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 Aug. 10

Special Appeal No. 156 of 1868.

Ramkuvarbai, widow of Tuljaram. ... *Appellant.*

Damodbar Narbheram. ... *Respondent.*

Remand order—Subsequent varying decision of law—Special Appeal.

A remand order made on Special Appeal is (unless a review of it be obtained within the prescribed time) a conclusive determination of the points of law involved in it ; and the correctness of law laid down upon a remand cannot be questioned on a second Special Appeal; nor is the fact of the Court's adopting a different view of the law after an order has been made in general a good ground for allowing a review of such order after the time for a review has elapsed.

This was a Special Appeal from the decision of the Assistant Judge of Thana in Appeal Suit No. 569 of 1864, passed in accordance with a remand order made upon a previous Special Appeal No. 723 of 1865.

This suit was instituted in the Munsif's Court at Bassein by the plaintiff Ramkuvarbai, widow of Tuljaram, to recover from the defendant, Damodhar, the son of Tuljaram's brother, Narbheram, a half share of the income of four temples at Nirmal, and of arrears of payment made by Government, belonging to the estate of Divalibai widow of Jetha, who was a separated cousin of Tuljaram and Narbheram. Divalibai died in 1861 without issue, and the defendant, Damodhar, performed her obsequies, paid her debts, and took possession of her estate.

The defendant, Damodhar, answered that by Hindu law the plaintiff, as the widow of Tuljaram, was not entitled to inherit from Divalibai's husband, and that he, the defendant, alone was entitled as heir to succeed to the share of the deceased Divalibai.

The Munsif threw out the plaintiff's claim. In appeal the Assistant Judge of Thana confirmed the Munsif's decree, holding it to be the general doctrine of Hindu law that 'the childless widow of a separated brother has no right to share in the estate of her husband's brothers.'

The plaintiff thereupon preferred a Special Appeal, No. 723 of 1865.

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When the Special Appeal came on for hearing, the case was remanded on the 11th of October 1866, with the following order :—

“In accordance with the ruling in Special Appeal No. 257 of 1864 (a), Tuljaram, Damodhar, and Jetha being separated cousins, the immoveable property of Jetha vested on his decease in possession in his widow, Divali, for her life, and in remainder in the separated cousins Tuljaram and Damodhar in equal shares. If Tuljaram survived Jetha, so surviving, as Tuljaram died before Divali, his vested right passed to his widow, Ramkuvar, who would be entitled on Divali's death to claim a half share of Jetha's property. The Lower Court has not found whether Tuljaram died before or after Jetha, and as Ramkuvar's right depends on Tuljaram surviving Jetha, the decessor appealed from is reversed, and the case remanded that this point may be ascertained and determined.”

In pursuance of this remand order, the Assistant Judge found that Jetha died before Tulajaram, and accordingly held that Ramkuvar, the plaintiff, as widow of Tuljaram, was entitled to a half share of the property of Divalibai.

The defendant, Damodhar, then brought the present Special Appeal from the decision of the Lower Court on remand.

The appeal was heard before COUCH, C.J., and WARDEN, J.

Shantaram Narayan for the Appellant : The ruling of this Court in *Bai Jamna's* case has been overruled by a later decision, and is not law : *Lakshmbai v. Ganpat Moroba* (b). According to Hindu law, as now understood, no estates in remainder vest in any of the expectant heirs of a husband until the actual death of his widow.

That being so, the remand order was made under a mistaken apprehension of the law. The Lower Court in pur-

(c) *Jamiyatram v. Bai Jamna*, 2 Bom. H. C. Rep. 11, 2nd ed.

(b) 5 Bom. H. C. Rep. O. C. J. 128.

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suance of the remand order has held that Ramkuvar is entitled to succeed to a half share of Divali's property. There has here been an error in law which may now be corrected.

Dhirajlal Mathuradas for the Respondent: The Court before which the former Special Appeal came went into the merits, and remanded the case to the Lower Court for the trial of issues of fact, accompanied with instructions in which the law, as it was then received, was laid down for the guidance of the Court in coming to a final determination, according as the issues of fact were found proved. That is, I submit, a conclusive determination of all points of law and fact, except the special issues to be tried on remand.

COUCH, C. J.:—The Court, on the last occasion when this case came before it, held "that if Tuljaram survived Jetha, he, as his cousin, took a vested estate in remainder to come into possession after the life estate of Devali. To this vested estate of Tuljaram his widow succeeded on his death, and so succeeding she was entitled to succeed to a half share of Jetha's estate after Divali's death along with the defendant Damodhar." The case was accordingly remanded to the Lower Court, which found that Jetha died before Tuljaram and decided in favour of the plaintiff's claim. The remand order was made in accordance with the principle laid down in *Bai Jamna's* case, which case has been subsequently overruled. The fact that the High Court subsequently to a remand takes a different view of the law from that held at the time of the remand is not in itself a sufficient ground for questioning the validity of a remand order made by that Court under what turns out to have been a mistaken apprehension of law, or for seeking a review of it after the prescribed time. An application for a review of the remand order, within the time allowed by law, was the proper course for the appellant to have followed. Failing that, the remand order is a conclusive determination upon the point of law, and its validity cannot be questioned in special appeal. The decree of the Lower Court is therefore confirmed with costs.

Decree confirmed with costs.