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Sayad Gulam Hussein's case[1] and followed in subsequent cases becomes easily intelligible and acceptable.

In view of the judgment of my Lord the Chief Justice, which I have had the privilege of reading, I do not consider it necessary to state my reasons in detail for the conclusion that the expression 'joint family property' is susceptible of the construction put upon it in *Sayad Gulam Hussein's case*[1].

I sincerely regret that I am unable to agree with my Lord the Chief Justice and my other learned colleagues on this question.

Answer accordingly.

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APPELLATE CIVIL.

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

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April 3.

BAI RAMAN, DAUGHTER AND HEIR OF BAI KIKI (ORIGINAL DEFENDANT No. 10), APPELLANT *v.* JAGJIVANDAS KASHIDAS (ORIGINAL PLAINTIFF), RESPONDENT.*

Hindu law—Vyavahara Mayukha—Succession—Non-technical Stridhana—Sons take precedence over sons' sons.

The non-technical *stridhana* of a Hindu female governed by the Vyavahara Mayukha descends to her son in priority to her son's son.

SECOND appeal from the decision of Mohanrai Dolatrai, First Class Subordinate Judge, A. P., at Broach, confirming the decree passed by C. M. Jhaveri, Second Class Subordinate Judge at Broach.

Suit to redeem a mortgage.

[1] (1885) P. J. 170.

*Second Appeal No. 847 of 1913.

The mortgage in question was passed by one Dulabhdas on the 7th June 1827 for a term of 99 years. Dulabhdas had one daughter, Bai Parvati. Bai Parvati had two sons, Jagjivandas (plaintiff) and Lakhmidas. Lakhmidas died during his mother's life time, leaving him surviving a son named Chunilal. After Parvati's death, Chunilal also died leaving a widow Bai Kiki (defendant No. 10), and a daughter Bai Raman (appellant).

The plaintiff filed the present suit to redeem the mortgage under the provisions of the Dekkhan Agriculturists' Relief Act, 1879. Defendant No. 10 applied to be made a party to the suit as having an interest in the equity of redemption.

The lower Courts granted a decree of redemption to the plaintiff. The claim of defendant No. 10 was negatived on the ground that the plaintiff alone was entitled to succeed to the property of his mother Bai Parvati to the exclusion of defendant No. 10.

Defendant No. 10 appealed to the High Court; and she having died during the pendency of the appeal, the name of her daughter was placed on the record as the appellant.

G. K. Parekh, for the appellant:—It is laid down in the Mayukha (Mandlik, p. 97): "As for the text of Yajnyavalkya 'let sons divide equally, both the effects and the debts after [the demise of] their parents', it relates to what is acquired by inheritance, [or] spinning, and the like, excepting the technical *stridhana*. Therefore, [even] if there be daughters, the sons or other [heirs] (*putrâdaya*) alone succeed to their mother's property, save the technical *stridhana*". Now the expression "*putrâdaya*" has a well-defined meaning and refers to sons, grand-sons and great grandsons as a body. In dealing with the devolution of a male's property the Mayukha uses the same expression,

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which, in that context, indisputably means, sons, grand-sons and great grand-sons as a body which succeeds simultaneously. The same interpretation should be put upon the term when used in succession to a female's property. Both the Mitakshara and the Mayukha use the word '*putra*' as including sons, grand-sons and great grand-sons. The former deals with the father's property only : while the latter deals with the property belonging to father as well as mother. When the Mayukha uses the expression '*putrâdaya*' it does not say in what way they ought to succeed ; nor does it say that they should take successively. Evidently, therefore, they should take their mother's property in the same way in which they take their father's wealth : see *Manilal Rewadat* v. *Bai Rewa*[1] ; *Marudayi* v. *Doraisami Karambian*[2] ; *Buddha Singh* v. *Laltu Singh*[3] ; *Ramchandra Martand Waikar* v. *Vinayek Venkatesh Kothekar*[4] ; *Ramappa Niacken* v. *Sithammal*[5] ; *Muttuvaduganatha Tevar* v. *Periasami*[6].

Jayakar with *Ratanlal Ranchhoddas*, for the respondent :—The expression '*putrâdaya*,' when applied to a male's ancestral property, bears a special sense for such property descends by survivorship. It is wrong to apply the analogy to the succession of a female's property ; and the expression '*putrâdaya*', when used with reference to the succession of such a property, must necessarily have a different meaning attached to it ; see Mitakshara, C. I, s. 5 (Stokes, p. 391), where the section is headed as "equal rights of father and son in property ancestral." The doctrine of survivorship, which is co-extensive with the simultaneous succession of sons, grand-sons and great grand-sons, is confined strictly to the male's property of an ancestral

(1) (1892) 17 Bom. 758 at p. 766.
(2) (1907) 30 Mad. 348.
(3) (1915) 37 All. 604 at pp. 611, 616.
(4) (1914) 42 Cal. 384 at p. 410.
(5) (1879) 2 Mad. 182 at p. 183.
(6) (1892) 16 Mad. 11 at p. 15.

character. It has its basis in the doctrine of spiritual benefit and *shradha*. The three constitute an entity because each of them is equally capable of giving the same spiritual benefit to the ancestors whose manes are to be administered to. This consideration applies only to male ancestral property. It has no place with respect to *stridhana* property, for the right arises for the first time on the death of the woman: see Smriti Chandrika, C. IX, s. 3, pl. 4, 5; *Muttuvaduganatha Tevar* v. *Periasami*[1]; *Musammat Ganga Jati* v. *Ghasita*[2].

Under the Mitakshara (C. 2, s. 11, pl. 12) (Stokes, p. 461) the heirs to *stridhana* property take severally and not collectively; for instance, daughters take first (pl. 12), then daughters' daughters (pl. 15), and next daughters' sons (pl. 18). In absence of grand-sons in the female line, sons take the property (pl. 19) This should furnish us a guide for succession to non-technical *stridhana*.

As to the Mayukha, the technical *stridhana* goes to a woman's daughters first (Mandlik, p. 96, l. 18). In default of daughters the issue of those daughters succeeds (*ibid*, p. 96, l. 27). In default of daughters and the rest, the sons, the grand-sons and the rest should succeed (p. 97, ll. 6, 7.) They certainly do not take together. The expression "sons and the rest" used with reference to the succession of non-technical *stridhana* at the end of the first paragraph of p. 97 of Mandlik should have the same sense which that expression bears when used at the head of that paragraph. The nearer context ought to prevail: see *Manilal Rewadat* v. *Bai Rewa*[3]; *Rachava* v. *Kalingapa*[4]; *Marudayi* v. *Doraisami Karambian*[5]; *Buddha*

[1] (1892) 16 Mad. 11 at p. 15. [3] (1892) 17 Bom. 758 at pp. 767, 768
[2] (1875) 1 All. 46 at pp. 49, 50. [4] (1892) 16 Bom. 716.
[5] (1907) 30 Mad. 348 at p. 351.

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Singh v. *Laltu Singh*[1] and *Ramchandra Martand Waikar* v. *Vinayek Venkatesh Kothekar*[2].

The modern text-writers also treat succession to *stridhana* as going not collectively but consecutively to sons, grand-sons and great grand-sons: see West and Buhler's Hindu Law, pp. 152, 512, Q. 2; Sarvadhikari's Hindu Law of Inheritance, p. 881; Bhattacharya's Hindu Law, p. 584; and Setlur's Article on Mayukha on Inheritance, Bom. L. R. Journal, Vol. IV, p. 33.

Further, under Hindu Law, affiliation continues in spite of partition and divided sons, grand-sons and great grand-sons do offer oblations.

G. K. Parekh, in reply.

SCOTT, C. J:—The only question which arises for decision in this appeal is whether the appellant claiming as the widow of Chunilal Lakhmidas has an equal right by inheritance to the property left by Bai Parvati with the plaintiff Jagjiwandas Kashidas who is admittedly an heir. Parvati had two sons, Jagjiwandas the plaintiff and Lakhmidas who predeceased his mother, leaving a son Chunilal of whom the appellant Bai Kiki is the widow. Jagjiwan therefore is the son, and Chunilal in whose place Kiki stands was the grand-son. The property is admittedly *stridhana* of the class styled in the Mayukha non-technical. In the case of any difference between the Mitakshara and the Mayukha the parties will be governed by the Mayukha. With regard to *stridhana* of the class which is known as technical, that is, *anvadheya stridhana* and what wealth is given through affection by the husband, the three writers on Hindu law to whom reference has been made in the arguments, namely, Vijnaneshwara, Nilkantha and the author of the Smriti Chandrika, are all agreed upon the principle by which inheritance is

[1] (1915) 37 All. 604 at p. 622. [2] (1914) 42 Cal. 384 at pp 411, 412.

governed. It is stated concisely in the Smriti Chandrika, Chapter ix, section III, paragraph 4: "the property of a woman leaving children will not be inherited by the husband, even though he survives her, but only by the surviving children of the woman." Thus a child who does not survive cannot pass on by the doctrine of representation any right to his children to succeed to technical *stridhana* of his mother in competition with her surviving children. In the Mitakshara the descent with regard to technical *stridhana* is worked out in detail. The property first devolves on daughters, then on failure of all daughters grand-daughters take, then great great grand-daughters, on their failure sons take, and then grand-sons, then great great grand-sons, and the same result follows in the case of non-technical *stridhana* under the Mitakshara. In the Mayukha, in the case of technical *stridhana* the rule of inheritance is worked out in the same way as in the Mitakshara, and it is laid down that in default of daughters and the rest, that is, grand-daughters and great great grand-daughters, the sons, grand-sons and the rest succeed. With regard to non-technical *stridhana*, the relations preferred are different in the Mayukha to those preferred according to the Mitakshara. The passage relating to non-technical *stridhana* is as follows on p. 97 of Mandlik's translation: "as for the text of Yajnavalkya, Ch. II, V. 117: 'Let sons divide equally, both the effects and the debts after[the demise of]their parents,"' Nilkantha says the "text relates to what is acquired by inheritance, [or] spinning, and the like, excepting the technical *stridhana*. Therefore [even] if there be daughters, the sons or other [heirs], (*putrâdaya*), alone succeed to their mother's property, save the technical *stridhana*."

Upon this reference to the text of Yajnavalkya, the whole argument on behalf of the appellant has been based. It is contended that this text is the basis of

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the discussion as to the descent of the inheritance of the father discussed on p. 46 of Mandlik's translation, and as that text was taken by Nilkantha to govern also the inheritance to non-technical *stridhana*, it must follow that the sons, grand-sons and great grand-sons will all be entitled collectively, inasmuch as they are so entitled in relation to the inheritance of the father, the rule of inheritance being that they take by birth.

As against that argument, it is pointed out for the respondent that the doctrine of religious efficacy in the offering of *shradha* is what governs the inheritance in the case of the property of the father; that the offerings of a son, of a grand-son, of a great grand-son all have religious efficacy, and all in theory are combined for the benefit of the deceased ancestor, and that is why where inheritance rests upon the basis of religious efficacy, the sons, grand-sons and great grand-sons will take collectively irrespective of their propinquity to the deceased ancestor. In the case of the inheritance of a woman's property, it is pointed out that the doctrine of religious efficacy in the ministrations to the *manes* can have no place, and it has been so laid down by the Allahabad High Court in *Musammat Ganga Jati* v. *Ghasita* [1]; moreover, Nilkantha himself in the passage following that relating to inheritance of non-technical *stridhana* quotes the well-known text of Manu that "of the nearest *sapinda* the wealth shall be," declaring propinquity to the deceased as the criterion of the right to take wealth. It is clear that in dealing with technical *stridhana* Nilkantha has followed this principle of propinquity, and there is no reason why in the discussion of non-technical *stridhana* which follows that of inheritance to the technical *stridhana*, and precedes that in which the

[1] (1875) 1 All. 46 at p. 50.

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doctrine of propinquity is again enforced, it should be assumed, merely because a reference is made to a certain text of Yajnavalkya, that Nilkantha abandons the principle of propinquity and reverts quite unnecessarily, since he is discussing woman's property, to the doctrine of religious efficacy. It appears to me that the argument on behalf of the respondent is well-founded, and no sufficient reason has been shown for holding that there is any different principle at the base of the rule of inheritance according to the Mayukha with regard to non-technical *stridhana* from the principle which clearly obtains under the three writers above referred to with regard to technical *stridhana*. I would, therefore, confirm the decree and dismiss the appeal with costs.

HEATON, J:—I concur.

Decree confirmed.

R. R.

APPELLATE CIVIL.

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

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April 13.

KURGODIGOUDA BIN LINGANGOUDA (ORIGINAL PLAINTIFF), APPELLANT *v.* NINGANGOUDA BIN NINGANGOUDA (ORIGINAL DEFENDANT), RESPONDENT.*

Civil Procedure Code (Act V of 1908), section 144—Decree—Execution—Application for restitution, whether an application for execution—Minority of the applicant—Indian Limitation Act (IX of 1908), section 6, Schedule I, Articles 182, 183.

On November 4, 1901, a decree was passed by the trial Court for delivery of certain lands in favour of the plaintiff. In execution of that decree the lands were delivered to the plaintiff. On an appeal preferred by the defendant who was then a minor the High Court amended the decree on August 17, 1903, by excepting from the decree for delivery two survey numbers. The

*First Appeal No. 72 of 1916.