

any more than by other creditors in the hands of the Collector or other disbursing officer, who would ordinarily pay it to Sampatrám. But once in his hands, it is deprived of any special protection. It blends with his other moneys and becomes undistinguishable. What the plaintiffs seek, indeed, is not a portion of Sampatrám's salary, as salary, but a sum of money, called by any name whatever, each year, bearing a certain proportion to Sampatrám's emoluments for that year. His personal obligation to pay this money is not extinguished by his being a *watandár*, though the *watan* cannot be attached; and the plaintiffs are entitled to enforce their decree free from the limitation imposed by the order of the District Judge. We modify his order accordingly. Costs on respondent. *

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Order accordingly.

[APPELLATE CIVIL JURISDICTION.]

Special Appeal No. 213 of 1873.

August 25.

KO'TARBASA'PA' *Plaintiff and Appellant.*

CHANVEROVA' *Defendant and Respondent.*

'Stridhan'—*Hindu Widow's power of alienation—Immoveable Property.*

A Hindu widow, on this side of India, has no power to alienate immoveable property if given to her by her husband in his lifetime, and thus becoming "Stridhan" in her hands.

THIS was a special appeal from the decision of Baron Larpent, Acting Judge at Dharwad, reversing a decree of the Subordinate Judge.

* NOTE.—An application to review this judgment was rejected by the Court on the 26th February 1874, on the ground that the arguments urged in support of it were substantially the same as those advanced at the hearing of the appeal. The ruling of the Court in this case is supported, by *Flarty v. Odleom* 3 Durn and E 681 and *Lidderdale v. Duke of Montrose* 4 Idem 248.—*Ed.*

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A Hindu, named Basápá, died, leaving, surviving him, two widows, viz., Ningavá the elder and Shivaka the younger, and a daughter, the defendant Chanverová by Ningavá. A posthumous son, the plaintiff Kótarbasápá, was born by Shivaka to Basápá three months after his death. As the two wives did not agree, Basápá, before his death, was alleged to have divided his property between them, and to have made a gift of the house in dispute to Ningavá, the elder wife. Subsequently, Ningavá, by an agreement, paid Rs. 200 to Shivaka, and agreed to occupy the house till her death, after which it was to pass absolutely to Shivaka.

The Subordinate Judge held the plaintiff's claim proved and gave a decree in his favour. In appeal, however, the District Judge threw out the plaintiff's claim on the ground that it was not competent to Ningavá to pass the agreement and thereby alienate her "Stridhan" to which after her death her daughter, the defendant Chanverová, was entitled to succeed under the Hindu Law. He observes in his judgment :—

"Exhibit 69 is a deed under which Basápá made a distribution of his property between his wives. The gift of the property to Ningavá, the elder wife, was absolute, and the terms of the deed are such as Basápá was competent to carry out between his two wives. Such an arrangement is valid by Hindu Law, and property so acquired by a wife ranks as "Stridhan," and would descend to the daughter, and not to the plaintiff, who is a son by the other wife. (Grady H. Law pp. 174, 175.)

"The question then is, whether the subsequent deed, the agreement made between the two wives, affects the defendant's right ?

"In this document Ningavá gives Shivaka Rs. 200, and it is agreed that Ningavá shall occupy the house during her life, and that after that it shall revert to Shivaka.

"I am of opinion that Ningavá had no power to enter into such an arrangement. * * * Under the Hindu Law, defendant has a clear right to inherit, and her mother could not deprive her of this right by executing such an agreement."

The special appeal was argued before MELVILL and PINHEY, JJ., on the 25th August 1873.

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Pándurang Balibhadra for the appellant:—The plaintiff, being a son of Basápá, is alone entitled to the property. The widows are only entitled to maintenance. Besides, Ningavá passed the agreement to plaintiff's mother. A Hindu daughter has no vested interest like a son. She can inherit only under certain contingencies: 3 Cole. Dig. Bk. 573 (Edit. of 1851).

Shántárám Náráyan contra:—The husband, before the birth of the plaintiff, gave the property absolutely to his two wives, by the first of the two deeds, because they were quarrelling. A Hindu woman has no power to alienate immoveable property given to her by her husband: Stokes H. Law Bks. p. 100—10. *Doe d. Kullammál v. Kuppu Pillai (a)*; *Vijiárangam v. Lakshuman (b)*.

MELVILL, J.:—The District Judge was right in refusing to give effect to the agreement between the two wives by which Ningavá alienated the house from her daughter, who would otherwise have inherited it as part of her mother's *Stridhan*. The *Mitákshará*, which governs this case, is wholly silent on the subject of the power of women to alienate their peculiar property; but both the Bengal School of Law (see *Dáyabhág Ch. IV., Sec. 1, pl. 21 to 23*) and the *Vyavahár Mayukha* (*Ch. IV., Sec. 10, pl. 9*) prohibit the alienation by a widow of immoveable property which she has received from her husband. In the absence of any provision on the subject in the *Mitákshará*, we think we should be right in following the rule laid down by the other authorities.

We are, however, not satisfied with the District Judge's finding that the house was given to Ningavá by her husband Basápá. The District Judge has described the first agreement as a deed under which Basápá made a distribution of his property among his wives, and he seems to rest his finding upon this document alone; but there is nothing in the document itself which proves that Basápá made the distri-

(a) 1 Mad. H. C. Rep. 85, 89.

(b) 8 Bom. H. C. Rep. O. C. J. 259.

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bution. It purports to be an agreement made by the two wives, *inter se*.

We think it necessary to direct the District Judge to record a fresh finding upon the whole evidence on the following issue:—

Is it proved that the house in dispute was given to Ningavá by her husband Basápá ?

Case remanded.

[APPELLATE CIVIL JURISDICTION.]

Special Appeal No. 351 of 1873.

October 9.

GAMBHIRMAL and another *Appellants.*

CHEJMAL and another..... *Respondents.*

Stamp—Discretion—Appeal—Act XVIII. of 1869, Sec. 20.

A District Court refused to allow, under Act XVIII. of 1869, Sec. 20, an insufficiently stamped document to be admitted on payment of the full amount of stamp duty, and the penalty, on the ground that it was wilfully executed in fraud of the stamp law. *Held* that the High Court cannot in special appeal question the correctness of the District Court's refusal.

Pendse v. Málse (3 Bom. H. C. Rep. A. C. J. 94) commented on.

THIS was a special appeal from the decision of A. Bosanquet, District Judge of A'hmada'bad, reversing the decree of Chintáman Hari Deshmukh, Subordinate Judge of Newásá.

The special appeal was argued before MELVILL and PINHEY, JJ.

Bhairavnáth Mangesh, for the appellants, contended that the Lower Court ought to have received the amount of de-