

gave in his rázinámá in 1847, and counting twelve years from that time the present suit is barred. We, therefore, reverse the decree of the Acting Senior Assistant Judge, and confirm that of the Munsif.

1867.
ARJUNA
BHIVA'
v.
BHAVA'N
NIMBA'JI'
et al.

GIBBS, J., concurred.

*Acting Senior Assistant Judge's decree reversed,
and the Munsif's confirmed.*

Special Appeal No. 307 of 1867.

Sept. 27.

VALLABHRA'M SHIVNA'RA'YAN *Appellant.*
BA'I HARIGANGA', by her guardian, DAYA'-
SHANKAR KRISHNA'JI *Respondent.*

Hindú Law—Inheritance—Dumbness—Disqualification—Hindú Widow.

Dumbness, if from birth, is a cause of disherison in females as well as in males.

A Hindú widow born dumb is, according to the law prevailing on this side of India, incapable of inheriting from her husband.

Such widow is, however, entitled to her *stridhan*, and to maintenance out of the property of her deceased husband.

Case remanded to have the widow made a party to the suit, that it might be determined whether she was born dumb, and if so, that the amount of her *stridhan* and of her maintenance might be ascertained.

THIS was a Special Appeal from the decision of C. G. Kemball, District Judge of Súrat, confirming, in Appeal Suit No. 236 of 1866, the decision of the Munsif of Súrat.

The Special Appeal was heard before GIBBS and WARDEN, JJ.

Nánábhái Haridás for the appellant.

Shúktárám Náráyan for the respondent.

The facts of the case appear from the judgment of the Court, delivered by

GIBBS, J.:—In this case the guardian of a female child sued to recover from the defendant certain jewels and other property, moveable and immoveable, which had come into

1867.
VALIADHARAM
SHIVNARRA.

YAN
v.
BAU HARI-
GANGA.

his possession at the time her father, who was the defendant's uncle, died in the defendant's house.

The defence was that the guardian had no claim; that the jewels were not with the defendant; that the property was not properly valued; and the defendant further set up a claim for Rs. 300, which he had expended for funeral ceremonies of the deceased.

The Munsif awarded all the claim save $1\frac{1}{2}$ *bighás* of land; and disallowed the set-off for funeral expenses.

In appeal this judgment was confirmed.

In special appeal it has been urged that Harigangá, being only a daughter, could not sue, as her mother is still living; and this has led to a very interesting and learned argument on a point of Hindú law, namely, whether the mother, who is stated to be dumb, is not thereby prevented from inheriting.

It is necessary here to observe that the claim includes the *stridhan* of the widow, as well as the family property, as it will affect our final order.

Mr. Shántáram has argued, for the respondent, that the Hindú law clearly lays down that dumbness is a ground for disinheritance, and has quoted the following authorities: Manú, Sir W. Jones, Trans. ch. ix., v. 201; 1 Bor. 438; 2 Bor. 713; 1 Strange 164; Strange's Manual, p. 57, rule 225; Stokes' Miták., p. 457. He urges that although the adjectives in Manú, chap. ix., v. 201, are in the masculine, still they are not used so restrictively, as the commentator on the *Mitákshará* observes, and as also does Mr. Borradaile, in his note on the case quoted by him, 1 Bor. 454. Hence the present suit is properly brought.

Mr. Nánabhái, on the other hand, urges that Sir T. Strange, and also Mr. Justice Strange in his Manual, both depend on the *Mitákshará* annotator. In the original text of *Yádryavalkya* the word "dumb" is not included; and in the text in Manú all the adjectives used are masculine. It is the commentator on the *Mitákshará* who says Manú did not restrict it to males; and Sir W. Jones in his translation

of Manú is incorrect, for he has put in the word "persons," the original running thus: "those born blind," &c.; and the commentator on Manú, Kúllúkbhaṭ, does not say that v. 201 applies to females. The best commentator on Manú is Manú or his commentators, and they are silent; hence 1 Bor. 453 is founded solely on the *Mitákshará*, and not binding.

Sir T. Strange (Vol. I., p. 213) says the disqualification is owing to the blind, dumb, &c. not being able to perform the *shrádhs*, as all wealth is for enjoyment here and spiritual benefit hereafter; and sons, who perform *shrádhs* for the benefit of their deceased parents, inherit wealth. But there is no cause shown why a dumb woman should be prohibited from inheriting on account of her non-performance of spiritual acts for the benefit of her deceased husband, as any male relative, however distant, performs the *shrádhs* in preference to the widow, although her sex is in itself no disqualification to her actually performing the ceremony. But there is another point. If dumbness disqualifies, it is in the same category as blindness, lameness, &c., and it must be from birth (1 Strange 214). But in truth it is not the dumbness or the blindness &c. which prevents a person performing the *shrádhs*. According to the Hindú lawyers, such and other infirmities are the signs of original sin, and it is the sin which is the cause of disinheritance; and this is used as a ground for bringing men to repentance. The *stridhan*, however, would not be affected by this; the widow, though dumb, may recover this portion of the property; the daughter cannot. The District Judge must try whether the dumbness is from birth, and the amount of the *stridhan*.

Mr. Shántáram, in reply, admits that the original sin is the cause--*i. e.*, sin committed in a former state. But this case must be settled according to the *Mitákshará*, which is the authority on this side of India, and not *Yádnayalkya*; and if there is a rule in the former which makes dumbness a ground for disinheritance, nothing but a legislative enactment can remove it. It is true that different lawyers differ in the reasons they give for disinheritance; and we can only arrive at a satisfactory conclusion from collating them (see

1867.

VALLABHRA'M
SHIVNA'RA'.
YAN
C.
BA'Í HARU
GANGA'.

1867.

VALLABHRA' M
SHIVNA' RA'
YAN
v.
SA' HARI-
GANGA'.

Colebrooke's Digest, chap. v., bk. 5, s. 1, title Inheritance). As, therefore, from this we find original sin is the cause, it equally affects females as well as males. The arguments regarding the use of the masculine gender are not of moment, having been disposed of by Vidnyāneshvar, as explained by Borradaile and others. There is no law, however, which prevents a dumb widow having her own *stridhan*.

This case has been most carefully argued, and the Court is much indebted to the pleaders for having brought before it the array of authorities quoted by both sides. In the words of Sir Thomas Strange, it did appear to us "harsh to divest of their heritable rights not only idiots and madmen, but the deaf, the dumb, and the blind;" and finding that the latest authority for a decision in a similar case, where blindness was the objection raised, dated as far back as 1817, and was passed in the Provincial Court of Appeal in Gujarat, we considered that the matter should not be decided until it had been argued afresh, and had received the fullest consideration. Now after carefully weighing the arguments on both sides, and examining the authorities quoted, I reluctantly come to the conclusion that dumbness is, under the Hindú law, a bar to inheritance.

The *Mitāksharā* is the book of greatest authority on this side of India, and although it is true that the original text of *Yādnyavalkya* does not contain the word "dumb," while it does "blind," yet it also adds "as well as others similarly disqualified," and the commentator Vidnyāneshvar explains this as including "a person deaf, dumb, or wanting any organ," and supports his comment by quoting Manú, who clearly includes the "dumb."

In considering the causes for what to European minds appears a harsh law, there appears no doubt but that the principle on which it is based is that such infirmities as dumbness, deafness, or the like, are considered by persons of the Hindú persuasion as signs of sin committed in a former state of existence, and hence as proving a state of impurity in the unhappy victim, which would, if a man,

render him incompetent to perform those religious ceremonies for the dead on which their future happiness is considered to depend. Now were the dumb person in this case a male, I should have no doubt, the Hindú law authorities being, I think, clear on the point; but a doubt has arisen from the fact of the party being a female; and the question arises, are females likewise debarred from inheriting. The argument that all the adjectives in the passage in Manú are in the masculine gender would, at first sight, raise a doubt as to whether they could be applied to females; but Vidnyáñeshvar, in his day, laid down that Manú did not use the masculine gender restrictively in speaking of the persons so afflicted, but that wives, daughters, mothers, or other female relatives were equally affected as males; and there is no doubt that, although any male relative is preferable, still a woman is not by her sex prevented from performing the ceremonies for her dead, and should, in consequence, be in a position to be able to do so. I must, therefore, decide that if this widow has been dumb from her birth, she is debarred from inheriting, and that under such circumstances the daughter is, by her guardian, the proper person to sue. But there is no finding on the point when dumbness commenced, and there are other matters which arise and on which this court cannot decide—*e. g.*, it is admitted by the plaintiff that a portion of the jewels claimed is the widow's *stridhan*; and as she was not prohibited from marriage, neither should she, though found to have been dumb from birth, be incapable of possessing the marriage gifts. What, therefore, the amount of the *stridhan* is must be determined. Again, the entire property of the deceased is involved in this suit, and the Hindú law, while it clearly bars the dumb widow from inheriting, also as clearly lays down that she should be entitled to maintenance; and in the event of dumbness from birth being established, and in consequence her inability to inherit, the amount of this should be settled. The decree of the District Judge must be reversed, the suit returned for re-trial, and, as I think that justice requires that the whole matter should be determined at once, it would be better to reverse both the decree of the

1867.

VALLABHRAJ

SHIVNARA-

JAN

v.

BAI HARI-
GANGA.

1867.

VALLABHRA'M
SHIVNA'RA'
YAN
v.
BA'I HARI-
GANGA'.

District Court and the decree of the Munsif, and remand the case to the court of first instance, in order that the widow may be made a party (for she is not, like an idiot or lunatic, incapable of asserting her rights), and the following issues determined :—

1. Has the widow been dumb from birth. If this is found in the negative, she is capable of inheritance, and must recover before her daughter ; but if it be found in the affirmative, then—

2. What portion of the property in dispute should be awarded the widow, as being her *stridhan*.

3. What amount of maintenance should be awarded to the widow, and on what property should it be secured.

And let the court raise any other issues which it may deem necessary for the proper disposal of the suit, and let fresh evidence, if needed, be received on the new issues.

Costs hitherto to be borne by the special appellant, who has failed entirely in his defence. Future costs to be determined in the new decree.

Decrees of both the lower courts reversed, and the suit remanded for re-trial.

Nov. 22.

Special Appeal No. 528 of 1867.

BHAGVA'N JAYARA'M..... *Appellant.*
VITHOBA' GOVIND..... *Respondent.*

Registration—Act XVI. of 1864, Secs. 15 and 29.

Held in a suit to compel registration under Act XVI. of 1864, Sec. 15, that where Courts found that the requirements of Sec. 29 of the Act had not been complied with before the Registrar of Assurances, he was justified in refusing to register the deed.

THIS was a Special Appeal from the decision of the Honorable G. A. Hobart, District Judge of Khândesh, in Appeal Suit No. 178 of 1866.

The plaintiff sued to obtain an order that the Deputy Registrar of Assurances at Jámner should register an instrument purporting to be a deed of sale of a field, dated the 11th of December 1865, which the Deputy Registrar refused