further proceedings before another Judge, I think it would be open to a Judge to exercise the jurisdiction vested in him. In this connection I would emphasise the observations made by the Privy Council in *Ma Shwe Mya* v. *Maung Mo Hnaung*[1] (p. 684) :—

"All rules of Court are nothing but provisions intended to secure the proper administration of justice, and it is therefore essential that they should be made to serve and be subordinate to that purpose."

I think this is a case where, having regard to all the circumstances, the learned Judge was justified in exercising the jurisdiction.

I agree, therefore, that the appeal should be dismissed with costs, to be paid by defendant No. 1.

Appeal dismissed.

Attorneys for appellants : Messrs. *Mirza & Mirza.*

Attorneys for respondent : Messrs. *Andrade & Cunha.*

(Editor's Note.—In the Criminal appeal the order of acquittal of the Sessions Judge at Nasik was reversed and the accused Peter Philip Saldanha was convicted and sentenced to rigorous imprisonment for nine months.)

B. K. D.

[1] (1921) 24 Bom. L. R. 682, P. C.

APPELLATE CIVIL.

Before Mr. Justice Madgavkar and Mr. Justice Wild.

MANIBHAI ALIAS PRANLAL KAMESHWAR (ORIGINAL DEFENDANT), APPELLANT v. SHANKERLAL KAMESHWAR (ORIGINAL PLAINTIFF), RESPONDENT.*

1929

November 15.

Hindu law—Vyavahara Mayukha—Property inherited from maternal grandfather—Succession—Grandson takes absolute estate.

Under the Vyavahara Mayukha prevailing in the Bombay Presidency, a person inheriting property from his mother who inherited it from her father has an absolute estate therein and he can dispose of it by will.

Raja Chelikani Venkayyamma Garu v. *Raja Chelikani Venkataramanayyamma*[1]; *Karuppai Nachiar* v. *Sankaramarayanan Chetty*[2]; *Jamna Prasad*

*Second Appeal No. 595 of 1928.

[1] (1902) L. R. 29 I. A. 156.

[2] (1903) 27 Mad. 300 at pp. 312, 314.

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v. *Ram Partap*[1]; *Rao Bahadur Man Singh* v. *Maharani Nawlakhbati*[2] and *Chotay Lall* v. *Chunno Lall*,[3] referred to and discussed.

SECOND Appeal against the decision of R. S. Broomfield, District Judge of Ahmedabad, confirming the decree passed by C. N. Desai, Joint Subordinate Judge at Ahmedabad.

Suit to recover possession of property.

The property in suit belonged originally to one Mayaram. On Mayaram's death his daughter Bai Parsan inherited the property. On Bai Parsan's death the house went to her son Kameshwar. Kameshwar died leaving a will by which he bequeathed portions of his property to his sons Shankerlal (plaintiff) and Manibhai (defendant). After Kameshwar's death the plaintiff sued to recover possession of some of the property from the defendant who contended that the property was ancestral property in the hands of Kameshwar and he had no right to dispose of it by will.

Both the lower Courts decreed the plaintiff's claim holding that the property was not ancestral, but the absolute property of Kameshwar and that he had a right to dispose of it by will.

The defendant appealed to the High Court.

G. N. Thakor, with *V. N. Chhatrapati*, for the appellant.

H. V. Divatia, for the respondent.

MADGAVKAR, J.:—The defendant appellant and the plaintiff respondent are the sons of one Kameshwar, who left a will assigning two different houses to the present parties. The only question argued in appeal is whether Kameshwar could not make a will in respect of this property, because this property was ancestral

(1) (1907) 29 All. 667.
(2) (1923) 2 Pat. 607 at pp. 611, 640.
(3) (1878) L. R. 6 I. A. 15.

property in the sense in which that term is used in Hindu law or whether it was absolute property which he could dispose of by will.

The property in question originally belonged to one Mayaram whose daughter Bai Parsan was the mother of Kameshwar. On the death of Mayaram it descended to Parsan and on her death, to Kameshwar, father of the present parties.

It was argued for the appellant that in view of the decision of their Lordships of the Privy Council in *Raja Chelikani Venkayyamma Garu* v. *Raja Chelikani Venkataramanayyamma*[1] property inherited from the maternal grandfather must be held to be ancestral property, as was held by the Madras High Court in *Karuppai Nachiar* v. *Sankaranarayanan Chetty*[2] and *Vythinatha Ayyar* v. *Yeggia Narayana Ayyar*,[3] and that the contrary view in *Jamna Prasad* v. *Ram Partap*,[4] and to a certain extent in *Rao Bahadur Man Singh* v. *Maharani Nawlakhbati*[5] was not correct. The trial Court held that it was not ancestral property and that he was entitled to make a will. The District Court saw no reason to differ.

Until the decision in *Raja Chelikani Venkayyamma Garu* v. *Raja Chelikani Venkataramanayyamma*[1] such property was not considered to be ancestral. The question arose on the Privy Council decision above and particularly on the remarks of their Lordships at page 164 which are as follows :—

" What then was the character of the property which they took? In the grandfather's hands it was separately acquired property. In the hands of the grandsons it was ancestral property which had devolved on them under the ordinary law of inheritance. "

That case was, however, from Madras. In the preceding para. their Lordships expressly observe

(1) (1902) L. R. 29 I. A. 156.
(2) (1903) 27 Mad. 300 at pp. 312, 314.
(3) (1903) 27 Mad. 382.
(4) (1907) 29 All. 607.
(5) (1923) 2 Pat. 607 at pp. 611, 640.

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Madgavkar J.

that the law of inheritance in the case of women is left in great obscurity by the Mitakshara and that in *Chotay Lall* v. *Chunno Lall*[1] the daughter's estate inherited from the father is a limited and restricted estate only and not Stridhan. It was these observations which led to the difference of opinion in the High Court of Madras on the one hand and the High Court of Allahabad on the other, the Patna High Court seeking a way out of the difficulty by suggesting that their Lordships of the Privy Council had treated the property as an accretion to the nucleus to other admittedly joint family property of the grand-sons. The present case from Gujarat is governed by the Mayukha. In the Bombay Presidency, the question admits of a decisive answer. A daughter in the Bombay Presidency inherits an absolute estate from her father. It is her Stridhan and it is only in default of daughters that it passes to her sons. In the present case, therefore, Parsan, and after her Kameshwar, took an absolute estate which could be disposed of by will. It is not, therefore, necessary to take into consideration the further fact that the present parties were already divided and not joint. The appeal fails and is dismissed with costs. The rule for stay is discharged with costs.

Decree confirmed.

J. G. R.

[1] (1878) L. R. 6 I. A. 15.

CRIMINAL REVISION.

Before Mr. Justice Patkar and Mr. Justice Baker.

1929

November 29.

EMPEROR *v.* POPATLAL BHAICHAND SHAH.*

Indian Railways Act (IX of 1890), sections 108 and 121—Overcrowding of passengers in a railway compartment—Pulling of emergency chain by passenger—Reasonable and sufficient cause—Ascertainment of names of passengers using abusive language.

A railway passenger who pulls the emergency chain because he finds the compartment crowded beyond the prescribed limit commits no offence under

*Criminal Application for Revision No. 364 of 1929.