APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

1921.

April 4.

KESHAV BIN PANDURANG LOKHANDE AND OTHERS (ORIGINAL DEFENDANTS NOS. 1, 2 AND 4), APPELLANTS *v.* MARUTI BIN KRISHNA SHINDE AND OTHERS (ORIGINAL PLAINTIFFS AND DEFENDANT NO. 3), RESPONDENTS*.

Hindu law—Widow—Savings from her limited estate—Savings are her absolute estate.

Ancestral property belonging to a minor Hindu was on his death inherited by his widowed mother. Out of savings which the widow made from the income of the property, she purchased the property belonging to her brother at a Court sale. Subsequently, she conveyed the property back to her brother. On the widow's death, the reversioners sued to recover the property as an accretion to the ancestral property :—

Held, dismissing the suit, that the property belonged to the widows' brother, for there was never any intention on the widow's part that the property should form an accretion to the ancestral property in her hands.

Under Hindu law, a widow has an absolute control over the income of the ancestral property which she inherits from her husband and can dispose of it as she pleases. If she invests it then it will depend upon the facts proved whether she has shown an intention that the investment shall be an accretion to the ancestral property or whether she can hold it in the same manner as the savings with which she has purchased it. That must be a question of fact in each case. The fact that the investment is in the widow's name cannot in itself be a presumption that the investment is intended to be an accretion to the ancestral property.

FIRST Appeal from the decision of V. P. Ravekar, First Class Subordinate Judge at Sholapur.

Suit to recover possession of property.

One Satvaji, a Hindu, died in 1864, leaving him surviving a grandson Govind and a predeceased son's widow Vithabai. Govind died a minor and unmarried in 1867. On his death, Vithabai succeeded to his property.

* First Appeal No. 249 of 1918.

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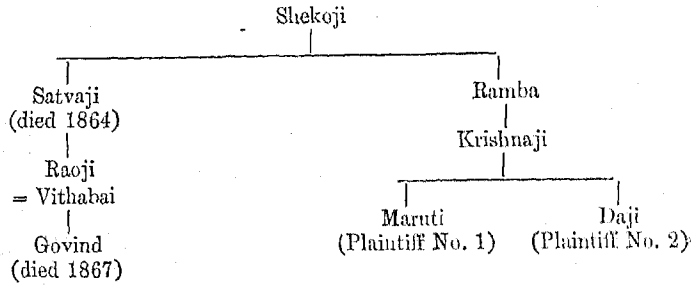
The following genealogical tree shows the relationship :—



In 1852, Vithabai purchased the property of her brother Pandu, which was sold at a Court sale. The purchase money came from the savings which she had made from her son's estate. In 1884, Vithabai sold the property to her brother ; and it remained in possession of her brother's sons (defendants).

Vithabai also purchased lands at Bhogaon out of the savings from her son's estate. The lands were purchased in her brother Pandu's name and were in his possession.

In 1915 Vithabai died.

The plaintiffs who were reversionary heirs of Govind sued to recover possession of the son's property and also of the two properties which Vithabai had purchased from the savings.

The trial Court awarded the plaintiffs' claim to Govind's property and also Pandu's property purchased by Vithabai and reconveyed by her to her brother ; but dismissed it as to lands at Bhogaon.

The defendants appealed to the High Court.

Coyajee, with *N. V. Gokhale*, for the appellants :— Vithabai had full power over the income of the ancestral property. She could spend it as she liked. The mere fact that she made investments in her own name

was not in itself sufficient on which to hold that they became accretions to the ancestral property. The widow did not intend to assimilate the income with the corpus (that is to say, with the ancestral property). Moreover, the estate was originally her father's property. When it happened to be sold in execution, she bought it and soon sold it to her brothers for the same price at which she had bought it. I rely on the cases of *Saodamini Dasi* v. *The Administrator-General of Bengal*[1] and *Akkanna* v. *Venkayya*[2].

P. B. Shingne, for respondents Nos. 1 and 2:—Unlike the third set of properties in the suit the properties, which once belonged to Vithabai's father were purchased by her in her own name and in order to defeat the interest of the reversioners, she alienated them as also the ancestral property and the property in the third set. The alienation was moreover to the brothers, who were fed by her and lived in her house and with her. All the three estates were regarded by her as falling into one stock and thus they happened to be sold by ostensible sales as stated above. Thus there is no proof that she had an intention of the sort alleged on behalf of appellants. I rely on *Isri Dutt Koer* v. *Hansbutti Koerain*[3].

MACLEOD, C. J.:—Plaintiffs sued to recover possession of the moveable and immoveable property described in the plaint.

One Satwaji died in 1864 leaving his widow Sakhubai, Vithabai the widow of his predeceased son and a grandson Govinda. After Satwaji's death, his estate was managed by his widow Sakhubai until her death in 1867. Govinda died a minor in the same year. His

(1) (1892) 20 Cal. 433. (2) (1901) 25 Mad. 351.

(3) (1883) 10 Cal. 324

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mother Vithabai succeeded as his heir. The plaintiffs are the grandsons of Ramba, the brother of Satwaji. The defendants are the sons of Vithabai's brothers.

The plaintiffs disputed various alienations made by Vithabai. They fall under three heads. The first was of certain property at Banegaon. The plaintiffs got a decree with regard to some of the properties at Banegaon and the decision of the lower Court has not been contested in appeal.

The second set of properties were originally the ancestral property of Vithabai's brothers, Rama and Pandu. These properties were sold in execution in 1876 and were eventually bought by Vithabai from the Court purchaser in 1882 and she conveyed them to her brothers in 1884. Admittedly they were purchased out of her savings of the income of the ancestral property. The learned Judge has held that when Vithabai purchased the property in her own name she purchased it and made it an accretion to her husband's and son's estate, and that she could not give it away to her brothers unless it was validly necessary to do so. That decision has been impeached in appeal and we think it is wrong. Admittedly, the widow had an absolute control over the income of the property and could dispose of it as she pleased. If she invested it, then it would depend upon the facts proved whether she had shown an intention that the investment should be an accretion to the ancestral property or whether she could hold it in the same manner as the savings with which she had purchased it. That must be a question of fact in each case. The fact that the investment was in the widow's name could not in itself raise a presumption that the investment was intended to be an accretion to the ancestral property. In *Isri Dutt Koer* v. *Hansbutti Koerain*[1] the widows, shortly after the

[1] (1883) 10 Cal. 324.

death of their husband in 1857, bought out of the savings of the income certain shares of land in which their husband had been a shareholder to a large extent. They made no attempt to alienate what they had purchased until in 1873. They sold without making a distinction between the original estate and the property purchased afterwards. It was held that the object of the alienation was not the need or the personal benefit of the widows, but a desire to change the succession, and to give the inheritance to the heir of one of themselves in preference to their husband's heir. It can be said that in that case the evidence showed that the widows had the intention, in the first instance, that the after purchases should be accretions to their husband's estate, and having kept them for over sixteen years and then alienated the property without making any distinction between the original estate and the after purchases, it could not be said that they had intended to keep the savings at their absolute disposal.

In *Saodamini Dasi* v. *The Administrator-General of Bengal*[1] the executor of the will of a Hindu testator made over to the widow of the latter an aggregate sum consisting of accumulations of income accrued during eight years from her husband's death, undisposed of by his will. The money was not received by her as a capitalized part of the inheritance, but as income that had been accumulated during her tenure of her widow's estate. The widow did not act as showing an intention on her part to make this sum of money, the greater part of which she invested in Government securities, part of the family inheritance for the benefit of the heirs. After the lapse of about twenty years she disposed of it as her own. It was held that the money so invested by the widow belonged to her as income derived from her widow's estate, and was subject to

[1] (1892) 20 Cal. 433 at p. 442

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her disposition. It was pointed out in the judgment as follows: "'There was no estate of her husband's in her hands for her to augment.' She did nothing to indicate an intention to make the fund received, or the interest on it, part of her husband's estate which was in other hands, or to justify the inference that she wished it to revert to her husband's heirs. It was said she had placed it in investments of a permanent nature. Had she done so, it does not appear to their Lordships that this circumstance alone would have added the fund to the estate devolving on her husband's heirs." No doubt, where the corpus is not in the hands of the widow, it would require very much stronger evidence to show that the savings of the income were intended to be an accretion to the corpus than when the corpus itself is in the hands of the widow.

In *Akkanna* v. *Venkayya*[1] these two cases were cited. A Hindu widow inherited certain property from her husband and with the income thereof acquired land on a usufructuary mortgage for fifty-two years. She assigned the unexpired portion of the term of the mortgage for consideration and subsequently died. The reversionary heirs to her late husband then sued her assignees for the property. There was no evidence that the widow had ever indicated any intention to make the property part of her husband's estate for the benefit of his heirs. The learned Judges said :—

"In the present case, as already stated, there is no evidence that Parvatamma ever indicated any intention to make the mortgage property part of her husband's estate for the benefit of his heirs. The acquisition made by her out of the income of her husband's estate was not in the nature of an enlargement of that estate or of redeeming the same from an incumbrance or charge or in the nature of an appurtenance thereto ; it was simply an investment, on a usufructuary mortgage, of her small savings over which she had absolute power of disposal, and it is difficult to see on what principle it is to be presumed that she thereby intended to part with her power of disposition,

[1] (1901) 25 Mad. 351 at p. 359.

for the benefit of her reversionary heirs. The acquirer of property presumably intends to retain dominion over it, and in the case of a Hindu widow the presumption is none the less so when the fund with which the property is acquired is one which, though derived from her husband's property, was at her absolute disposal."

On the facts of this case, the property which originally belonged to Vithabai's brothers had been sold in execution of the decree against them. Then we find that Vithabai purchased that property from the auction-purchaser and soon after conveyed it back to her brothers. It seems to me, beyond all doubt, that there never was any intention on the part of Vithabai that this property should form an accretion to the ancestral property in her hands. I think, therefore, that the learned Judge in the Court below was wrong in passing a decree in favour of the plaintiffs for these properties. Therefore the plaintiffs' suit with regard to these properties should be dismissed.

With regard to the third set of properties at Bhogaon, the defendant succeeded and the plaintiffs filed cross-objections. These properties admittedly were purchased by savings of the widow and were bought in the name of Pandu her brother. So it cannot be said that there was any intention on the part of the widow that these properties should form an accretion to the ancestral property. The learned Judge was right in rejecting the plaintiffs' claim as to the Bhogaon land.

The appeal must be allowed with regard to the second set of properties and the mesne profits thereof.

The appellants will be entitled to costs in proportion to their success throughout. Cross-objections are dismissed with costs.

SHAH, J :—I agree.

Appeal allowed:
Cross-objections dismissed.

R. R.