

1890.

WA'MAN  
RAMCHANDRA  
GAUNDE

DIPCHAND  
BALKISAN.

of surprise, and if Government are unable to give some satisfactory explanation of it, the plaintiff is to say the least, entitled to favourable consideration at their hands.

We must, therefore, reverse the decree and dismiss the plaint, with costs throughout on plaintiff.

*Decree reversed.*

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## APPELLATE CIVIL.

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*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Telang.*

1890.  
*August 12.*

MANJA'PPA HEGADE BIN DEVA'PPA HEGADE, (ORIGINAL PLAINTIFF), APPELLANT, v. LAKSHMI KOM RA'MA'YA AND ANOTHEE, (ORIGINAL DEFENDANT), RESPONDENTS.\*

*Hindu law—Undivided family—Widow's right—Maintenance—Gotrāja sapinda—Purchaser of a co-sharer's interest—Right of.*

The widow of an undivided brother does not take a life estate. She is only entitled to maintenance. She may perhaps succeed her brother-in-law as a *gotrāja sapinda*.

A person who purchases the share of a co-parcener in family property is entitled to recover that share on his vendor's succession to the property as against the vendor himself and the widow of his undivided brother.

*Udārām Sitārām v. Rānu Pāndujī*<sup>(1)</sup> distinguished.

THIS was a second appeal from the decision of Gilmour McCorkell, District Judge of Kánara.

The facts of the case were as follows:—

Ganapáya, Rámáya and Venkápa were three brothers and lived together as an undivided family. Ganapáya died first, leaving his widow, Lakshmimama. After Ganapáya's death, Venkápa sold his undivided moiety of the family property to the plaintiff, Manjáppa Hegade, for Rs. 500 under a registered deed of sale, dated the 3rd July, 1886. In November, 1886, Rámáya died, leaving his widow, Lakshmi, a minor. After Rámáya's death, Laksmimama died, and also Venkápa, unmarried and without issue.

Second Appeal, No. 706 of 1889,

(1) 11 Bom. H. C. Rep., 76.

The plaintiff, Manjappa Hegade, sued the defendant Lakshmi to recover possession of the moiety of family property sold to him by Venkapa, and mesne profits.

1890.

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 MANJAPPA  
 HEGADE  
 v.  
 LAKSHMI.

The defendant Lakshmi, by her guardian, contended (*inter alia*) that the deed of sale sued upon was without consideration, and that as Ramaya was the manager of the family, Venkapa had no authority to pass the deed.

The Subordinate Judge allowed the plaintiff's claim.

Against the decree of the Subordinate Judge, the defendant appealed to the District Court, and the District Judge reversing the decree of the Subordinate Judge disallowed the plaintiff's claim.

The District Judge in his judgment observed: "The case of *Udarám Sitárám v. Ránu Pánduji*<sup>(1)</sup> clearly lays down that the purchaser of the undivided interest of a member of a joint Hindu family cannot claim either partition or joint possession of his vendor's interest after the death of his vendor. It has here been contended that that case applies only to succession by survivorship and not to succession by inheritance. I am unable to distinguish the difference. If a man leaves any heirs at all, his estate vests at the moment of death in them. Now, in the present case, admittedly on the death of Venkapa, Lakshmi, the widow of his predeceased undivided brother Ramaya, takes an estate for life, if there are any reversioners, but otherwise an absolute estate. As the widow of the deceased undivided brother, Lakshmi is a member of the undivided family, and, as such, a co-parcener of Venkapa, and must take the estate as much by survivorship as by succession, and, therefore, I am of opinion that this case is one which is governed by the ruling cited above."

Against the decree of the District Court the plaintiff appealed to the High Court.

*Naráyan Ganesh Chandávarkar* for the appellant.

*Shámráv Vithal* for the respondent.

SARGENT, C. J.:—The District Judge is wrong in supposing that on Ramaya's death his widow Lakshmi took a life estate.

(1) 11 Bom. H. C. Rep., 76.

1890.

MANJÄPPA  
HEGADE  
v.  
LAKSHMI.

As Rámäya and VenkÄppa were joint, the entire property passed to the surviving brother VenkÄppa, subject only to the right of Lakshmi to maintenance. The case of *Udärám Sitärám v. Ránu Pánduji*<sup>(1)</sup> has, therefore, no application to the present one. The plaintiff, who had purchased a moiety of the estate from VenkÄppa, became entitled, on VenkÄppa's succession, to the property to have a half share in it, and is equally entitled against Lakshmi, who may perhaps be entitled to succeed to VenkÄppa as a *gotrája sapinda*.

As the District Judge framed only one issue, we must reverse the decree of the Court below, and send back the case for a fresh decision. Costs of this appeal to abide the result.

*Decree reversed.*

(1) 11 Bom. H. C. Rep., 76.

## APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Telang.*

GIRIA'NNA MURKUNDI NA'IK, MANAGER, (ORIGINAL PLAINTIFF, APPELLANT, v. HONA'MA KOM TIMMA'PA NA'IK, (ORIGINAL DEFENDANT) RESPONDENT.\*

1890.  
August 12.

*Hindu widow—Residence in family house directed by husband—Right to maintenance.*

A Hindu widow, whose husband has directed that she shall be maintained in the family house, is not entitled to maintenance if she reside elsewhere without cause.

SECOND appeal from the decision of Gilmour McCorkell, District Judge of Kánara.

This was a suit brought by the plaintiff Honáma to recover arrears of maintenance from the defendant Giriánna, the undivided nephew of her deceased husband.

The defendant contended (*inter alia*) that the plaintiff was not entitled to recover maintenance, as the will made by the plaintiff

\*Second Appeal, No. 741 of 1889.