

Special Appeal No. 146 of 1869.

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Oct. 6.

Narsappa Lingappa, *et al.*, Appellants.

Sakharam Krishna... .. Respondents.

*Hindu Law—Inheritance—Widow'd mother's estate as
heir of her son—Stridhan.*

Held, that in a separated family a Hindu Mother succeeding to her son's immoveable property takes in it the same estate as a Hindu widow takes in the immoveable property of her husband dying without male issue.

A Hindu died leaving by his first wife, who predeceased him, three sons, from whom he had separated, his second wife and a minor son by the latter. The minor son died in infancy.

Held, that the mother succeeded to the immoveable property of her minor son, but took only a life interest in it.

This was a Special Appeal from the decision of R. W. Hunter Senior Assistant Judge at Solapur, in Appeal Suit No. 137 of 1867, confirming the decree of Krishnarav Sadashiv, Sadr Amin, in Original Suit No. 631 of 1866.

The Special Appeal was argued on the 29th June 1869 before Gibbs and Melvill, JJ. The facts sufficiently appear in the judgment of the Court.

Bhairavnath Mangesh for the appellants.

Vishvanath Narayan Mandlik and *Ganpatrav Bhasker* for the respondent.

Cur. adv. vult.

5th October—Gibbs, J. :—This is a suit to recover possession of land sold by a Hindu widow, on the ground that the widow could not alienate it. It appears that her husband Krishnarav Parsharam Limaye, was twice married; by his first wife he had three sons, one of whom is the plaintiff; by his second wife, the defendant Radhabai, one son. Krishnarav divided his property into five shares, three of which he gave to his three sons by his first wife, retaining the other two for himself; on his death he left the one son by Radhabai, who, being a minor, was under the guardianship of his mother. This minor subsequently died, and the whole of these two shares came into the hands of Radhabai, a portion of which, field No. 315, subsequently sold by her

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to the 1st and 2nd defendants, forms the subject of this action. The Sadr Amin of Solapur being of opinion that Radhabai could alienate her life interest in the field, rejected the claim, on the ground that no suit would lie until after her death. This decree was confirmed by the Acting Senior Assistant Judge. A special appeal has now been made by the 1st and 2nd original defendants, on the grounds that the sale was good, not only for Radhabai's lifetime, but for ever, and that the Lower Court was in error in holding that immoveable property inherited by a mother from her son is not her *stridhan*. Other points were taken, but this was the only one that was argued.

Mr. Bhairavanath in support of the special appeal cited the following authorities:—*Navalram Atmaram v. Nankishor Shivnarayan* (a); *Doe d. Kullammul v. Kuppu Pillai* (b); *Vyavahara Mayukha, ch. IV., sec. 10, paras. 7, 8 and 9* (c); *Grady on Hindu Law, pp. 186 and 221; 1 Morley's Digest; 595; West and Buhler on Inheritance, LXIII.; Jamiyatram v. Bai Jamma* (d).

The argument sought to be supported by these authorities was that property inherited by a widow, no matter from whom, other than from the husband, is of the nature of *stridhan*, and therefore can be alienated absolutely by her.

Ravsahab V. N. Mandlik on the other side, argued that the rule by which a widow in a divided family succeeds to her husband's interest is the same rule by which, under the same circumstances, the mother would inherit the property of her son. The property inherited from a son can never form a portion of her *stridhan*. *Manu* only acknowledges six forms of *stridhan*, and there is no mention made among them of "property inherited". He quoted in support of his argument: *Vyavahara Mayuka, ch. IV., sec. 6, para. 15; sec. 8, paras. 3 and 16-20; sec. 10; Mitac., ch. II., sec. 1, sec. 11, paras. 1-5; Daya-krama Sangraha, ch. II., sec. 2, paras. 1 and 2, and 21-29; Steele on Hindu Custom, 69;*

(a) 1 Bom. H. C. Rep. 209.

(b) 1 Mad. H. C. Rep. 85.

(c) Stokes' Hindu Law Books, p. 100.

(d) 2 Bom. H. C. Rep. 10.

para. 72; *Beehar Bhugvan v. Bai Lakshmi* (e), *Sengamalathammal v. Valaynda* (f), *Goburdhun Nath v. Onoop Roy* (g), *Punchanund Ojhab v. Lalshan Misser* (h), *Doorga Dayee v. Poorun Dayee* (i), *Kashee Chunder v. Gour Kishore* (j).

The question for us to decide in the present case is what right has a widow over the proerty which she inherits from her minor son, who, with herself, is a member of a divided family. Mr. Bhairavanath points to the *Mitaksbara*, as alluded to in the judgment of Mr. Justice Forbes in *Navalram Atmaram v. Nandkishore Shivnarayan* (*supra*), in which the following passage occurs in describing a woman's *stridhan* : —“Also property which she may have acquired by inheritance;” and argues that there is no limitation as to the person from whom the inheritance is derived ; that, therefore, whether a woman inherits from her own family, or from the family of her husband, such inherited property equally comes under the head of *stridhan*; and that the case just quoted, as well as the case of *Kullammal v. Kuppu Pillai* (*supra*), shows that a woman can dispose of such property absolutely. Before noticing the arguments of the other side, we remark that the question of a woman's *stridhan* going to her own heirs, and not to those of her husband, may be taken to have been authoritatively settled in this Court by the case quoted (k), and the entire question before the Court turns on whether the son's property, when inherited by the mother, becomes part of her *stridhan* or not. In the case of *Jamiyatram v. Bai Jamna* (l) the judgment of Sir Joseph Arnould, Acting C. J., pointed out that the property acquired by inheritance, and which in consequence becomes part of the widow's *stridhan*, can only consist of property inherited by her from members of her own family. This view has been questioned by the learned editors of the Digest of Hindu Law, Messrs. West and Buhler (m); but whether their criticism

(e) 1 Bom. H. C. Rep. 56. (f) 3 Mad. H. C. Rep. 312.

(g) 3 Calc. W. Rep. Civ. R. 105. (h) *Ibid* 140.

(i) 5 *Ibid* 141. (j) 10 *Ibid* 139.

(k) *Navalram Atmaram v. Nandkeshar Shivnarayan*, 1 Bom. H. C. Rep. 209.

(l) 2 Bom. H. C. Rep. 10. (m) Introduction, p. 65.

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is correct or not, the decision which has been followed on several occasions is binding upon this Court as a precedent. Were it otherwise, we are of opinion that the very able argument for the respondent and the authorities cited have distinctly shown that the rule under which the widow succeeds to her son's separated property is the same under which she succeeds to her husband's in a divided family.* Now the interest of a widow in her deceased husband's estate (he being a member of a divided Hindu family) has been authoritatively settled by this Court to consist of a life interest only in immoveables, while moveables are taken absolutely: *Vinayak v. Lakshmbai* (a), and *Devkuwarbai's case* (c). We do not consider that Mr. Bhairavanath has in any way met this argument, and in holding, as we do in the present case, we are only following the latest rulings of the High Courts of the two other Presidencies (p). We consider, therefore, that Radhabai has in the estate inherited from her minor son taken only a similar interest to that which she would have taken had the estate come to her direct from her deceased husband, viz., a life interest in the immoveable property. We agree therefore with the decision arrived at by the Lower Court, which we confirm with costs.

Decree confirmed.

(a) 1 Bom. H. C. Rep. 417.

(c) *Ibid.* 130

(p) Calc. W. Rep. 139; 3 Mad. H. C. Rep. 312.

*Mitakshara, Ch. II., Sec. 1, paras. 1 and 2; Stokes' H. L. B., p. 427; Mayukha, Chap. IV., Sec. 2, paras. 1 and 2; Stokes' H. L. B., pp. 83 & 84.