

PER CURIAM:—The Court is of opinion that a question whether the execution of a decree is barred by any law of limitation is a question arising between the parties to the suit, and that it is immaterial whether this question be raised by the Court *proprio motu*, or by the defendant.

1869
 Hari Vishnu
 v.
 Gopal bin Ragji
 et al.

The Court, therefore, reverses the order of the Senior Assistant Judge, and directs that he proceed to hear the appeal.

Special Appeal No. 298 of 1869.

Sept. 15.

POLI, Widow.....Appellant.
 NAROTUM BAPU and LALA KESHAVSHET ... Respondents.

Hindu law—Inheritance—Priority amongst daughters.

On this side of India, having male issue does not determine the right to inherit. Comparative poverty is the only criterion for settling the claims of daughters to their father's estate. A *nidhan* (unendowed) daughter has preference over a *sadhan* (dowered) daughter.

Bakubai v. Manohabai (2 Bom. H. C. Rep. 5) followed.

This was a Special Appeal from the decision of A. Bosanquet, Judge of the district of Thana, in Appeal Suit No. 331 of 1868, reversing the decree of the Munsif of Bassein.

The action was instituted by the plaintiff, Poli, to establish her proprietary right to a one-fourth share in a field in the village of Omrale, in the talooka of Bassein, which had belonged to her father Lakshuman, deceased, and which the first defendant had attached and sold in execution of a decree obtained against one Dama Poput, the husband of the plaintiff's sister. The second defendant purchased the property in dispute at the auction sale. The plaintiff claimed as sole heir to her deceased father.

The defendants set up the title of their judgment-debtor, Dama Poput, in right of his wife, the plaintiff's sister, who died after her father, leaving a son, and contended that a daughter with a son had a preferential claim to succeed as heir to her father over a daughter who was a childless widow, as the plaintiff was.

1869 : The Munsif of Bassein found that after Lakshuman's death
 the plaintiff succeeded to the property in dispute as his heir,
 Polli, Widow and that Dama managed it as trustee for the plaintiff, and
 c. decreed in favour of the plaintiff.
 Narotam Bapu
 and Lala
 Keshavshet.

The first defendant appealed from this decision to the District Court, on the ground that the share claimed belonged to Dama in Right of his wife, and that at the time of the sale it was in his possession as owner, and not as trustee for the plaintiff.

The District Judge held that, according to Hindu law, among daughters the unmarried take first, and after them the married daughters having male issue. Dama's wife accordingly, as a daughter having male issue, was heir to Lakshuman in preference to the plaintiff, a childless widow. The District Judge accordingly reversed the decree of the Munsif.

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

Dalpatram Jivanram for the appellant.

COUCH, C.J. :—The circumstance of having male issue does not, on this side of India, determine the right to inherit. The case of *Bakubai v. Manchhabai* (a), settled this point definitely. Comparative poverty is the only criterion of settling the claims of the daughters among themselves. An (*nirdhan*) unendowed daughter has preference over an (*sadhan*) endowed daughter. The decision of the District Judge is accordingly reversed, and the suit is remanded for retrial, in accordance with the principle laid down in the leading case,

Decree reversed and suit remanded.