

this case the Railway Company has adduced practically all the available evidence and has made a definite suggestion supported by evidence as to robbery from the running train. I do not say that the fact is established; but the theory of wilful neglect on the part of the Railway servants is sufficiently excluded. I agree, therefore, that the decree of the lower Court should be set aside and the plaintiff's suit dismissed with costs.

Decree reversed.

J. G. R.

APPELLATE CIVIL.

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

NARAYAN MORESHWAR WELANKAR (ORIGINAL PLAINTIFF), APPELLANT *v.* WAMAN MAHADEO KULKARNI (ORIGINAL DEFENDANT), RESPONDENT^c.

1921.

March 3.

Hindu law—Widow inheriting as a gotraja sapinda to a female—Widow takes absolute estate.

Under Hindu law in the Bombay Presidency a widow inheriting as a *gotraja sapinda* from a female takes an absolute estate which would go on her death to her heirs and not revert to the heirs of the last female owner.

Gandhi Maganlal v. Bai Jadab ⁽¹⁾, relied on.

SECOND Appeal against the decision of N. S. Lokur, Assistant Judge of Satara, confirming the decree passed by V. P. Raverkar, First Class Subordinate Judge at Satara.

The facts material for the purposes of this report are sufficiently stated in the judgment.

K. H. Kelkar, for the appellant.

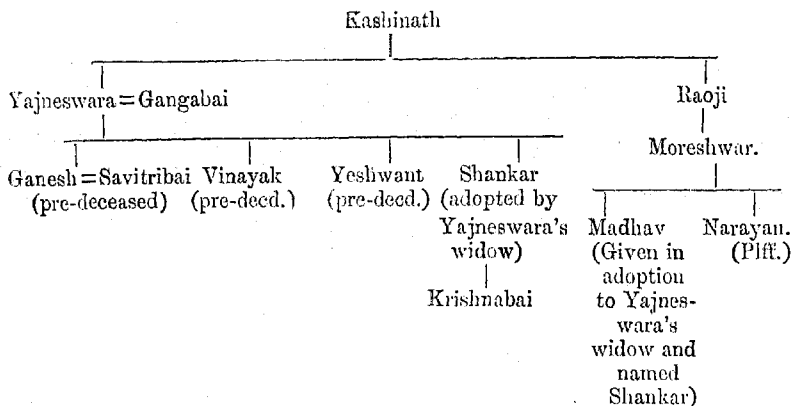
P. V. Kane, for the respondent.

^c Second Appeal No. 441 of 1920.

⁽¹⁾ (1899) 21 Bom. 192.

SHAH, J. :—The facts which have given rise to this Second Appeal are not in dispute. The following table shows the relationship of the parties concerned :—

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The property in suit belonged to Yajneswara who died leaving a widow, Gangabai, and a pre-deceased son's widow, Savitribai. After his death Gangabai adopted the natural brother of the present plaintiff from the other branch. It is common ground that after the death of Shankar and his widow in 1909, the property was vested absolutely in Shankar's daughter, Krishnabai, who was a few months old then. She died a few months after her parents. Savitribai took possession of the property as the next heir of Krishnabai, and sold it to the present defendant in 1913. Savitribai died in 1915 ; and the plaintiff, who is the grandson of the brother of Yajneswara, claims the property in this suit on the ground that the alienation by Savitribai was not for any legal necessity and that it ceased to be operative on her death.

The defendant pleaded that Savitribai was absolutely entitled to the property as the heir of Krishnabai, and that in any case the sale was for a legal necessity. Both the lower Courts have found that there was no legal necessity for the alienation, but they have

held that Savitribai was absolutely entitled to the property and was competent to alienate it without any necessity.

In the appeal before us it is not disputed that Savitribai as the widow of the uncle of Krishnabai was a nearer heir to Krishnabai than the plaintiff according to the rule laid down in *Lallubhai Bapubhai v. Man-kuvarbai*⁽¹⁾ and affirmed by the Privy Council in *Lullobhoy Bappoobhoy v. Cassibai*⁽²⁾. She would undoubtedly be a nearer *gotraja sapinda* of Krishnabai's father than the plaintiff according to that rule, and, therefore, a preferential heir to Krishnabai. It is hardly necessary to discuss this point any further in view of the decisions in *Tukaram v. Narayan Ramchandra*⁽³⁾ and *Basangavda v. Basangavda*⁽⁴⁾, and the clear provisions as to the succession to the estate of a maiden, both in the Mitakshara and the Vyavahara Mayukha (see Mitakshara, Chapter II, section XI, paragraph 11; Stokes Hindu Law Books, p. 463 and Vyavahara Mayukha—Mandlika's Hindu Law, pp. 97 and 98).

It has been argued, however, that the widow inheriting as a *gotraja sapinda* according to the rule in *Mankuvarbai's case*⁽¹⁾ always takes a limited estate, and that on her death the property goes not to her heirs but to the heirs of the last owner, whether the inheritance be from a male or a female. Where the widow inherits as the *gotraja sapinda* from a male, it is clear on the authorities that she takes the limited estate of a Hindu widow and that on her death the property would revert to the reversioners of the last male owner. But there is no direct authority on the question as to whether the widow inheriting from a female under similar circumstances takes it subject to the same limitation. The learned pleaders have not cited any such

(1) (1876) 2 Bom. 388.

(2) (1880) L. R. 7 I. A. 212.

(3) (1911) 36 Bom. 339.

(4) (1914) 39 Bom. 87.

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authority. We have taken time to consider the case, and I have not been able to find any decision directly bearing on the point. In the case of *Bai Kesserbai v. Hunsraj Morarji* ⁽¹⁾ the co-widow inherited the estate which was held to have been absolutely vested in the deceased widow. She was preferred as an heir to that estate as the nearest *sapinda*; but there was no question in that case as to the nature of the estate, which she took.

It is urged, however, on behalf of the respondent that the *ratio decidendi* in *Gandhi Maganlal v. Bai Jadab* ⁽²⁾ which found favour with the majority of the Full Bench is decisive of the question, and that the widow Savitribai took an absolute estate, which would go on her death to her heirs and not revert to the heirs of the last male owner. This was a decision as to the grandmother inheriting her maiden grand-daughter's estate; and it was held that she took an absolute and not a limited estate. One of the grounds of the decision was that she did not take as the widow of her husband but as a grandmother.

It is urged on behalf of the appellant that the decision must be limited to the case of a grandmother, and that a widow who takes the estate as a *gotraja sapinda* under the rule in *Mankuvarbai's case* ⁽³⁾, takes it as the widow of her husband and can only take it subject to the ordinary limitation of a Hindu widow. In the Full Bench decision, however, the majority of the Judges base their conclusion on the broad consideration that the general rule as to females inheriting the property in this Presidency is that they take it absolutely, and that the limited estate is an exception applicable to cases of females entering the family by marriage and inheriting from a male and not from a

⁽¹⁾ (1906) 130 Bom. 431.⁽²⁾ (1899) 24 Bom. 192.⁽³⁾ (1876) 2 Bom. 388.

female. The exception, it is stated, does not apply when the inheritance is from a female. It is quite true that this reasoning was not accepted by Candy J. But the other Judges (Jenkins C. J. and Ranade, Parsons and Crowe JJ.) accepted that view; and it appears to me that their decision is based mainly upon that ground. Though they had not to deal in that case with a widow inheriting as a *gotraja sapinda* according to the rule in *Lalubhai Bapubhai v. Mankuwarbai*⁽¹⁾, the reason of the rule which they have enunciated is equally applicable to such a widow and cannot be confined to the case of a grandmother inheriting from her maiden grand-daughter. I see no good ground to refuse to apply the general proposition enunciated in the case by the majority of the Full Bench to the case of a widow inheriting as a *gotraja sapinda* from a female.

In the present case it is clear that Krishnabai as the daughter of Shankar took the estate absolutely: and if on the death of Savitribai, who took as an heiress to Krishnabai, the inheritance is to be traced back to the heirs of Krishnabai, we would be extending the theory of reverting to the last owner in the case of inheritance from a female in a manner in which it has never been done before in this Presidency. At least the reported decisions do not disclose any such application; and the observations of Telang J. about the theory of reverting to the last male owner in *Manilal Rewadat v. Bai Rewa*⁽²⁾, suggest that the theory should not be extended beyond the limit already accepted in this Presidency. Personally I am unable to find anything in the *Mitaksharā* or the *Vyavahara Mayukha*, where the subject of *Stridhan* is dealt with to support the view that the estate inherited by a widow from a female is subject to such limitation as is applicable to

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(1) (1876) 2 Bom. 388.

(2) (1892) 17 Bom. 758.

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a widow inheriting from a male. It may appear rather anomalous that the widows coming in as *gotraja sapindas*, under a ruling which was based upon acceptance and usage rather than upon texts, should be able to take the property absolutely when they inherit from females, though they would take only a limited estate when they inherit from males. If, however, the significance of the absence of any such limitation in the texts relating to the devolution of Stridhan, technical or non-technical, such as is indicated in the texts in the case of a widow inheriting her husband's estate and as is now accepted in the case of all widows inheriting from a male in this Presidency, is properly appreciated, it would appear that the anomaly is only apparent and not real. In the absence of any reported cases bearing on the question of the nature of the estate inherited by a widow taking under the rule in *Mankuwarbai's case*⁽¹⁾ from a female who owns the estate absolutely, and in the absence of any clear indication of acceptance and usage to the contrary, it is difficult to differentiate the case of such widows from the case of other females like the grand-mother inheriting from a female. I do not see any adequate ground not to apply to such widows the general rule as stated by Sir Lawrence Jenkins in *Gandhi Maganlal's case*⁽²⁾.

It is not without significance that, though the judgment of the learned Chief Justice in that case refers to the circumstance that the grandmother does not come in as a widow of her husband, it proceeds to deal with a point based on the difference between inheritance from males and females, and does not appear to lay any stress upon the first consideration as would appear from the fact that the case of a mother inheriting from a male is expressly included in the exception. Further,

(1) (1876) 2 Bom. 388.

(2) (1899) 24 Bom. 192.

this Court has declined to reconsider the nature of the estate inherited by a mother from her son in spite of the judgment of Candy J. and the reason given by the majority of the Full Bench that the grandmother did not come in as her husband's widow in *Gandhi Maganlal's case*⁽¹⁾; see *Vrijbhukandas v. Bai Parvati*⁽²⁾. The case of the grandmother inheriting from her grandson came up for consideration, when there was no such precedent as regards the nature of her estate as would necessitate the application of the rule of *stare decisis*. Still the point was treated as settled by the decisions relating to the mother and other widows inheriting from males: see *Dhondi v. Radhabai*⁽³⁾. These decisions indicate by implication that the view of the majority of the Full Bench in *Gandhi Maganlal's case*⁽¹⁾ as to the difference between inheritance from males and that from females was accepted as the real basis of the decision. After a careful consideration of the point I have come to the conclusion that Savitribai, inheriting as a *gotraja sapinda* under the rule stated in *Lallubhai Bapubhai v. Mankuvarbai*⁽⁴⁾ from a female, took an absolute estate.

Though the case comes from a district where the Mitakshara law prevails, I have referred to the Mitakshara and the Vyavahara Mayukha generally as there is no conflict between the two on the point in question.

My remarks in this judgment are made strictly with reference to the law as accepted in this Presidency. It is obvious that the question cannot arise where the rule in *Mankuvarbai's case*⁽⁴⁾ giving the widow the place of her deceased husband in the order of succession as a *gotraja sapinda* within certain limits is not accepted.

(1) (1899) 24 Bom. 192.

(2) (1907) 32 Bom. 26.

(3) (1912) 36 Bom. 546.

(4) (1876) 2 Bom. 388.

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I would confirm the decree of the lower appellate Court with costs.

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MACLEOD, C. J. :—I agree.

Decree confirmed.

J. G. R.

APPELLATE CIVIL.

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

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March 29.

CHUNILAL RATANCHANDRA GUJRATHI (ORIGINAL PLAINTIFF),
APPLICANT v. LAXMAN GOVIND DUBE (ORIGINAL DEFENDANT),
OPPONENT^o.

Ruzu Khata—Suit based on a khata—Maintainability of suit.

There had been certain dealings between the plaintiff and the defendant resulting in the defendant incurring debts to the plaintiff on the 3rd July 1914, 21st July 1914 and 3rd September 1914. An account of the dealings being made, the defendant signed an acknowledgment (Khata) for Rs. 90 on the 29th June 1917. The plaintiff having sued to recover the amount due on the Khata, the Subordinate Judge held that the suit was not maintainable on the Ruzu Khata and dismissed it. The plaintiff having applied to the High Court,

Held, reversing the decree and allowing the suit, that inasmuch as the acknowledgment made before the limitation period expired, implied an unconditional promise to pay, there was no reason why it should not form the basis of the suit.

Maniram Seth v. Seth Rupchand⁽¹⁾, which in effect overruled *Shankar v. Mukta*⁽²⁾, followed.

APPLICATION under Extraordinary Jurisdiction against the decision passed by S. A. Gupte Subordinate Judge at Pimpalgaon.

Suit on a Ruzu Khata.

*Application No. 304 of 1920 under Extraordinary Jurisdiction.

(1) (1906) 33 Cal. 1047

(2) (1896) 22 Bom. 513.