatraya contested the suit which was dismissed.

* Second Appeal No. 504 of 1913.

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Balkrishna (defendant No. 5), who had purchased Appa's interest in the land, again sued in 1894 to redeem the land. Dattatraya having died, the suit was contested by his mother Jankibai. The suit was dismissed on the ground that it was barred by *res judicata*.

Shortly afterwards, a consent decree was taken out in terms of an agreement under which Jankibai was paid Rs. 650 and Balkrishna was put into possession of the land.

Jankibai having died in 1906, the plaintiff, a reversioner of Dattatraya, filed the present suit to recover possession of the land, alleging that Jankibai had no right to alienate the property beyond her life-time.

The Subordinate Judge dismissed the suit.

On appeal, the District Judge confirmed the decree on the following grounds :—

A woman's estate is not a life estate because she can give an absolute and complete title under certain circumstances. The nature of her estate must be described by the restrictions which are placed upon it and not by the terms of duration. She is not a trustee for reversioners. She is accountable to no one and fully represents the estate and no one has any vested right in the succession as long as she is alive. The limitations upon her estate are the very substance of its nature and are not merely imposed upon her for the benefit of the reversioners. They exist as fully, if there are absolutely no heirs to take after her, as if there were. A widow stands in a different position from that of a manager. The latter can act only with the express or implied consent of the body of members of a joint Hindu family. In the widow's case, the co-parceners are reduced to herself. She can, therefore, do what the body of co-parceners can do subject always to the condition that she acts fairly to the expectant heirs.

Applying these principles to the facts of the case, I am not prepared to hold that plaintiff has any reason as reversioner to question the conduct of the said Jankibai in transferring the suit lands to defendant No. 5 in pursuance of terms of *kararpatra*, Exhibit 87, which was passed by her husband and adopted by her son Dattatraya, as is apparent from Exhibit 28. The said Jankibai in performing the terms of that *kararpatra* and in coming to an amicable settlement in that matter has done that which her husband or her

son or a manager of a joint Hindu family would have done under similar circumstances. *Kararpatra*, Exhibit 87, to which her action is referable is not her document. She has not herself incurred any obligation therein. She filled the ownership of the estate and could deal with it for all purposes consistent with her duty of husbanding its substance honestly for her successors. It was not any breach of duty on Jankibai's part to fulfil the obligations of her husband and son under that *kararpatra*. The estate of the last male holder passed to her as an aggregate property and obligations together and she was fully justified in fulfulling the obligations of her husband and son under that *kararpatra*. It is urged that the claim of defendant No. 5 under that *kararpatra* was time-barred when he presented his application to the conciliator of Pandharpur in the matter. I feel grave doubts as to the bar of limitation argued upon. Assuming that the claim was time-barred, the question remains whether decree, Exhibit 31, is liable to be set aside on that ground. I answer that question in the negative. The obligation which rested upon the said Jankibai under *kararpatra*, exhibit 87, could not be obliterated by the circumstance that the law of limitation barred that claim (*Chimnaji* v. *Dinkar*, I. L. R. 11 Bom. 320; *Bhau* v. *Gopala*, I. L. R. 11 Bom. 325; *Kondappa* v. *Subba*, I. L. R. 13 Mad. 189 and *Udai Chunder* v. *Ashutosh*, I. L. R. 21 Cal. 190).

The true test is whether Jankibai had acted fairly towards the expectant heirs and whether defendant No. 5 had exercised special circumspection in effecting decree, Exhibit 31. That test is fully satisfied in the case.

The plaintiff appealed to the High Court.

P. B. Shingne, for the appellants :—A Hindu widow is entitled to pay her deceased husband's debts though they are time-barred. But this does not mean, that she can revise a claim repudiated by her deceased husband. Here there was no question of paying off any debt.

D. A. Tuljapurkar, for the respondents :—The first two suits failed on an entirely different point. In each of them, the plaintiff alleged that the *kararpatra* was a mortgage and sued to redeem. The *kararpatra* was not held to be inoperative in either suit. Jankibai was therefore entitled to act upon the *kararpatra* and to arrive at an arrangement to carry out its terms.

BEAMAN, J. :—The material facts are that in 1869 Appa, the original owner of this property, sold it to Ram-

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chandra and Ramchandra passed a contemporaneous agreement, Exhibit 87, in the case, under which he agreed that if the vendor Appa paid him Rs. 100 every year for six years he would reconvey the land. So matters stood till after the death of Ramchandra. His son Dattatraya was sued in 1883 by the representatives in interest of the original owner Appa. The suit took the form of a redemption suit, because had it been upon the agreement, merely as an agreement, it is obvious that it would have been time-barred. Dattatraya resisted this suit. His written statement shows that he denied that the agreement had been complied with or could now be enforced, and at the same time alleged that the transaction was not a mortgage. The defence succeeded and the suit was dismissed.

In 1894 after the death of Dattatraya, Jankibai, who as a widow of Ramchandra and mother of the last male holder Dattatraya was in life enjoyment of the estate, was again sued by the representatives in interest of Appa for the redemption of this mortgage. The suit again failed on the very obvious ground that the claim was *res judicata*.

Immediately after this the widow Jankibai appears to have entered into what is called a compromise before the conciliator and allowed a consent-decree against herself for the sale of this land to the representatives of Appa for the sum of Rs. 650. It is this transaction which the plaintiff, who is the reversioner of Dattatraya's estate, seeks to have set aside.

The learned Judge of first appeal relying upon a current of authority, the effect of which simply is that a Hindu widow is under a pious obligation to pay her deceased husband's debts, even though they may be time-barred, held, by what we suppose he meant to be a parity of reasoning, that the widow Jankibai here was under the pious obligation to do for the last holder

of the estate what he had emphatically declined to do for himself. Now none of the authorities cited by the learned Judge in support of his proposition has the least bearing upon the facts we have to deal with; nor is there any true analogy between the principle underlying those cases and any principle which could be applied here. Put upon purely ethical, not legal ground, the reasoning of those cases is clear. The Courts have held that a widow is entitled to sell part of the ancestral immoveable property to discharge the just debts of her husband even though those debts might be time-barred, and this is based doubtless upon the moral duty of discharging the debts of her husband; and again on the assumption that had the husband lived he would as a moral and upright man have discharged them himself. In not one of those cases is to be found the slightest indication that the deceased husband had ever repudiated the debts before his death which the widow paid after his death.

The case here is, therefore, totally different upon moral principle as well as upon its own facts. There is no question of any debt here at all; nor could it be seriously contended that in acting, as she did, the widow was doing what the last male holder would have done had he been alive, nor can we say that there was the least moral obligation upon the widow to restore this property to the representatives in interest of Appa upon payment of the sum for which it had been sold in the year 1869. That, as soon as the terms of the agreement were exhausted, has been held by the Courts to have been an out and out sale. That was the view which Dattatraya himself took of the transaction when he successfully resisted the attempt of the representatives in interest of Appa to redeem the property; and if that were so, we are unable to see that the bargain was originally an unfair one or that the last male

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holder Dattatraya was acting in any way dishonestly in insisting upon adhering strictly to the conditions of the original bargain. So that we are unable to find here the slightest ground for applying the principle upon which alone the learned Judge below appears to have thought that this alienation by the widow was justifiable and ought to be sustained against the reversioner.

It has never been contended that there was any legal necessity for this sale in the ordinary sense of those words; and but for a general expression used in the case of *Chimnaji Govind Godbole* v. *Dinkar Dhondev Godbole*[1] that a widow may deal with the property finally, provided that she is dealing fairly by the expectant heirs, we do not think that the learned Judge would have been misled into the line of reasoning which he has finally adopted. A general expression of that kind can hardly take the place of the settled principles upon which the law governing this class of cases has long been established. Such terms as "dealing fairly by the expectant reversioners" are much too loose and general in our opinion to be made the ground of law governing the widow's powers of disposition during her life-time, of ancestral immoveable property. The only solid ground upon which such alienations are justified and made good against reversioners will be found on analysis in every case to be what is known as legal necessity. Here there is nothing in the least like legal necessity. We are therefore forced to the conclusion that the learned Judge below who has, we think, written a very able and careful judgment has nevertheless entirely misconceived the law, and has, therefore, misapplied it to the facts of the case before him.

[1] (1886) 11 Bom. 320.

We must, therefore, reverse his decision on issue No. 1 and remand the case to the learned Judge below to dispose of upon the remaining points awaiting his decision in the light of the foregoing remarks. In doing so we must observe that the case of the 6th defendant has not been dealt with in the Court of first appeal. The learned Judge should inquire into and decide upon the alleged legal necessity of the mortgage under which the defendant No. 6 claims to hold the property from the widow Jankibai. Costs will abide the final result.

Decree reversed : case remanded.

R. R.

APPELLATE CIVIL.

Before Mr. Justice Beaman and Mr. Justice Hayward.

MADHAVRAO KESHAVRAO AND ANOTHER (ORIGINAL DEFENDANTS), APPELLANTS, *v.* SAHEBRAO GANPATRAO AND ANOTHER (ORIGINAL PLAINTIFFS), RESPONDENTS.*

1914. *August* 21.

Construction of deed—Simultaneous execution of sale deed and agreement to reconvey—Transaction amounts to mortgage by conditional sale.

The land in dispute was sold by the defendants to the plaintiffs' father on the 7th November 1892 for Rs. 300. On the same day, the latter agreed with the defendants that if they repaid Rs. 300 in five years, he would re-sell the land to them. From 1895 the defendants were in possession of the land as tenants of the plaintiffs and paid Rs. 18 as rent every year. In 1910, the plaintiffs sued to recover possession of the land. The defendants claimed to redeem the lands alleging that the transaction of 1892 amounted to mortgage. The first Court held that the transaction was a mortgage and allowed redemption ; but the lower appellate Court held that it was a sale and decreed plaintiffs' claim. The defendant having appealed :—

Held, reversing the decree, that in view of the facts and the contemporaneous nature of the two documents the proper construction would be that they constituted conditional sale, and that the real intention of the parties was to

* Second Appeal No. 329 of 1913.