[APPELLATE CIVIL JURISDICTION.]

1875. March 11.

Cross Special Appeals Nos. 542 *of* 1873 *and* 90 *of* 1874.

No. 542.

KRISHNA'JI VYANKTESH.....*Defendant and Appellant.*

PA'NDURANG, deceased, by his son VYANKA'JI..... } *Plaintiff and Respondent.*

No. 90.

PA'NDURANG, deceased, by his son VYANKA'JI..... } *Plaintiff and Appellant.*

KRISHNA'JI VYANKTESH.....*Defendant and Respondent.*

The comparative weight of authority of Mitákshará and Mayukha in the Southern Maratha Country.

In Western India, on questions of inheritance, the first place is assigned to the Mitákshará, and only a subordinate, though still an important one, to the Mayukha, on the authority of the responses delivered officially by the Shástris of the courts and oral statements of persons learned in the Hindu law of this Presidency.

Bábáji Káshináth v. *Anandráv Bháskar* commented upon.

THESE were cross special appeals from the decision of S. Tagore, Assistant Judge at Belgaum, amending the decree of the Subordinate Judge of Bágalkot.

Pándurang brought this suit for the possession of certain lands and other property, on the allegation that the same belonged to his half-brother, Vasápá, who died childless, leaving him surviving his widow, Lakshmibái, that Lakshmibái died on the 20th December 1864, and that the plaintiff was entitled to the possession of the property claimed as the next heir of Lakshmibái's husband. Krishnáji asserted his own preferential right to the property as a nephew (brother's son) of the deceased Vasápá, and also claimed part of the property under some other rights. The Subordinate Judge, on the authority of the Vyavahár Mayukha, held that the defendant Krishnáji, the nephew of the deceased Vasápá, had a better right to succeed as his (Vasápá's) heir than the plaintiff, who was Vasápá's half-brother. The first court accordingly dismissed the plain-

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tiff's claim. In appeal, Mr. Tagore was of opinion that the authority of the Mitákshará was paramount in the Maratha Country, the Mayukha being used only as a secondary authority, and held the plaintiff entitled to succeed as heir of Vasápá under Mitákshará, Chapter I., Section 4, pl. 6, and West and Bühler, p. 129. He, accordingly, decreed to the plaintiff part of the property claimed, and threw out his claim to the rest, on the ground that it was alienated for proper and necessary purposes according to Hindu law.

In special appeal, the principal contention was, which of the two authorities, the Mitákshará or the Mayukha, prevailed in the Southern Maratha Country and governed the present case.

The special appeal was argued before WEST and PINHEY, JJ., on the 11th March 1875.

Ghanashám Nilkanth, for the appellant, contended for the superior authority of the Mayukha, and cited Steel, p. 7, 2nd Ed.; Borradaile's Pref. to the Mayukha (Stokes H. L. B., p. 6,) and the judgments of Arnould, J., in *Ramiá* v. *Bhági* (*a*), of Sausse, C.J., and Arnould, J., in *Vináyak* v. *Lakshmibái* (*b*), and of Melvill and Kemball, JJ., in *Natháji* v. *Hari* (*c*). In *Viziarangám* v. *Lakshman* (*d*), Westropp, C.J., relied upon the Mayukha and not upon the Mitákshará. So too Sargent, J., expressly gave preference to the Mayukha over the Mitákshará in *Bábáji Káshináth* v. *Anandráv Bháskar*, decided on the Original Side of this Court. If the Mayukha governs this case, the appellant Krishnáji is entitled to succeed in preference to Pándurang, on the authority of Mayukha, Chap. IV., Section 8, pl. 16; *Dináji* v. *Rámji* (*e*).

Vishnu Ganashám, contra:—The Mitákshará is the greatest of all the Hindu law authorities, especially in Western India: 1 Mor. Dig. Introd., p. 204; West and Bühler, Introd.,

(*a*) 1 Bom. H. C. Rep. 66, see p. 68. (*b*) *Id. Ib.* 117, see p. 122.
(*c*) 8 Bom. H. C. Rep. 67 A.C.J., see p. 72.
(*d*) *Id. Ib.* 244 O.C.J., see p. 273. (*e*) Bellasis Sel. Ca. 11.

pp. 1, 2; Colebrooke's Preface to the Mit. (Stokes, H. L. B., p. 173). Steel and Borradaile, so far from supporting the other side, attribute superior authority to the Mitákshará over the Mayukha: Steel, p. 4, 2nd Ed.; Borradaile's Preface to the Mayukha, (Stokes H. L. B., p. 5). The authority cited from West and Bühler's Introduction must be considered of peculiar value, because it is based on the opinions of Shástris, as expressly stated there. The opinion of Westropp, C.J., on the question of the comparative weight of authority of the Mitákshará and Mayukha, in the Bombay Presidency, is expressed in *Nárâyan Bábâji* v. *Nánâ Manohar* (*f*). *Bábáji Káshináth* v. *Anandráv Bhâskar* does not apply to the present case, as the parties are not residents of the island of Bombay.

The judgment of the Court was delivered by

WEST, J.:—The present case turns on the comparative authority on questions of inheritance in the Southern Maratha Country of the Mitákshará and Vyavahára Mayukha. Their relative weight has been estimated in 1 W. and B. Introduction I., II., so far as an opinion could be gathered from the numerous responses with which the editors of that work had to deal, as delivered officially by the Shástris of the Courts, and from the oral statements of persons learned in the Hindu law of this Presidency. As to the former the Privy Council have said, in the case of the *Collector of Madura* v. *Mootoo Ramalinga Sathupathy* (*g*) that "these opinions * * * could not be shaken without weakening the foundation of much that is received as the Hindu law in various parts of British India." The first place is, on such authority, assigned to the Mitákshará, only a subordinate, though still an important one, to the Mayukha. The view there expressed is in accordance with that taken by the Privy Council in the same case, at p. 435, of the "supreme authority" of the Mitákshará, and it has since been repeated by the learned Chief Justice of this Court.

(*f*) 7 Bom. H. C. Rep. 153 A.C.J., see p. 167.

(*g*) 12 Moore I. A. 397, see pp. 438 and 439.

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At 7 Bom. H. C. Rep. 167 A.C.J., he speaks of the Mitákshará as "foremost amongst legal authorities in Mahárástra," while of the Vyavahár Mayukha he says, in the same case, at p. 169, that it "ranks next in authority in the west of India and in the Marathi school to the Mitákshará." In cases of direct conflict between the two authorities, there can be no doubt, after these expressions of opinions, that preference should, in general, be given to the Mitákshará doctrine, although where the Mayukha's gloss may not seem easily reconcilable with the text, its construction is to be received, if not absolutely contradictory to the "supreme authority."

It is true that that doctrine has, in some instances, been broken in upon in Guzerat, by an adoption of the different views propounded in the Mayukha, and in the island of Bombay, where a large and intelligent part of the population has been furnished by Guzerat, the Mayukha may perhaps rank as the foremost authority. This is the utmost that can be deduced from the language attributed to the Chief Justice in the report of *Viziárangám's case*. It was not his intention certainly to lay down a general rule as to the comparative weight of the two authorities at variance with what he had said but a short time before. The doctrine of the Mayukha was, in a subsequent case (*Bábáji Káshináth* v. *Anandráv Bháskar*), preferred by Sir Charles Sargent to that of the Mitákshará in a case of inheritance between parties resident in the island of Bombay; but this has no conclusive bearing on a case arising in the Southern Maratha Country. The conflict of opinion which the learned Judge supposed to have existed between the Judges in *Viziárangám's case* did not in fact arise; they were in perfect accord as to the decision and the grounds of it. The case is not one which could have much bearing on the one we have now to deal with; but so far as it does bear on it, it is in favour of the general paramount authority of the Mitákshará, subject to a local exception for the island of Bombay.

Accepting the Mitákshará, however, as furnishing the law

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by which this case is to be decided, the half-brother's right of succession takes precedence of that of the son of the brother of the whole blood: Stokes H. L. B. 445, 1 W. and B. 129. Several decisions to the same effect have been passed by the High Court of Bengal, and are referred to in Cowell's Digest.

The cross appeal of Vyankáji has not been seriously pressed. We must confirm the decree of the District Court, with costs of each appeal on the party appellant therein.

Decree confirmed.

[APPELLATE CIVIL JURISDICTION.]

Special Appeal No. 169 *of* 1874.

March 16.

LAKSHMAN RA'MCHANDRA and others ..... *Defendants and Appellants.*

SARASVATIBA'I..... *Plaintiff and Respondent.*

Maintenance—Ancestral property—Hindu law—Purchaser bonâ fide and for value.

The maintenance of a Hindu widow is not a charge on any ancestral property in the hands of a *bonâ fide* purchaser from her late husband's successors any more than the payment of unsecured debts due by the family.

The proposition in *Rámchurun Tewaree* v. *Mussamat Jasooda Koonwer* (2 Agra 134) that the liability of family property, in the hands of a purchaser, for the maintenance of a widow, depends on the ability of her husband's heir to support her, dissented from.

THIS was a special appeal from the decision of W. H. Crowe, Acting Assistant Judge at Tanna, in Appeal No. 378 of 1872, confirming the decree of the Subordinate Judge of Alibág.

The appeal was heard by KEMBALL and NA'NA'BHA'I HARIDA'S, JJ.