

1869  
Hayatkha  
Abdulakha

the Court of Small Causes at Ahmedabad, under Sec. 22 of Act XI. of 1865:—

“The plaintiff has sued the defendant for a sum of money, which he alleges he had lent to the defendant. The defendant denies that he ever borrowed from the plaintiff; but, on the contrary, avers that he had lent him Rs. 58. The plaintiff objects to the set-off, stating, that as the defendant has entirely denied the claim, he cannot plead a set-off.

“The question is whether or not a defendant, who entirely denies the claim of the plaintiff, can plead a set-off against him, and obtain a decree for it.

“My opinion is, that the defendant may plead a set-off and obtain a decree for it, though he entirely denies the truth of the plaintiff’s claim.”

Per Curiam (Couch, C. J., and Warden, J.):—The Court is of opinion that a defendant may deny the plaintiff’s claim and also plead a set-off, and may obtain a decree for it, although no sum may be found to be due to the plaintiff.

Aug. 17

*Special Appeal No. 226 of 1869.*

LAKSHMIBAI, widow of KALYANRAV

Anant..... Appellant.  
Jayram Hari, Itavji Shripat, and Ganpatrav

Mahipat..... Respondents.

*Hindu Law—Widow—Gotraja Sapinda—Samanodakas*

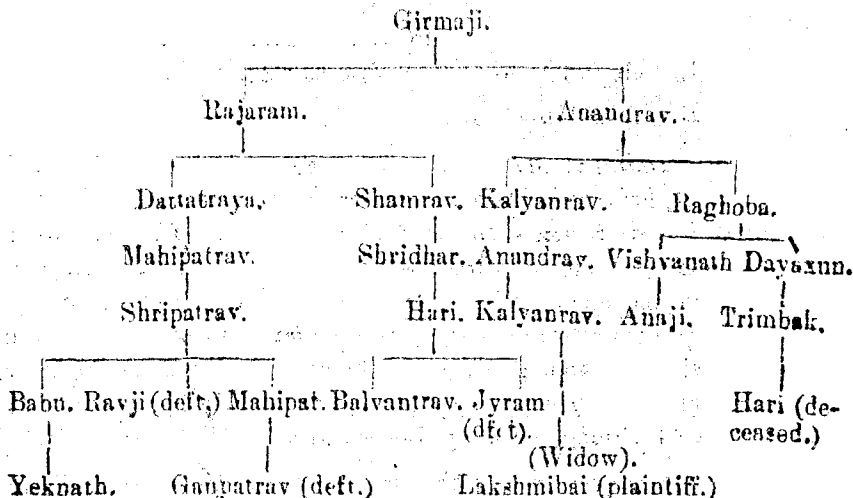
According to the Hindu Law obtaining in Western India, the wives of all Gotraja Sapindas and Samanodakas have rights of Inheritance co-extensive with those of their husbands immediately after whom they succeed.

This was a Special Appeal from the decision of Arthur St. John Richardson, Judge of the District of Ahmednagar, in Appeal Suit No. 285 of 1868, amending the decree of Krishnaji Vishnu Limaye, Principal Sadr Amin of Ahmednagar.

The plaintiff, the childless widow of a separated member of a Hindu family, sued the defendants, also members of that family, to recover by right of inheritance property left by one Hari Trimbak.

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The following genealogical tree explains the relationship between the parties to the suit to each other and to the deceased:—



The Principal Sadr Amin held that all the parties to the suit were equally entitled to succeed to Hari Trimbak's property. The Lower Appellate Court, on the contrary, considered the claim of the plaintiff inadmissible.

The Special Appeal was argued before LLOYD and MELVILL, JJ., on the 6th of August 1869.

*Bahirachath Marjesh* for the Appellant: The plaintiff is the sole surviving representative of Anandray's branch of the family. It cannot be denied that Kalyanray was a *gotraja sapinda* of Hari, and a nearer relative of his than any of the defendants, who do not belong to the class of *gotraja sapindas*. Had Kalyanray been alive, he would have succeeded as heir to Hari, in preference to the defendants; and, therefore, his widow after him should, according to the Hindu law obtaining on this side of India, succeed.

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So long as there are representatives of a nearer ascendant, they, together with their wives, exclude the representatives of one more remote. In this case Anandray is an ascendant of the fourth degree, the plaintiff, Lakshmbai, being his sole surviving descendant; while, on the other hand, Girmaji is an ascendant of the fifth degree, and the defendants are his and not Anandray's descendants: West and Buhler, Hindu Law of Inheritance, Introduce. lii., and pp. 137—174. The same rule of inheritance holds good also with respect to *samanodakas*: West and Buhler, Introduce. liii., Widows of distant relatives succeed as heirs, Examples 170—174.

*Dhirajlal Mathuradas* for the Special Respondents: *Sapindas* are of two kinds, near and remote. Here the parties are remote *sapindas* of Hari Trimbak. The females of the near line of *gotraja sapindas* alone succeed; and even in that line the widow, the daughter, the mother, and the grandmother are the only eligible females; other females in this line, and all females in the line of the remote *sapindas*, are entirely excluded: Grady on Hindu Law, 221, 222, 228; Strange's Man. p. 75, sec. 310.

With reference to the line of remote *sapindas*, the *Mitakshara* makes no mention of females, but limits the succession to "sons and their issue": Ch. II., sec. 5, para. 5\*; Coleb. Dig. Bk. V., Ch. VIII., sec. 1, para. 335. No case has been cited by the other side showing the admission of females to succession in the line of remote *sapindas*.

*Bahiravnath Mangesh* in reply: The texts cited on behalf of the special respondents are law in Bengal and Madras; they are not of authority in the Presidency of Bombay.

*Cur. adv. vult.*

17th August—MELVILL, J.:—The plaintiff's husband, Kalyanray, was the great grandson of the deceased Hari's paternal grandfather's grandfather. The defendants are fifth in descent from the father of the same ancestor. It is admitted that Kalyanray, being more nearly related to Hari,

\*Stokes' Hindu Law Books, p. 447.

would have succeeded to his estate if he had lived, and the only question is whether his widow is entitled to do so.

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Both Kalyanrav and the defendants are *gotraja sapindas*, and the plaintiff relies mainly on the following passage in West and Buhler's Hindu Law of Inheritance, Introduction, page lii.; On failure of the paternal grand-mother, the *gotraja sapindas*, i. e. all the males of the deceased's family (*gotra*) related to him within six degrees, downwards and upwards, together with their respective wives, are entitled to inherit the estate of a separate householder."

On the other hand, it has been urged that this exposition of the law is without authority, and that no widow of a remoter, *sapinda*, (i. e. a *sapinda* who is not among the first three in direct descent or ascent) can succeed, so long as there is a male remoter *sapinda* in existence. Reference has been made to Grady on Hindu Law, p. 228, where it is laid down that "the wife, daughters, and daughters's sons, the mother and the paternal grandmother are also embraced among the *sapindas*; the female line extends no further."

This view seems to be in accordance with that held by Strange (Manual, p. 75, sec. 310) and Colebrooke (Digest, Vol. II. pp. 564—568, Madras Ed. 1865,) and there can be no doubt that it correctly describes the doctrine held by the Bengal and Madras schools.

But the Mitakshara is the ruling authority in the Deccan, where the present case arose, and we have to form our decision in accordance with the law therein contained.

Now the Mitakshara expressly carries the succession beyond the limit laid down in the above works. At chapter II., sec. 5., para. 5, we find the following:—"On failure of the paternal grandfather's line, the *paternal great-grand-mother*, the great-grandfather, his sons and their issue, inherit." Here then the competency of the widow of a remoter *sapinda* to inherit is in plain terms recognised; and the principle having been once admitted, is carried out to its logical conclusion by the commentator Visves varabhata in his

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Subodhini. He extends the succession to "the paternal great-grandfather's mother, great-grandfather's father, great-grandfather's brothers, and their sons; the paternal great-grandfather's grandmother, great-grandfather's grandfather, great-grandfather's uncles, and their sons. The same analogy holds in the succession of kindred connected by a common libation of water." From the mention of the great-grandfather's grandmother (*i.e.*, the wife or widow of the most remote of the male *sapindas* in direct ascent); and of the kindred connected by a common libation of water (*i. e.*, the *samanodakas*, or collaterals, within thirteen degrees) it is clear that the commentator meant to convey that by a logical interpretation of the Mitakshara, the wives of all *sapindas* and *samanodakas* must be held to have rights of inheritance coextensive with those of their husbands. This is the doctrine laid down by West and Bühler at pp. lii. and liii. of their Introduction, and discussed by them at considerable length in the introductory remarks to Digest, chap. II., sec. 14. We consider that it is the doctrine which we are bound to follow, as being drawn from the work which is the principal source of law on this side of India, and we, therefore, reverse the Judge's decision, and allow the claim with all costs on respondents throughout.

*Decrees reversed and claim allowed.*

Aug. 27.

*Special Appeal No. 256 of 1869.*

Nanabhai Narotamdas. ... .. *Appellant.*  
Ramshet Govindsbet. ... .. *Respondent.*

*Special Appeal—Remand by Lower Appellate Court—Cir.  
Proc. Code, Sec. 351.*

It is an error in law for a Lower Appellate Court to remand a case except in accordance with Sec. 351 of the Civil Procedure Code.

A Special Appeal will lie against a decree remanding a suit.

This was a Special Appeal from the decision of F. Lloyd, Judge of the District of Puna, in Appeal Suit No. 177 of 1866, reversing the decree of the Principal Sadr Amin of Puna.