Special Appeal No. 257 *of* 1864.

1864.
Sept. 19.

JAMIYATRA'M and U'TTAMRA'M.....*Appellants.*
BA'I JAMNA' .....*Respondent.*

Hindú Law—Inheritance—Self-acquired immoveable Property—Widow —Western India—Stridhan—Daughters—Vested Right—Daughter's Son —Representation—Funeral Obsequies.

A Hindú died possessed of self-acquired property in land, leaving no sons or sons' sons, but one widow, a daughter by the widow, and another daughter by an elder wife deceased. The last died in the widow's lifetime, leaving two sons :—

Held that the daughters as co-heiresses took an estate in remainder, vested in interest on their father's death, and that such vested right, on the death of one of them during the widow's lifetime, passed by inheritance to her sons, who upon the widow's death became entitled to enter into possession of their mother's half as her representatives.

The widow in Western India has only a particular estate for life in the immoveable separate property of her deceased husband.

THIS was a special appeal from the decision of R. H. Pinhey, Acting Judge of the Súrat District, in Appeal Suit No. 189 of 1863, confirming the decree of the Munsif of Anklesar.

The case was heard before ARNOULD, Acting C.J., and TUCKER, J.

Nánábhái Haridás for the appellants.

Dhirajlál Mathurádás for the respondent.

Cur. adv. vult.

ARNOULD, C.J. :—This case, involving rather a nice point in the Hindú law of inheritance, has been very ably argued before us by the respective pleaders of the special appellants and the special respondent, to whose industry we have been indebted for a reference to the principal authorities.

The following were the material facts of the case :—

Káshírám Pharasrám died, leaving a considerable amount of self-acquired property in land, no sons, sons' sons, &c., but one widow, Rámbái, and two daughters, Jamná, his daughter

1864.
JAMIYATRÁM *et al.* v. BA'I JAMNÁ'.

by Rámbáí, and Súraj, his daughter by an elder wife. Rámbái succeeded to all her husband's property as his sole surviving widow, and held it for her life. Súraj died in Rámbái's lifetime, leaving two sons, Jamiyatrám and U'ttamrám.

On Rámbái's death her daughter Jamná, who is a childless widow, took out a certificate of heirship to Rámbái, and shortly after having done so, filed the original suit, out of which the present appeal arises, against the two sons of her step-sister, Súraj, to eject them from a certain portion of Káshírám's land, for which they had, since Rámbái's death, taken rent, and over which they claimed proprietary right.

The defence set up by the special appellants was that they, as the sons of Súraj, one of the two daughters who survived Káshirám, were on the death of Káshírám's widow entitled, both by Hindú law and by the custom of their caste, to share Káshírám's land equally with their paternal aunt, Jamná, his other surviving daughter: that Jamná's claim was not as heir of Rámbái, who, as widow, took only a life interest in Káshirám's land, but as the heir of Káshírám.

It may be as well to state at once that, as no caste custom materially, if at all, varying what we consider to be the general rule of Hindú law applicable to the present case, appears to have been made out in the courts below, and was certainly not seriously relied on in this court, on behalf of the special appellants, the case will be considered by us solely with reference to what, in our view, is the general rule of Hindú law on the subject.

The Munsif of Anklesar decided the case in Jamná's favour, on the ground that she was the heir of Rámbái.

The Senior Assistant Judge, considering that the Munsif had given undue weight to Jamná's certificate of heirship to Rámbái, and being of opinion that the case involved nice questions of Hindú law which had not been adjudicated upon, remanded it to the lower court to be disposed of according to law.

It came again before the same Munsif, who again decided

it in favour of Jamná, on the ground that the title by inheritance was established alike by Hindú law and caste custom.

On appeal against this decision, Mr. Pinhey, the Acting Judge of Súrat, confirmed the Munsif's decree, on the grounds that Súraj (the mother of the then appellants) was admitted never to have had possession in Rámbái's lifetime; that on Káshírám's death the land passed to Rámbái; and that, therefore, as he conceived there could be no doubt that Jamná, Rámbái's only child, was Rámbái's heir, and, therefore, entitled to the lands for which she sued.

On special appeal to this court, the ground taken by Mr. Pinhey as the basis of his decision, viz., that Jamná was entitled to all Káshírám's land as sole heir to Káshírám's widow, was scarcely, if at all, insisted upon by Jamná's counsel.

Indeed, considering what must now be taken to be the established doctrine in this court with regard to the extent of a widow's interest in landed property to which she succeeds on the death of her husband, such an argument could not well have been relied on.

It was in effect conceded that Jamná must claim as heir of her father, Káshírám; but it was strenuously and ably contended that, claiming in that capacity, she has an exclusive right to the whole of the lands, as against the sons of his other daughter, Súraj, who, though she had survived her father, had died before the termination of the life estate of the widow.

In effect it was contended that the respective claims of those who, but for the existence of his widow, Rámbái, would have inherited on Káshírám's death, must be decided by reference, not to the state of things that existed at the death of Káshírám, from whom the inheritance descended, but by the state of things that existed on the death of the widow, the inheritrix of the intermediate estate for life.

In support of this proposition many authorities were cited, the effect of which was stated to be as follows, viz., that the established order of succession in Hindú law to the immove-

1864.
JAMIYATRA'M et al. v. BA'I JAMNA'.

able property of a man dying separated, without direct descendants in the male line, is this :—(1) widow ; (2) daughters ; (3) daughters' sons : *Mitákshará*, Chap. II., Sec. 2, Cl. 1, Cl. 6 ; *Dayà-bhága*, Chap. XI., Sec. 2, Cl. 1, Cl. 25, Cl. 29 ; *Vyavahára Mayúkha*, Ch. IV., Sec. 8, Cl. 13. There can be no doubt that the authorities cited, and which in effect, with the exception of the Mayúkha, are the same as those relied on by Sir Thomas Strange (*a*), do establish the above proposition, which is often stated in this form :—On failure of male issue, the widow inherits ; on failure of widow, the daughters ; on failure of daughters, the daughters' sons.

But though this proposition must be considered well established, it does not touch the real question involved in this case, which is in effect this, whether the doctrine of representation, which in Hindú law undoubtedly prevails in the case of the sons (*b*), prevails likewise in the case of sons of daughters.

This question, as regards the claim of the sons of a daughter who has died in the lifetime of their grandfather's widow, against another daughter of the grandfather who has survived the widow (which is the present case), may be put thus :—Do, or do not, the daughters of a separated Hindú who has died leaving no male descendants in the direct male line, take on their father's death a vested estate in remainder as co-heiresses, subject, as to its coming into possession, to the particular life estate of the widow.

The point is by no means a clear one. It would appear to turn mainly on the determination of the two following points :—(1) The nature of the widow's estate ; (2) On the point how far the sons of daughters can be regarded as bearing a similar relation, in respect of funeral obsequies to the grandfather, as that borne by the sons of sons.

(*a*) 1 H. L., 130.

(*b*) "The doctrine of representation obtaining in it, if the son have died in the lifetime of his father, leaving a son, and that son also die, leaving one, and then the great grandfather die, the great grandson succeeds, as his grandfather would have done had he survived." 1 Strange, H. L., 124.

1864.
JAMIYATRA'M et al. v. BA'I JAMNA'.

1. As to the first point, viz., the nature of the estate which the widow of a separated Hindú takes on his death in his immoveable property, we have already intimated that it ought in this court to be considered as definitively established. It was in effect settled by an elaborate decision of the present Chief Justice, pronounced in the late Supreme Court, after an exhaustive reference to all accessible printed authorities, and the consultation of many learned Hindú Shástrís —a decision well known on the other side of the court as *Devkúvarbái's Case*, and which has since been confirmed in the Privy Council, in a case decided there in the early part of the present year. (*c*) That decision was that on this side of India the widow of a separate Hindú takes only a life estate in the separate immoveable property of her deceased husband. The notion that, according to the *Mitákshará*, such property forms part of the widow's *stridhan*, and as such goes on her death to *her* heirs, not her *husband's*, was founded on a passage of Sir Thomas Strange (*d*), which was itself based on a mistaken reference to the *Mitákshará*.

The *Mitákshará*, Chap. II., Sec. II., Cl. 2, undoubtedly classes "property acquired by inheritance" under the widow's stridhan, but (as pointed out in *Devkúvarbái's Case*) clause 4 of the same chapter and section conclusively shows that the words "property acquired by inheritance," as used in clause 2, relates only to what has "been received by the widow from her brother, her mother, or her father," *i.e.*, from her own family.

The widow, therefore, in Western India has only a particular estate for life in the immoveable separate property of her deceased husband.

It follows from this that when a separated Hindú dies, leaving landed property and no sons or sons' sons, his widow, on his death, takes for her life; and the daughters, on his death, subject to the widow's life estate, take an estate in

(*c*) *Vinayek Anundráo* v. *Luxumibai*, *Per* ARNOULD, J., 28th March, 1861, affirmed in the Privy Council, Feb. 1864; *Pranjivandas Tulsidas* v. *Devkuvarbai*, *Per* SAUSSE, C. J., 8th Nov. 1859; in 1 Bom. H. C. Rep. 117—134.—ED.

(*d*) Chap. X., "On Widowhood," 1 H. L., 248.

1864.
JAMIYATRA'M et al. v. BA'I JAMNA'.

remainder, vested immediately in interest, but not coming into the possession of themselves or their sons, as the case may be, until after the death of the widow.

There is a passage in Sir Thomas Strange, founded on a case cited in the Appendix to Chap. X., in which Mr. Colebrooke, Mr. Sutherland, and Mr. Ellis all express an opinion which, though somewhat less positive than that of the learned author, substantially agrees with his), which entirely supports the position as above laid down. It runs thus:—"Of that which devolves upon her (the widow) from him (the husband), he dying leaving no son of any description, the *landed* part, or whatever comes under that description, descends on her death *to his heirs, not to hers; the principle being,*" adds Sir Thomas Strange, "*that it vests in those who would have taken it upon his death, had she at the time not existed.*" (*e*)

Now, in this case, had Rámbái not existed at the time of Káshírám's death, his self-acquired landed estate (*i.e.*, the property in question in these cases, for there are six depending, we understand, on the present decision,) would have vested in right in his two then surviving daughters, Jamná and Súraj, as co-heiresses.

That being so, although Súraj has died during the continuance of the widow's particular estate, Káshírám's landed property on the widow's death would vest in Jamná, and the other half in the sons of Súraj, unless there be any rule of Hindú law which prevents the doctrine of representation from taking effect in the case of sons of daughters, as well as in the case of sons of sons.

This brings us to the second point, viz.—Is there any such rule, or are sons of daughters considered in Hindú law to stand, though perhaps in an inferior, yet in a somewhat analogous, spiritual relation to their deceased grandfather as the sons of sons.

The universally admitted fact that they are in Hindú law reckoned among the heirs of their deceased grandfather

(*e*) 2 Stra. H. L. 404.

goes far towards supplying an answer to this question, for, as Sir W. Jones long ago pointed out, the whole Hindú law of inheritance is based on the principle of spiritual services to be rendered by the heir to the deceased by means of a due discharge of his funeral rites. (*f*)

The doctrine, however, that sons of daughters are regarded in Hindú law as standing in an analogous spiritual relation to the deceased with the sons of the sons does not rest on inference alone, but is supported by abundant authority.

Sir Thomas Strange, after distinguishing between the case of an "appointed daughter" under the old law (who by a legal fiction was supposed, after appointment, to stand in the place of a son), and the case of a daughter not appointed, proceeds as follows:—"The daughter *not appointed, but succeeding,* derives her title from the law, having regard to the general principle of conferring, at his obsequies, benefits on the deceased." (*g*)

We have referred to the authorities cited by Sir Thomas Strange in a footnote to this passage, and find that they fully bear out his position. The principle on which a *daughter* inherits is thus stated by *Manu,* Chap. IX., v. 130:—"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, notwithstanding the survival of her who is as it were himself?" So *Vrihaspati,* as cited in *Mitákshará,* Chap. II., Sec. II., Cl. 2:—"As a son, so does the daughter of a man, proceed from his several limbs. How then should any other person take her father's wealth?"

The principle on which the son of a *daughter* inherits (the point that more immediately interests us here) is thus stated by *Manu*:—"By that male child whom a daughter, whether formally appointed or not, shall produce from an husband of an equal class, the maternal grandfather becomes the grandsire of a son's son: *let that son give the funeral oblation* and possess the inheritance":—Chap. IX., v. 136. To the same effect is *Vishṇu*:—"If a man leave neither son nor son's son

(*f*) Stra., H. L. 128.

(*g*) 1 H. L. 138.

1864.
JAMIYATRÁ'M et al. v. BA'I JAMNA'.

nor [wife, nor female *] issue the daughter's son shall take his wealth. *For in regard to the obsequies of ancestors, daughter's sons are considered as son's sons.*" (*h*) It thus appears that as in Hindú law daughter's sons are considered as son's sons in respect of their spiritual relation to their deceased ancestor, so they must be regarded as equally entitled with son's sons to avail themselves of the right of representation, which in Hindú law, like the very right of inheritance itself, is ultimately founded on the principle of service to be performed to the ancestor in relation to his funeral obsequies with a view to his spiritual welfare.

On the whole, then, our conclusion is, that on the death of Káshírám his landed property vested in possession in his widow, Rámbái, for her life; vested in remainder (*i.e.*, subject to the widow's life estate) in his two then surviving daughters, Jamná and Súraj. Súraj having died before the termination of the widow's life estate, her vested right passed on her death by inheritance to her sons, who upon Rámbái's death became entitled, as representing their mother, to enter into the enjoyment of one half of the whole landed property of Káshírám, leaving the other half to be enjoyed by their mother's half-sister, Jamná.

We accordingly reverse the decrees of the lower courts, and award a decree in favour of the defendants in the original suit. Costs throughout on the special respondent.

Appeal allowed.

* Bálam-bhaṭṭa.

(*h*) Mit., Chap. II., Sec. 2, § 6; and see Stokes, H. L. Bks., p. 441, note.

NOTE.—See, further, on the points referred to in the judgment *Doe d. Kullamál* v. *Kappu Pillai*, 1 Mad. H. C. Rep. 85, and Editor's Note at p. 90 *Ibid.*; *P. Backirájw* v. *V. Venkatappadu*, 2 Mad. H. C. Rep. 402; *Rindamma* v. *Venkatarámappa*, 3 Mad. H. C. Rep. 268; Colebrooke's Digest, Bk. V., Ch. VIII., Sec. 1., p. 531, Mad. Ed. of 1865; Digest of Hindu Law: Inheritance, Bombay, by West and Bühler, Introd., pp. lxiv.—lxvii., and the Remarks of ARNOULD, J., in *Lakshmibái* v. *Ganpat Morobá et al.*, O. S. No. 1507 of 1866, decided 10th October 1857, and to be reported.—ED.