

APPELLATE CIVIL.

Before Sir Lallubhai Shah, Kt., Acting Chief Justice, and Mr. Justice Kemp.

1923.

July 12.

HARIBHAI GULAB (ORIGINAL PLAINTIFF), APPELLANT v. MATHUR LALLU AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS^o.

Hindu law—Succession—Reversioner—Uncle and nephew—Uncle excludes nephew—Propinquity.

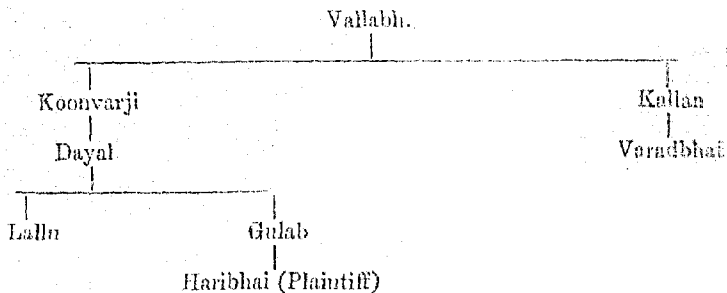
The rule under the Vyavahara Mayukha that a brother's son takes equally with the brother when the inheritance to another deceased brother opens cannot be extended by analogy to the case of distant Sapindas, the only test there being the test of propinquity.

Held, therefore, that under the Vyavahara Mayukha a nephew would not be entitled to succeed equally with his uncle as reversionary heir, the uncle being nearer.

FIRST appeal against the decision of D. D. Cooper, First Class Subordinate Judge at Broach.

Suit to recover possession of property.

The properties in dispute which were situated at Bholav, District Broach, originally belonged to one Varadhbhai. The pedigree of his family was as follows :—



In 1864 Varadhbhai made his will. The defendants Mathur Lallu and others were in possession of the property under the will. Varadhbhai died leaving him surviving his widow Sakbai who died in 1900.

In 1911 Lallu (defendant No. 1) filed a suit as a reversionary heir of Varadhbhai to recover possession of the

^o First Appeal No. 16 of 1922.

1923.

 HARIBHAI
 GULAB
 v.
 MATHUR
 LALLU.

property from other defendants, but the suit was dismissed. On December 13, 1919, Haribhai filed the present suit to recover possession of the property from the defendants, alleging that under the Vyavahara Mayukha, he was entitled to succeed to the property equally with his uncle Lallu.

The Subordinate Judge held that Lallu being nearer in descent than the plaintiff was the heir to the property left by Varadhbhai and dismissed the plaintiff's suit.

The plaintiff appealed to the High Court.

G. N. Thakor, with *R. J. Thakor*, for the appellant.

P. B. Shingne, for the respondents.

SHAH, AG. C. J. :—The only question argued in this appeal is that Haribhai, the plaintiff, would take equally with his uncle Lallu as reversionary heir to the deceased Varadhbhai who was the first cousin of Lallu's father. The relationship of the parties is given at page 3 of the print in the judgment of the lower Court, and according to the relationship it is clear that Lallu is nearer by one degree to Varadhbhai, Haribhai being the son of Lallu's brother Gulab who was dead at the date the inheritance opened.

It is urged on behalf of the plaintiff, who raised this contention in the lower Court without success, that, as, according to the rule under the Vyavahara Mayukha, a brother's son takes with the brother when the inheritance to another deceased brother opens, by the same analogy in the case of distant Sapindas the same rule should be adopted. It is a contention which is not supported by any authority. It seems to us to be entirely opposed to the whole scheme of the rules of inheritance. It is enough to refer to the passage in the Vyavahara Mayukha itself at page 82 in Mandlik's Hindu Law, where it is stated: "All the Sapindas and the

1923.

HARIBHAI
GULAR
v.
MATHUR
LALLU.

Samanodakas follow in the order of "propinquity"; and after the specified heirs when we come to the agnates, the only test is the test of propinquity. Applying that rule, it is clear that Lallu would be a nearer heir than Haribhai, and would exclude him. This contention is so opposed to the plain meaning of the Vyavahara Mayukha that we are not surprised that learned counsel for the appellant has not been able to rely upon anything better than the analogy of brother and brother's son in support of this proposition. A case like the present is not of uncommon occurrence, and if the analogy had ever been extended in this Presidency in the Districts governed by the Vyavahara Mayukha, there would be some decision in favour of such a proposition. But the absence of such a decision indicates that the contention is not sound. We, therefore, confirm the decree of the lower Court and dismiss the appeal with costs.

Decree confirmed.

J. G. R.

CRIMINAL REVISION.

Sir Lallubhai Shuk, Acting Chief Justice, and Mr. Justice Gogjee.

EMPEROR v. NEMCHAND NATHA^o.

1923.

July 19.

Bombay Primary Education (District Municipalities) Act (Bombay Act I of 1913), sections 7, 8, 9, 10†—School Committee—Attendance order—Disobedience of the order—Prosecution.

^o Criminal Application for Revision No. 98 of 1923.

† The sections run as follows :—

7. Where a notification under section 3 is in force in any municipal district, the parent of every child to which such notification applies shall, in the absence of a reasonable excuse as hereinafter provided, and if such parent and child ordinarily reside in such municipal district, cause such child to attend a recognised primary school in such district.