

## APPELLATE CIVIL.

( 38 )

*Before Sir M. R. Westropp, Kt., Chief Justice, and Mr. Justice West.*HARIBHAT (ORIGINAL PLAINTIFF), APPELLANT, v. DAMODARBHAT  
(ORIGINAL DEFENDANT), RESPONDENT.\*1878  
September 23.*Hindu Law—Inheritance—Daughter's estate.*

Under the Hindu law, a daughter who succeeds to an absolute and several estate in her father's immoveable property may, if she has no issue, make a gift of that property in her lifetime or devise it by will, and her devisee is entitled to hold it against her own heirs of her father.

THIS was a second appeal from the decision of G. G. Phatak, First Class Subordinate Judge of Dharwar, affirming the decree of Manjunath Vithal, Second Class Subordinate Judge of Haveri.

Haribhat brought this suit for a declaration of his right to certain immoveable property left by one Damodarbhat, and alleged that the said property, on Damodarbhat's death without any male issue, had descended to his only daughter Subava, and that on her death he was entitled to the possession of it as the nearest heirs of Damodarbhat. The defendants, among other things, answered that he was entitled to hold the property by virtue of a will made by Subava in his favour. Both the lower Courts dismissed the plaintiff's claim on the ground that the property was Subava's *stridhan*, and that her father's heirs had no right to it so long as the heirs of her husband were alive, as they were found to be in this case.

*Shamrav Vithal* for the appellant.—Under the Hindu law, the estate which a daughter takes in property inherited by her from her father is only a qualified estate, and on her death descends to the heirs of her father and not to her own heirs. The lower Court, therefore, was wrong in rejecting the plaintiff's claim.

*Ghanasham Nilkanth Nadkarni* for the respondent.—Subava on her father's death without male issue succeeded to his immoveable property absolutely, and was, therefore, competent to dispose of it by will, as she did. The execution of her will is not disputed by the appellant. He relied upon *Pranjibandas Tulcidas v. Devkuvarbai*, (1) *Gungaram v. Ballia*. (2)

\* Second Appeal, No. 223 of 1878.

(1) 1 Bom. H. Rep. 130.

(2) Sp. Ap. No. 519 of 1871, Printed Judgments for 1878, p. 31.

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WESTROPP, C.J.—The execution of the will of Subava not being disputed, and Subava as daughter of Damodarbhat having succeeded to an absolute and several estate in his immoveable property, (1) she, not having any issue, might have made a gift of that property in her lifetime, or might devise it by will.(2) The defendant, who is her devise, is, therefore, entitled to hold it against the heirs of Subava or against the heirs of her father. On these grounds we affirm the decree of the First Class Subordinate Judge, which costs.

*Decree affirmed.*

(1) *Pranjiandas Tulsidas v. Devkuverbai*, 1 Bom. H. C. Rep. 130, and *per Sausse, C. J.*, in *Vidayak Anandray v. Lukshmbai*, *ibid.* 124; *Navalram Atmaram v. Nankiskor Shivnarayan*, *ibid.* 209; 2 Stra H. L. 402; *Gangaram v. Ballia*, Sp. Ap. 519 of 1873, see printed Judgments of 1876, p. 31; West and Buhler, 471 (2 ed.)

(2) *Narotam Jagjivan v. Narsandas*, 3 Bom. H. C. Rep. 6 A. C. J.; see also the note 5 Bom. H. C. Rep. 136 O. C. J.—*Bhikka v. Bhana*, 9 Harr. S. D. A. 449, and *Rikhowdas v. Baee Dewakor* (2 Morris, S. D. A., 127). This last case, in which the property devised is described as “personal,” goes far beyond the cases cited above the testator here having left son, daughter and widow. Possibly, however, that property was self-acquired; whether that was so or not, does not appear in the report.

## APPELLATE CIVIL.

( 39 )

*Before Mr. Justice Melvill and Mr. Justice Kimball.*

November 25. TRIMALRAY RAGHAVENDRA (ORIGINAL DEFENDANT), APPELLANT, v. THE MUNICIPAL COMMISSIONERS OF HUBLI (ORIGINAL PLAINTIFFS) RESPONDENT.\*

*Sale of immoveable property—Non-payment of purchase-money—Vendor's remedy.*

A vendor of immoveable property who has given possession to the purchaser is not entitled to rescind the contract of sale and recover possession because the purchase-money is not paid. His remedy is to use for the sum due and, he has a lien on the property for the amount.

THIS was a second appeal from the decision of Ray Bahadur Gopal Govind Phatak, First Class Subordinate Judge of Dharwar, confirming the decree of the Subordinate Judge, Second Class; of Hubli.

\* Second Appeal, No. 248 of 1878.