

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.

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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

1865. 1864, reversing the decree of the Munsif of Jambusar, in
Original Suit No. 737 of 1863.

MAYÁRÁM
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v.
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GOVINDRÁM.

Govindrám, the father of the special respondent, brought the original suit to cancel the sale of two houses and a *vádá* : alleging that one house and the *vádá* had descended from their father to his deceased brother, Narsírám, who purchased the other house himself ; and that since the death of his brother, his brother's widow, Báí Mahálakshmí, had, without the consent of her husband's relations, sold both properties to Mayárám Bháírám, which, both by Hindú law and by usage, she was incompetent to do.

Báí Mahálakshmí contended that she had a right to sell, as her husband and his brother had been divided in interest for forty years previous ; and that she sold the property, in order to defray the funeral expenses of her husband and those of her daughter, and to provide the means of supporting herself. Mayárám's defence was that he had purchased from Báí Mahálakshmí.

The Munsif decreed against the claimant on the grounds : that it was admitted, at the trial, that Govindrám and his brother had been divided in property for thirty years ; and though, by Hindú law, Báí Mahálakshmí was incompetent, as a childless widow, without the consent of her husband's relations, to sell her husband's immoveable property ; yet he was satisfied, by the evidence taken in the case, that the custom of the country recognised such a right in her, and such custom must be held to be of greater authority than the Hindú law, under Reg. IV. of 1827, Sec. 26.

Govindrám having died, his son Motírám appealed to the Senior Assistant Judge, on the following among other grounds : that the widow alone was not competent to sell the immoveable property of her husband ; that she was not required to incur the funeral expenses of her daughter, as the father-in-law undertakes to be responsible for such expenses, which, moreover, need not have exceeded Rs. 30 ; and that the decree was against the weight of evidence.

The issue laid down for decision by the Senior Assistant

Judge was: whether Báí Mahálakshmi had a right to sell, without the consent of her husband's relations, the houses and the *vádá*, which she inherited from her husband; and he found that the evidence, upon which the Munsif based his decision, consisted "of the testimony of a few cultivators, and of a few deeds of transfer of property, the execution of which is not proved."

He then referred to Strange's Hindú Law, from which he quoted the following passages:—In Chap. 6, on *Inheritance*: "The widow * * * in her right to inherit; a right vested in her by marriage, to be perfected on the death of her husband, dying without leaving male issue. This obtains universally, the deceased, at his death, having been separated from co-heirs. (*Jim. Vah.*, Ch. XI., Sec. 1., 2, 6; *Mitákshara*, Ch. II., Sec. 1., 39; *Vrihaspati*, 3 Dig. 458; *Vridhha Manu*, 3 Dig. 478, 483)." (a)

Chap. 10, on *Widowhood*:—"As to her property * * * With respect not only to what she may have inherited from her husband, but to its accumulated savings also, her duty is to regard herself as little more than tenant for life, and trustee for next heirs of property so possessed; being (as already intimated) restricted from alienating it by her sole independent act, unless for necessary subsistence, or purposes beneficial to the deceased. If in anything she may take liberties with it, it is in making pious and charitable gifts, with presents to her husband's relations and dependents, but not to her own without their assent; the concurrence of her legal guardians and advisers, as well as of her husband's heirs, being generally necessary to any alienation by her of such property;—by heirs being meant, not the immediate ones merely, but the whole living at the time; their assent to be manifested by their attesting the conveyance, or by other expression of it in writing. The restriction, however, in the extent stated, seems to concern land only." (b)

Case:—"A childless widow having succeeded to the separate property of her husband, who has brothers living, to what extent has she power to alien it, and how?"

(a) 1 Strange, H. L. 134.

(b) *Ibid.* 246.

1865.

MAYA'RA'M
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1865.
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Remarks by Colebrooke : " A widow who succeeds to her husband's estate is restricted from alienating the *immoveables*, without consent of his heirs, according to the *Madhavya*; but there does not appear to be any restriction on her power as affecting *moveables*." (c)

The Judge concluded as follows :—" I gather from the above that Bái Maháalakshmi had no right, without the consent of her husband's relations (or at least his next heirs), to alienate the houses and *vádá*, except for the funeral expenses of her husband, and for her necessary subsistence; and I do not find that such necessity is proved by Bái Maháalakshmi; and she was bound to show that such necessity existed. She, at least for those causes, should have alienated the moveable property she inherited first; and, that failing, she might, for those causes, if they existed, have next alienated the property in dispute. The issue is, therefore, decided against Bái Maháalakshmi; and the transfer is, consequently, pronounced invalid. The Munsif's decree is reversed: costs on Bái Maháalakshmi and Mayáram."

Dhirajál Mathurádás, for the appellant:—The Senior Assistant Judge, having held that Maháalakshmi had a life-interest in the property, was wrong in not awarding the same to the appellant.

Nánabhái Haridás for the respondent:—The Hindú law does not recognise in a Hindú widow any independent power of sale with regard to immoveable property inherited by her from her husband, except under certain specified circumstances, none of which is shown to exist in this case.

PER CURIAM (WESTROPP and JANA'RDAN VA'SUDEVI):—The Court directs that the decree of the Senior Assistant Judge, of the 6th of April 1865, be varied, by declaring that the special appellant, Mayáram Bháiram, is entitled to enjoy the houses and lands, and the rents and profits, in the plaintiff mentioned, and in dispute in this cause, during the life of Maháalakshmi, the widow of Narsíram Gangáram, one of the defendants in this case, and no longer; and that the special

respondent, Motírám Govindrám, and the other male heirs (if any) of Narsírám Gangárám, are entitled to the reversion of and in the said houses and lands, and the rents and profits thereof, on the death of the said Maháalakshmi.

1865.
MAYA'RA'M
BHA'IRA'M
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The Court further orders that the parties to this special appeal shall respectively bear their own costs thereof; and that the said Mayárám Bháirám and the said Maháalakshmi shall pay to the said Motírám Govindrám all the costs of this suit in the courts below.

Decree amended.

Special Appeal No. 652 of 1865.

1866.
Feb. 22.

BA'I VIJKOR, daughter of BHA'I'LA'L..... *Appellant.*

FAKÍRBHA'I TULJA'RA'M and A'TMA'RA'M

BHAGVA'N *Respondents.*

Deposit of Dower-jewels (Pallá) in contemplation of marriage--Legal Representative--Heir--Parties--Remand.

The High Court remanded the case in consequence of a misunderstanding of the District Judge as to the meaning of the term "legal representative," which he supposed to be identical with "heir."

New directions given as to parties.

THIS was a special appeal from the decision of C. H. Cameron, District Judge of Súrat, in Appeal Suit No. 82 of 1862.

The original suit was instituted by Vijkor to recover from Fakírbháí and A'tmárám certain ornaments of the value of Rs. 775: alleging that the same had been deposited by her late brother Nandlál, and the second defendant, A'tmárám, with the first defendant Fakírbháí's father, Tuljárám, on the occasion of his (Nandlál's) betrothal with Jaikor, daughter of Vallabh Haribháí; and that her said brother having died without the intended marriage having taken place between him and Jaikor, since dead, she, the plaintiff, was entitled to the said ornaments.

Fakírbháí answered that his deceased father had desired him not to deliver up the said ornaments, unless asked to do