

*Special Appeal No. 675 of 1863.*1865.
Dec. 5.

KRISHNA'BA'I KOM DEPA' VAJA *Appellant.*
 SONU'BA'I, daughter of RU'PA' BAJAJI, by her
 Managers, BHULA' SHIVRA'M and others. *Respondents.*

Will—Hindú Testator—Executors—Minor—Misjoinder—Guardian ad litem—Remand.

A minor interested in contesting the execution and validity of an alleged will by her father, having been improperly joined with the alleged executors of the said will as co-plaintiff; the decrees of the courts below were reversed, in order that the minor might be made a defendant, and a guardian *ad litem* appointed to protect her interests.

THIS was a special appeal from the decision of the Puna District Court, in Appeal Suit No. 88 of 1863.

The following judgment was recorded by the Acting Judge, Baron A. J. DeH. Larpent:—

“Plaintiffs brought this action to establish their right to administer the property of one Rupa Bajaji deceased, according to the disposition made by the deceased in a vyavasthapatak (a deed operating as a will). The property being valued at Rs. 3,000, the claim has been stated at that sum.

“The defendant answered that plaintiffs have no right to administer the estate; that defendant is the eldest daughter of the deceased Rupa Bajaji, and that, if the will were genuine, defendant would have been left the property; that plaintiffs are persons of bad character, and acting designedly to appropriate the property to themselves. That it is evident defendant's father would never have appointed plaintiffs as trustees of the property, as for some time, owing to their bad character, they were not acknowledged by defendant's father, and did not take their meals with him; that on an application for a certificate of administration, the Judge refused to grant it, and held the will untrustworthy.

“The Principal Sadr Amin gave judgment for plaintiffs,

and held the will proved, and that the defendant was acting in an unreasonable and vexatious manner.

1865.

KRISHNA'BA'I

v.

SONU'BA'I.

“Reasons for appeal: (1) That the will being on unstamped paper, and the provisions it contains, show it was fraudulently made; (2) that under the will Sonúbái has no right to the property, and hence the trustees have no right to sue; (3) that the Court committed an error in not taking into consideration the fact that deceased annulled the will by the deposition before the Bazár Master; (4) that it is clear that the respondents were acting fraudulently for their own benefit; (5) that the decision is contrary to the evidence; (6) that the will is contrary to the Shástras; (7) that the lower court, in deciding the will genuine, gave a contrary decision to the superior, which held the will untrustworthy.

“The circumstances of the original action are as follows:— On the decease of one Rúpá Bajáji, the respondents applied to this court for a certificate of administration. This application, being opposed by the appellant, was refused, and the parties referred to the civil courts. This action was then brought by respondents to establish their claim to administer the estate. The evidence shows that Rúpá Bajáji died on the 3rd of April 1862; a vyavasthápatrak, a deed operating as a will, was left by the deceased, dated the 1st of April 1862, by which he vested the management of his shop in Bhulá Shivrám and three others; and directed them to adopt a son, in order that the shop might still continue and be carried on in his (deceased's) name; and, in the event of no adoption being made, the deceased directed that his property should be disposed of in performing certain religious ceremonies, &c. Deceased has left two daughters, one, Krishnábái, the appellant, the other, Sonúbái, who was with her father at his decease; and who is now under the guardianship of Bhulá Shivrám and the three other respondents. To his daughter Krishnábái the deceased left Rs. 700 for the marriage expenses of her son; and stated in the will, that his reason for acting in this manner towards her was that her character was bad.’ In regard to Sonúbái the deceased left her a sufficient sum to pay the expenses of her marriage.

1865.
KRISHNA'BA'I
v.
SONU'BA'I.

“The question now for decision is, whether the *vyavasthá-patrak*, exhibit No. 4, is valid and operative. The courts recognise the power of a Hindú to make a will; but it appears that the extent of the power of the testator to dispose of his property is regulated by Hindú law.

“The Court holds that in this action the will is proved. It is true that on the 31st of March the deceased made a deposition before the cantonment authorities, by which he expressed his intention to dispose of his property in a different manner from that set forth in the will, which was executed the following day, the 1st of April. Had deceased died on that day, there might have been some ground for doubting whether deceased was competent, and whether the change in his intention was the result of an unfair pressure brought to bear by the guardians upon an intellect weakened by illness; but deceased did not die until the night of the 3rd of April. It is also stated that *Krishnába'i* (appellant) was herself present at the time the will was executed; and she does not appear then to have remonstrated with her father, or to have declared him in an unfit state to execute the deed.

“The question the Court has, therefore, to decide is, whether the disposition made by the testator is admissible by the Hindú law. The Court has obtained the opinion of the *Shástris* of this court and of the *Tháná* court on this point; and the opinion of both appears to be that the disposition made is according to the Hindú law. The property is all self-acquired; some consists of money, but none of the property is land. The disposition appears to the Court to be natural. The testator wished that his shop should be continued after his death; and he, therefore, first expresses his wishes as to this point, and, failing the possibility of the adoption, he sets forth in what manner he desires that his property should be disposed of.”

Krishnába'i then preferred a special appeal.

Dhirajlál Mathurádás for the appellant.

Vishvanáth Náráyan Mandlik for the respondents.

PER CURIAM (WESTROPP and TUCKER, JJ.):—Inasmuch as the respondent Sonúbái, being interested in contesting the execution and validity of the alleged will of her father, Rúpá Bajáji, was improperly associated with Bhulá Shivrám, Nahánchand A'páji, Pemá Híráji, and Krishná Chandra, the alleged executors of the said will, as a co-plaintiff; and, therefore, the interests of the said Sonúbái have never been properly represented in this suit; and no decree made in this suit, while she was such co-plaintiff, and her interests were so unrepresented, can be maintained: the Court reverses the decrees of the Acting District Judge and of the Principal Šadr Amín; and directs that the name of the said Sonúbái, as a plaintiff, be struck out from the plaint, and the other proceedings in this suit, and be introduced therein as a defendant; and that notice of this suit and of this order be given to the said Sonúbái, and to some person fit, willing, and legally eligible to act as her guardian in this suit, and whose interests are not in any respect adverse to those of the said Sonúbái; and that there be a fresh trial of the suit upon the merits; and that all costs of this suit, and of this appeal, occasioned by the improper joinder of the said Sonúbái as a plaintiff, as aforesaid, be borne by the other plaintiffs; and that the question as to all other costs be reserved until the final decision.

1865.
KRISHNA'BA'I
v.
SONU'BA'I.

Decree reversed and suit remanded.

Special Appeal No. 436 of 1865.

Dec. 6.

MAYA'RA'M BHA'I'RA'M *Appellant.*
MOTI'RA'M GOVINDRA'M *Respondent.*

Hindú Widow—Immoveable—Life-Interest—Power of Sale.

Held that a Hindú widow, having a life-interest only in immoveable property inherited from her husband, has an independent power of sale over the same to the extent of such life-interest, and no further.

THIS was a special appeal from the decision of the Honourable G. A. Hobart, Acting Senior Assistant Judge of the Súrat District at Broach, in Appeal Suit No. 111 of