LATE SUPREME COURT, EQUITY SIDE.

1859. Nov. 8.

PRA'NJIVANDA'S TULSIDA'S and JAGMOHANDA'S JAMNA'DA'S ..... *Plaintiffs.*

DEVKU'VARBA'I, widow of RA'MDA'S HIRA'CHAND, deceased, BHAGVA'NDA'S PURSHOTAMDA'S, GOKALNA'TH SA'VAKNA'TH, and NA'NA'BHA'I PARBHUDA'S (executors of the last Will and Testament of Purshotamdás Hiráchand, deceased) and ARTHUR JAMES LEWIS, Advocate General of Bombay ..... *Defendants.*

Hindú Law—Succession—Widow's Right to Inherit—Daughter's Right to Succeed.

A Hindú, an inhabitant of Bombay, entitled to separate moveable and immoveable property, dies without male issue, leaving a widow, four daughters, a brother, and the male issue of other deceased brothers. The widow is entitled to the moveable property absolutely, and to the immoveable property for life. Subject to the widow's interest, the moveable property descends to the daughters absolutely, in preference to the brother, and the issue of the deceased brothers.

THE point with reference to which this case is reported arose in the following manner :—One Hiráchand Lakhmichand died in the Christian year 1819, leaving four sons, Rámdás, Purshotamdás, Tulsidás, and Jamnádás. Tulsidás died intestate in 1830, leaving one son, the plaintiff Pránjivandás Tulsidás. Jamnádás died intestate in 1832, leaving one son, the plaintiff Jagmohandás Jamnádás. Rámdás died in 1846, leaving a widow, the defendant Devkúvarbái, and four daughters who were all married, but no male issue. In his lifetime Rámdás had executed a Gujaráti Will, which contained the following residuary gift :—"and whatever surplus of my funds there may remain, the same is to be expended for charitable purposes in my name, with the consent or advice of my wife, and my brother Purshotamdás." The last survivor of the brothers, Purshotamdás, died in 1853, leaving a son, Bhagvándás, one of the defendants, and having executed a Will, of which the defendants Gokalnáth Sávaknáth and Nánábhái Parbhudás were acting executors.

The plaintiffs filed their bill against the defendants, and amongst other things prayed that the residuary bequest in the will of Rámdás might be declared void and inoperative, as

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being so vaguely expressed as to be incapable of being carried into effect, and that it might be declared that the plaintiffs, as co-heirs with Purshotamdás of Hiráchand and also of Rámdás, and as members of a joint and undivided family, became entitled upon the decease of Rámdás to one-third part each of his residuary estate.

The evidence taken at the hearing was considered by the Court to show that Rámdás had separate property, moveable and immoveable, in respect to which his Will, and the residuary bequest therein contained could operate; and two questions then arose with regard to the residuary bequest—(1) Was the same a valid bequest to charity, having regard to the vagueness and generality of the Gujaráti word for charity, *viz.*, "*dharm*," used in the Will? and (2) If the bequest was void, to whom did the residuary property of Rámdás, the subject of such bequest, descend? The decision of the Court with reference to the first question was that the bequest was void, and that the residue was undisposed of.* The judgment of the Court on the second point was delivered on the above day by SAUSSE, C. J., and was in substance as follows:—

The testator left a widow and daughters, and we must consider first what estate the widow took, the husband dying leaving separate property. I have felt considerable difficulty in coming to any decision, the schools being so conflicting, and it is difficult to follow the reports of the Adálat. The books of chief authority in this part of India are three: Manu, the Mitákshará, and the Vyavahára Mayúkha. Mr. Colebrooke, in a letter set out in the Appendix to Strange's Hindú Law, † speaks of the Mayúkha as being in the West of India, and particularly among the Maráthás, the greatest authority after the Mitákshará. Mr. Borradaile, in his reports, also speaks of these as being the three books generally referred to in this part of the country. I had inquiries made of the Shástris here and at Puná, and was informed that these three books have been established by usage as authorities in this part of India, and for the last eighty years have been referred to as such upon the law of inheritance in this presidency. The Dáyá Bhága and Dáyá Krama Sangraha, referred to in Sir Thomas Strange's preface, are of the Bengal school. I was induced to make these inquiries because Strange refers to Bengal authorities, and the Bengal law is on many points different from that in force in this part of India.

* *Suprà*, p. 76, *in notis*.

† Vol. I., p. 318.

Then according to these three books what estate does the widow take? All the authorities, both in Bengal and here, are in unison as to the right of the widow to succeed where property is separate. In Bengal she succeeds also to undivided property, but her power over it is stated to be limited, and she is treated merely as tenant for life. On this side of India, however, a different rule is considered to prevail, and it is based on the authority of the three books I have mentioned. In Strange* it is stated that the restrictions there mentioned, on the disposing power of a widow over property inherited from her husband, seem to concern land only, whereas with regard to moveables she has a greater latitude. He cites Bengal Reports of the year 1812, and 2 Borradaile's Bombay Reports, p. 428. I have referred to the latter, but it does not appear to support the statement. In Steele's "Summary of the Law and Custom of Hindú Castes in the Dakhan," published by authority of the Bombay Government in 1827, it is laid down that the widow of a separated brother dying out male issue succeeds by inheritance to the whole of his share of the family property and acquisitions, but that she has no right to alienate immoveable property without consent of all the male heirs, † and subsequently "females, however, possess a life-interest only in immoveable inherited property, and cannot, therefore, alienate it without consent of the next male heirs;"‡ He also states that in Khándesh and Sátárá the widow is heiress to the husband's personal property, but holds the real property for life only, and without power of alienation. In the Mitákshará § it is laid down as a settled rule that a wedded wife, being chaste, takes the whole estate of a man who, being separated from his coheirs, and not reunited with them, dies leaving no male issue. In the Mayúkha‖ the law is laid down very much in the same way. From these authorities it would appear that a widow takes an absolute interest in her husband's estate; but in answer to my question the Shástris stated that as to the immoveable property she is limited to the use of it for life, but she has power over the whole estate for proper purposes, provided she exhaust the moveable before resorting to the immoveable property, the latter being an object of care to the Hindú law, with a view to preserve it for the heirs. The schools and the cases are conflicting, but I find that over the moveable the widow has

* Vol. I., p. 246, 247. † Para. 25, p. 42. ‡ Para. 72, p. 69.
§ Ch. II., Sec. 1. para. 39. ‖ Ch. IV., Sec. 8, paras. 1, 2.

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according to some cases, a power of disposal, but that this power is denied in respect to the immoveable. In Madras it was said that a widow may give away personal property during her life, but cannot will it.*

On the whole, I think the spirit and practice of Hindú law, as recognised in Western India, will be best construed by treating the widow as having uncontrolled power over the moveable estate, but as having nothing more than a life-use in the immoveable estate. The widow has, according to the text-books, a number of duties thrown upon her in respect to the mode of spending money she may have inherited, but these duties are of such a character that it would be impossible for the Court to enforce the performance of them. In Bengal, dealings by a widow with immoveable estate are held to be legally, but not morally, good, but I am not aware that such a distinction has ever prevailed here. I have, therefore, come to the conclusion that in regard to immoveable property her estate is in the nature of that of a tenant for life.

The widow, then, not having an absolute estate in the immoveable property, it remains to determine who are entitled to the absolute interest subject to the estate taken by her. In this case there are daughters. Now, according to all the authorities, the daughters take next after the widow. What then is the nature of the estate they take? Here, again, there are differences of opinion, but, dealing with the question according to the three books I have mentioned, it appears to me that the daughters take an absolute estate. We find quoted in the Mayúkha† a passage from Manu: "The son of a man is even as himself, and the daughter is equal to the son; how then can any other inherit his property, but a daughter, who is as it were himself." With reference to this point also I consulted the Shástris both here and at Puná, and inquired whether daughters could alienate any, and what, portion of the property inherited from a father who died separate. The answer was that daughters so obtaining property could alienate it at their will and pleasure, and in this the Shástris of both places agreed, both also referring to the above text in the Mayúkha as their authority for that posi-

* *Jushadah Raur* v. *Juggernaut Tagore*, East's Notes of Cases, No. XLVII.; 2 Morley's Dig., pp. 67-69.

† Ch. IV., Sec. VIII., para. 10.

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tion. On reviewing all accessible authorities, I have come to the conclusion that daughters take the immoveable property absolutely from their father after their mother's death. I, therefore, hold that the plaintiffs have no *locus standi* to maintain this suit. The bill must be dismissed with costs as against Devkúvarbái and the Advocate General. As to the other parties, though nominally defendants, they are virtually plaintiffs, and have been acting in concert with them: therefore, as to them I think the bill should be dismissed without costs.

Bill dismissed.

NOTE.—With the above decision compare the cases of *Rangasvámi Ayyangár* v. *Vanjulatámmál*, 1 Mad. H. C. Rep. 28, and *Perammál* v. *Venkatammál*, *ib.* 223.

In the matter of the Petition of DA'NA'PPA' bin SUBRA'V.

1863.
Dec. 21.

Guardian ad litem—*Mother of Infant.*

In the absence of a competent and unobjectionable male relative, ready and willing to act as guardian *ad litem* of an infant, the mother of the infant may be appointed such guardian, if there be no objection to her on any ground but that of her sex.

THE petition in this case stated that the applicant, Dánápá, a minor, who appeared through his mother and guardian, Bassává, had presented a petition through his mother, on the 24th of October 1863, to the Honorable G. A. Hobart, Judge of the District of Solápur, praying for permission to sue as a pauper, and that the petition had been dismissed, on the ground that a female guardian would be unable to discharge the functions of that office. The petition further stated that the male relatives of the infant were interested in the subject-matter of the suit, and that other objections existed to their being appointed guardians, and prayed that the order of the Judge might be set aside, and that he might be directed to accept Bassává as the guardian of her son, the infant.