

*Special Appeal No. 398 of 1868.*

1868.  
Sep. 16.

JANÁRDHAN PA'NDURANG ..... *Appellant.*  
GOPÁL and VÁSÚDEV PA'NDURANG ..... *Respondents.*

*Hindú Law—Leprosy—Disqualification for Inheritance.*

It is only when leprosy assumes a virulent and aggravated type that it is by Hindú law made a ground for disqualification for inheritance.

THIS was a Special Appeal from the decision of R. H. Pinhey, District Judge at Tháná, in Appeal Suit No. 451 of 1867, confirming the decree of the Munsif of Panvel.

Janárdhan sued his two brothers, Gopál and Vásudev, to recover possession of a third-share of the moveable and immoveable property of his family. The defence was that the plaintiff was incompetent by Hindú Law to claim a share in the family property, as he was suffering from leprosy. The Munsif, Vithal Vásudev, rejected the claim, holding that the plaintiff was incompetent to claim a share of the family property, by reason of his being an incurable leper. The District Judge confirmed this decision. The following is an extract from his judgment:—

“That the plaintiff is a leper is proved by his own witness No. 18, as well as by the defendant’s witness No. 19; and I think it is clear from all the text-books that according to Hindú Law a man cannot claim his share of family property while he is suffering from leprosy. It is urged for the plaintiff that the leprosy with which he is afflicted must be proved to be incurable before it can be considered as disqualifying the plaintiff from maintaining this suit; but this argument is not, in my own opinion, a sound one. The Hindú Law contemplates the case of a man recovering from leprosy, and declares that to a man so recovered his right to claim a share of family property revives. This shows that leprosy, though not incurable, disqualifies the leper from inheriting until he is cleansed from his leprosy.”

The case was heard before COUCH, C.J., and NEWTON, J.

*Pándurang Balibhadra* (with him *Shántávám Náráyan*), for the appellant:—It is only when leprosy assumes a virulent

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and aggravated type that it is regarded by Hindú Law as a disqualification entailing forfeiture of inheritance: Madras Sadr Court Rep. for 1860, p. 239; but there is no finding by the Judge as to the nature of the disease in this case.

“One incurably diseased” is included among those who are disqualified: Grady on Hindoo Law of Inheritance, p. 98, where the authorities are collected. “Ulcerous leprosy” is described to be a disease of an obstinate or agonising nature: *vide* Strange’s Manual, p. 56, para 218. According to the Mitákshará (Ch. II., Sec. 10), persons “afflicted with an incurable disease” are excluded from inheritance, and those who are so afflicted are described to be persons “affected by an irremediable distemper, such as marasmus or the like.” Again it is laid down that persons afflicted with a long and painful disease are excluded from inheritance; and “long” is explained to be from the period of birth, and “painful” is explained to be leprosy, &c.: *vide* Stokes’ Hindu Law Books, p. 500. It is also laid down that the disease that disables (an obstinate or an agonising one) must be ascertained to be the sign of an atrocious crime, or it has not the effect of excluding; it being not the disease, but the sin, that is the cause of the disability; and hence it may be removed by penance: Strange’s Hindú Law, p. 156; Thompson on Hindú Law, p. 65. All the authorities go to show that the type of the disease to exclude must be virulent, which is not the case in this instance.

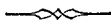
*Vishvanáth Náráyan Mandlik*, for the respondent:—The moment a party becomes afflicted with leprosy he loses his natural right of inheritance: Madras S. D. A. Rep. for 1857, p. 210; but if he recover from or is cured of his leprosy, he will not be debarred from making a claim: Elberling on Hindú and other Laws, p. 88; Vyavahára Mayúkha, Ch. IV., Sec. XI., para. 2.

COUCH, C.J.:—It appears to us that the law on the point now before us was correctly laid down by the Judges of the late Sadr Court at Madras, as reported at p. 238 of the Reports for 1860. Here it was observed that “it is a fact well-known in medical science that the disease of leprosy

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assumed in some cases a mild and curable form, while in others it appears in a virulent and aggravated type. The Sadr Court find, on consulting the best authorities on the subject, that it is in the latter case only that the disease is regarded by Hindú Law as a disqualification entailing forfeiture of inheritance." This appears from the Mitákshará and Vyavahára Mayúkha to be the correct view of the law. We, therefore, reverse the decree of the Court below, and remand the case that it may be determined whether the plaintiff was suffering from leprosy of a virulent and aggravated type, so as to be disqualified by Hindú Law from inheriting.



*Special Appeal No. 353 of 1868.*

Sep. 23.

KA'NU KHANDU ..... *Appellant.*  
KRISHNA' BHULA'JI SHET ..... *Respondent.*

*Registration—Unregistered Mortgage—Decree—Priority.*

An unregistered mortgage without possession upon which a decree has been obtained but not executed, has not, by virtue of such decree, priority over a subsequent deed of sale which is registered.

THIS was a Special Appeal from the decision of A. Lyon, Assistant Judge at Tháná, in Appeal Suit No. 269 of 1867, reversing the decree of the Munsif of Alibág.

One Bálu Hassiá, on the 9th of April 1858, mortgaged a house to the second defendant, Náthá. On the 21st of October 1859 a decree was obtained thereon by Náthá, but this decree was not executed till the 14th of January 1867, on which date the house was bought by Krishná at a Court's sale under the decree of the 21st of October 1859. Meanwhile, subsequently to that decree, but prior to the Court's sale in 1867, the house was sold to one Khemji at another Court's sale on the 24th of March 1862, and Khemji was put in possession on the 12th of May 1862. Khemji sold the house to the plaintiff, who continued in possession until he was dispossessed in execution of the decree against Bálu Hassiá.