

Produce be determined in the execution of this decree. In other respects the decree of the District Judge is affirmed.

The parties will bear their own costs in this second appeal.

*Decree amended.*

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## APPELLATE CIVIL.

( 71 )

*Before Sir M. R. Westropp, Kt., Chief Justice, and Mr. Justice Kemball.*

SAKHARAM SADASHIV ADHIKARI (ORIGINAL PLAINTIFF), APPELLANT,  
v. SITABAI (ORIGINAL DEFENDANT), RESPONDENT.\*

May 3.

*Hindu Law—Inheritance—Right of sister to inherit in preference to half-brother  
—Mitakshara and Mayukha, authority of.*

A Hindu died possessed of certain immoveable property situated in the district of Thana, in the Northern Konkan, leaving him surviving a mother, a full-sister and a separated half-brother. His mother succeeded to his estate, and held it till her death. The half-brother then sued for a declaration of his right to the estate of his deceased brother.

*Held* that the full-sister and not the half-brother was entitled to succeed as heir to the estate of her deceased brother.

*Held*, also, that the decision in *Vinayak Anandrav v. Lakshmbai*(1) must be regarded as of general authority in the Presidency of Bombay, except where an invariable and ancient special usage to the contrary is alleged and proved.

*Seemle* the law of the Mayukha should prevail in the Northern Konkan.

*Krishnarjiv. Pandurang*(2) and *Lallubhai Bapubhai v. Manjuverbai*(3) referred to.

It is settled law that a mother succeeding, on the death of her son, to his immoveable property, takes only such a limited estate in it as a Hindu widow takes in the immoveable property of her husband dying without male issue, and that, on her death, her son's heir succeeds to such property.

THIS was a special appeal from the decision of W. M. Coghlan, Judge of the district of Thana, in appeal No. 165 of 1874, reversing the decree of Narayan Govind, Second Class Subordinate Judge at Panvel, in original suit No. 805 of 1873.

Sakharam Sadashiv brought this suit against Sitabai in the Subordinate Judge's Court at Panvel, and prayed for a declaration of his right to one-half of certain salt-works situated at Sonari;

\* Special Appeal, No. 34 of 1875,

(1) Bom. H. C. Rep. 117, 126; S. C. 9 Moo. L. A. 516; S. C. Calc. W. Rep. P. C. 41.

(2) 12 Bom. H. C. Rep. 65.

(3) I. L. R. 2 Bom. 418, 419, 420.

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in the island of Karanja. The salt-works had belonged to the plaintiff's father, Sadashiv Gopal, who died leaving him surviving one son, viz., the plaintiff Sakharam by his first wife, and another son Nana and a daughter, the defendant Sitabai, by his second wife Mathurabai. After Sadashiv Gopal's death the two sons Sakharam and Nana were separate, and each had possession of moiety of the salt-works. On the death of Nana it appeared there had been some litigation between Sakharam and his step-mother Mathurabai, the result of which was that she succeeded her son Nana in the enjoyment of his moiety, and held it up to the period of her death. After Mathurabai's death her daughter Sitabai, the plaintiff's half-sister, caused her own name to be substituted in the Government books for that of Mathurabai. The plaintiff in this suit claimed to be entitled to Mathurabai's share.

Sitabai answered that the plaintiff and her younger brother, by name Nana, had separated by partition; that after Nana's death his mother Mathurabai was his heir, and had held and enjoyed his property; that after Mathurabai's death she (Sitabai) and not the plaintiff was her mother's legal heir. The first Court awarded the plaintiff's claim, on the ground that plaintiff was the heir of his deceased step-mother, Mathurabai. Sitabai appealed, and the District Judge reversed the decision of the first Court, and made a decree in her favour, on the ground that she (Sitabai) was the heir of her deceased brother, in preference to the plaintiff. The following is an extract from the judgment of the District Judge:—

“The contention has resolved itself into the question, whether, among Hindus, a divided half-brother or a sister is the nearer heir?”

“This question is answered differently by the two leading text-books on Hindu law in this Presidency.

“According to the Matakshara, (to which Messrs. West and Buhler, the learned editors of ‘A Digest of Hindu Law,’ assign paramount authority,) sisters are not in the line of heirs at all, and they are not included in the order of succession given by the shastri of Khandesh in the reference published at pp. 129, 130 of the Digest. At page 152 of the Digest, in a reference to the

Ahmedabad shastri, half-brothers rank above all 'gotraja' relations, among whom are sisters.

"The 'Smriti Sangraha' is quoted at page 170 of West and Buhler's Digest. The order succession, as stated in the Smriti Sangraha, places sisters after daughters-in-law, but does not specifically mention half-brothers. The Mitakshara ranks half-brothers as next in succession to uterine brothers (Mitakshara, c. ii, iv, sec. 5, (6)).

"This doctrine is, however, directly combated by Nilakantha, the compiler of the Vyavahara Mayukha, who declares that Vijnanesvara was wrong in laying down 'that, in default of uterine brothers, those by different mothers succeed, and ranks a half-brother after a sister and a paternal grandfather : (Vyav. May., iv, viii, 16, 20). Were there no judicial ruling on the point I should have little hesitation in following the Mitakshara in ranking a half-brother before a sister; but I am bound to rule to the contrary by *Vinayak v. Lakshmibai*, (1) a case decided by the late Supreme Court of Bombay, and confirmed by the Judicial Committee of the Privy Council (1 Bom. H. C. Rep., O. C. J. 117).

"The case is on all fours with the present, except that the plaintiff was uncle, not half-brother, of the deceased. It was held that, in a separated family, sisters take as heirs to an unmarried and intestate brother, in preference to the relations of the father, and that the marriage does not exclude them from inheritance. This question does not appear to have arisen since the institution of the High Court, which, with all the respect to the late Supreme Court and to the Judicial Committee of the Privy Council, is in a better position than either of those tribunals to expound Hindu law. The ruling in the Privy Council in *Vinayak v. Lakshmibai* (2) appears to be negative rather than positive, since it does not go further than to state that their Lordships were not satisfied that the doctrine advocated in the judgment of the Supreme Court was wrong.

(1) 1 Bom. H. C. Rep. 117, 126; S. C. 9 Moo. I. A. 516; S. C. 3 Calc. W. Rep. P. C. 41.

(2) 1 Bom. H. C. Rep. 117, 129; S. C. 9 Moo. I. A. 516; S. C. 3 Calc. W. Rep. P. C. 41.

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" This case will now, doubtless, go up to the High Court on special appeal. I think it highly desirable that it should do so, in order that the question of priority of succession in a divided family between a father's relations and sisters may be re-opened, and a decision obtained on the position of half-brothers, and generally on the relative authority of the Mitakshara and Vyavahara Mayukha.

" On the authority of *Vinayak v. Lakshmi Bai* (1) I reverse the decrees of the lower Court, and dismiss the claim, with costs on the respondent."

*Dinkar Gangadhar* for the appellant.—The rival claimants in the present case are a full-sister and a half-brother. I admit that the brother is not entitled, as heir to the property in dispute, under the Mayukha. But the law which applies to this case is not the Mayukha but the Mitakshara, which occupies the first place in Western India on questions of inheritance, as held in *Krishnaji v. Pandurang*. (2) That decision is based on the authority of the responses officially delivered by the shastris of the Courts, and oral statements of persons learned in the Hindu law of this Presidency. It is, therefore, entitled to great weight. The Mayukha only prevails in Gujarat and the island of Bombay: Morley's Digest, Introd., p. 196; I strange's H. L. p. 318; *Lakshmi Bai v. Jayram Hari*. (3) If the Mitakshara governs this case, as it ought, because it comes from the Northern Konkan, the half-brother has a right to succeed under chap. ii, sec. 4, pl. 6 (Stok's H. L. Books, p. 445).

*Ghanasham Nilkanth Nadkarni* for the respondent.—In Western India the Mayukha is a general authority equally with Manu and the Mitakshara: I Morley's Digest, Introd., p. 222; Steel on Hindu Law and Customs, pp. 4, 7; *Vinayak Anandray v. Lakshmi Bai*; (4) *Ramiav. Bhagi*; (5) *Vijiarangam v. Lakshuman*; (6) *Nathaji Krish*

(1) 1 Bom. H. C. Rep. 117, 126; S. C. 9 Moo. I. A. 516; S. C. 3 Calc. W. Rep. P. C. 41.

(2) 12 Bom. H. C. Rep. 65.

(3) 6 Bom. H. C. Rep., A. C. J. 155.

(4) 1 Bom. H. C. Rep. 117, 126; S. C. 3 Calc. W. Rep. P. C. 41; S. C. 9, Moo. I. A. 516.

(5) 1 Bom. H. C. Rep. 66.

(6) 8 Bom. H. C. Rep., O. C. J. 241.

*naji v. Hari Jagoji*; (1) Borradaile's Preface to the Mayukha; Stoke's H. L. Books, pp. 5, 6, 8. If the Mitakshara is ever regarded as a superior authority to the Mayukha, it is so on account of its greater antiquity: Steel on Hindu Law and Customs, pp. 4, 7. If this case falls under the Mayukha, as it must according to the above authorities, the respondent (Sitabai) succeeds to the property as heir both to her full-brother Nana and her mother Mathurabai, who had only a life-interest in the property: Mayukha, chap. 4, sec. 8, pl. 16—20 (Stoke's H. L. Books, pp. 88, 89); *Vinayak Anandruv v. Lakshuibai* (2) *Narsappa Lingappa v. Sakharam Krishna*; (3) *Vijiarangan v. Lakshuman*. (4)

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The following is the judgment of the Court delivered by

WESTROPP, C. J.—Sadashiv Gopal died possessed of certain immoveable property, (salt-works,) situated at Sonari, near Uran, in the island of Karanja, in the district of Thana, and in the Northern Konkan, leaving surviving him one son, the plaintiff Sakharam, by his first wife; another son, Nana; and a daughter, the defendant Sitabai, by his second wife, Mathurbai, who also survived him. There appears to have been some question as to whether a partition (including the property in dispute), which, it was admitted, had taken place, was made by Sadashiv Gopal in his life-time between the plaintiff Sakharam and Nana, or whether they made it after the death of their father, Sadashiv Gopal. That question, however, is of no importance, it being admitted that, previously to the death of Nana (which occurred subsequently to that of his father), Sakharam and Nana (the half-brothers) were separate, and each severally in possession of his own moiety of the salt-works. On the death of Nana, litigation arose between Sakharam and his step-mother Mathurbai; the result of which was that she succeeded her own son Nana in the enjoyment of his moiety of the salt-works, and held it up to the period of her death. Thereupon Sitabai, her daughter, caused her name to be entered in the Government books as successor to that moiety, and the present suit was instituted against her by

(1) 8 Bom. H. C. Rep. A. C. J. 67.

(2) 1 Bom. H. C. Rep. 117, 126; S. C. 9 Moo. I. A. 516; S. C. 3 Calc. W. Rep. P. C. 41.

(3) 6 Bom. H. C. Rep., A. C. J. 215.

(4) 8 Bom. H. C. Rep., O. C. J. 244.

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her half-brother Sakharam. The Subordinate Judge decreed, him entitled to recover as heir to Mathurabai; Sitabai appealed to the District Judge, who reluctantly reversed the decree of the Subordinate Judge, being of opinion that, in accordance with the doctrine of the late Supreme Court of Bombay, laid down in *Vinayak Anandray v. Lakshmibai*,<sup>(1)</sup> and upheld on appeal by Her Majesty's Privy Council, he was bound to prefer, as heir to Nana, his full-sister Sitabai to their half-brother Sakharam. This view the learned District Judge admitted to be supported by the Vyavahara Mayukha (bk. iv, sec. viii, pl. 16 to 20), but said he would have had little hesitation in following what he conceived to be the Mitakshara doctrine rather than that of Nilakantha, were it not for the authority of *Vinayak Anandray v. Lakshmibai*.

The plaintiff Sakharam has a filed a special appeal, alleging that the District Judge was in error in three respects : viz. 1, in holding the defendant entitled to the property in dispute in preference to the plaintiff; 2, in preferring the Vyavahara Mayukha to the Mitakshara in the District of Thana; 3, in holding *Vinayak Anandray v. Lakshmibai* applicable to this case.

This special appeal was well argued before us by Mr. Dinkar Gangadhar for the appellant and Mr. Ghanasham Nilkanth for the respondent; and Mr. Dinkar, with becoming candour, admitted that if the Vyavahara Mayukha were applicable, his client, the appellant and plaintiff Sakharam, must fail; but argued that the Mayukha, as an authority, should be limited to the province of Gujarat, and that the property in dispute being in the Northern Konkan, the Mayukha was inapplicable, and that the Mitakshara, which does not specify sisters as heirs, and specially ch. ii, sec. iv, pl. 6, governed the case.

It must, however, be observed that the immoveable property in the case of *Vinayak Anandray v. Lakshmibai* <sup>(2)</sup> was not situated in the province of Gujarat, but in the island of Bombay, where, as well as in Gujarat, the Mayukha is much regarded as an authority; and, further, that neither the Supreme Court of Bombay nor Her

(1) 1 Bom. H. C. Rep. 117, 126; S. C. 9 Moore's Ind. Ap. 516; S. C. 3 Calc. W.R. P. C. 41.

(2) 1 Bom. H. C. Rep. 117, 126; S. C. 9 Moore's Ind. Ap. 516.

Majesty's Privy Council, in deciding that case, drew any distinction as to the points in that case between the law in the island of Bombay and the law in this Presidency at large; and, as one of the counsel in the case when it was in the Supreme Court, I am able to say that there was not any such distinction taken in the arguments before that tribunal, nor does any such appear, from the report in 9 Moore's Indian Appeals, to have been suggested in the argument for the appellants before the Privy Council. The respondent's counsel were not there called upon to address their Lordships. After referring to the Vyavahara Mayukha, (ch. iv, sec. 8, pl. 19,) the Supreme Court said: "Considering the high authority of the Mayukha on this side of India, this might alone seem sufficient to establish the position that the sister comes next in order of inheritance after the paternal grandmother;" and then proceeds to show that Nanda Pandita and Balambhatta treat the first the passage of ch. ii, sec. iv, of the Mitakshara—"On failure of the father, brethren share the estate"—as including sisters within the term "brethren". And Lord Justice Knight Bruce, in giving the judgment of the Privy Council, said: "Now upon this capacity of the sisters to be heirs to their brother, different views of the law appear to have been taken in different parts of India, and a general learning in favour of excluding the sisters in such a case appears to prevail in Bengal, (1) but appears not to prevail in *the territories of Bombay*." He then mentions the passage in the Mayukha and the construction put by Nanda Pandita and Balambhatta on the passage in the Mitakshara referred to and relied upon by the Supreme Court, and proceeds thus: "Their Lordship desire not to be understood as expressing an opinion that the general course said to be taken in Bengal upon the subject, or upon the construction of the word 'brethren', is wrong; but certainly neither are they satisfied that the construction but on the passage in the Mitakshara, which has been mentioned and generally adopted, as it seems, in Bombay, is

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(1) See Colebrook's note to ch. xi, sec. vi, pl. 8 of the *Daya Bhaga, Raja Koon. v. varee Kirpa v. Raja Damodhar Chundhur Deyb*, 7 S. D. A. Rep. (Calc.) 192; 1 Stra. H. L. 146; *Kalee Parshad Surma v. Bhoirabee, Dabee*, 2 Calc. W. R. Civ. Rul. 180, and see 14 Moore's Indian Appeals, 196. In Madras a sister has been admitted to be an heir as a *bandhu* only: *Kutti Ammal v. Radakristna* 8 Mad. H. C. Rep. 88:

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wrong. Their Lordship come to the conclusion that the general rule in Bombay has long been, and is, to treat the sisters as heirs to the brother rather than the paternal relatives of the description of the present plaintiffs. Accordingly. their Lordships think that they may safely and properly, in the present instance, adopt or accept that rule. They consider that in Bombay, at least, the sisters, in such a case as this, are the heirs of the brother." (1)

It will be observed that Nilakantha declines to adopt the construction of the word "brethern" maintained by Nanda Pandita and Balambhatta as a ground for introducing the sister into the order of heirs,(2) but effects that purpose by treating her as a *gotraja sapinda* next to the paternal grandmother.(3) His rejection of Nanda Pandita's and Balambhatta's construction of the word "brethern", which accurs as well in the original text of Yajnyavalkya II, pl. 135, 136, as in the Mitakshara, ch. ii, sec. i, pl. 2 (where the order of succession to a man who dies separate and without leaving issue is set fourth), and ch. ii, sec. iv, pl. 1, was not adopted either by the Supreme Court or by the Privy Council in *Vinayak Anandrav v. Lakshmi Bai*(4) in which the decision, whereby the sisters were preferred to paternal first cousins of the *propositus*, was rested as well on Nanda Pandita's and Balambhatta's construction of the term "brethern" in the Mitakshara, as upon Nilakantha's mode of bringing in the sister as an heir. A perusal of the judgments of the Supreme Court and Privy Council shows clearly that they rested their decision on both grounds. The passage of the Mayukha, ch. iv, sec. viii, pl. 19, in which Nilakantha introduces the sister, is not correctly translated by Mr. Borradoile. A better translation, given in the case of *Lallubhai Babubhai v. Mankuverbai*,(5) runs thus: "19. In the case of the nonexistence of that (the paternal grandmother) the sister (takes) according to the *dictum* of Manu, (6) that 'whoever is the nearest *sapinda* his should be the property;' and according to the

(1) 1 Bom. H. C. Rep. 127 to 129; 9 Moore Ind. Ap. 536 538; 3 Calc. W. R. P. C. 41.

(2) Vyav May., ch. iv, sec. viii, pl. 16.

(3) *Ibid.* pl. 18, 19.

(4) 1 Bom. H. C. Rep. 117, 126; S. C. 9 Moore's Ind. Ap. 516.

(5) Ind. L. R. 2 Bom. at p. 421.

(6) Ch. ix, pl. 187; Coleb. Dig. Bk. V, ch. viii, pl. 434.

text of Brihaspati, that 'where there are many *jñati*, *sukulyas* and *bandhav* is, among them whoever is the nearest he should take the property of the childless ;' she, the sister, also being born in the brother's *gotra*, and so there being no difference of *gotra* (the state of being born in *gotra*). But (says an objector) there is no *sagotrata* (state of being in the same *gotra*). True, but neither is that stated here as a reason for taking property." *Sagotra* is an abbreviation of *samunagotra*, which means "in the same *gotra*" or "a person in the same *gotra*". It was said by myself in *Lallubhai v. Mankuverbai*,<sup>(1)</sup> that Nilakantha's concluding sentence in that passage amounts to no more than an assertion that the sister is a *sapinda*. It is, no doubt, a re-assertion that she is a *sapinda*; but my remark must be thus far qualified by adding that Nilkantha's allegation; that she has *gotra*, is an averment that she is a *sapinda* of a particular kind, *i.e.*, a *sapinda* by birth as distinguished from those who, according to the *Achāra Khanda* of the *Mitākshara*, the *Sanskara* *Mayukha* and *Nanda Pandita*, become *sapindas* by marriage, which *Sapinda*-ship by birth is the reason which induced Nilakantha to give her so high a place in the order of succession. *Sapinda*-ship by birth is a qualification which the wives of male *gotra sapindas* do not possess. Hence the case of the sister is in *Lallubhai v. Mankuverbai* treated as an exception to the rule there laid down—the sister being a *persona designata* to whom a particular position is assigned. The widow of the *propositus*, his mother and his paternal grandmother also are all such *personae designatae*, and, as such, enter the order of succession before the wives of other *sapinda*.

The text of Brihaspati (*Vrihaspati*), cited by Nilakantha in the passage above extracted from his work, is one of two given by Jagannatha.<sup>(2)</sup> It, no more than the text of Manu,<sup>(3)</sup> to which Nilakantha refers, specifies the sister. But she is specified in another text of Brihaspati given by Jagannatha,<sup>(4)</sup> (relating, however, to partition after reunion) which runs as follows: "If brothers, who have made partition, become, through mutual affec-

(1) Ind. L. R. 2 Bom. 422.

(2) Coleb. Dig., Bk. V, ch. viii, pl. 437, cl. 4.

(3) Coleb. Dig., Bk. V, ch. viii, pl. 434; Manu, ch. ix, pl. 137.

(4) Coleb. Dig., Bk. V, ch. viii, pl. 407.

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tion, reunited, and again make a division of their joint property, the first-born has no right to a larger portion. 2. Should any one of them die, or any how seclude himself from the world, his share shall not be lost, but devolve on his uterine brother. 3. But she who is his sister is next entitled to take the share : this concerns him who leaves no issue, nor wife, nor father nor mother." The words "nor mother" have been added to that text by the translator, Mr. Colbrooke, inconformity with another text of Brihaspati, which provides for the succession of the mother to a son (who dies leaving neither wife nor male issue), unless she consent to waive her right in favour of the brother of the deceased.(1) Kaluka Bhatta also introduces the mother.(2) The text of Brihaspati (which specifies the sister,(3) in stating her to be next entitled after the "uterine" brother, gives her priority over the half-brother, and therein agrees with Nilakantha (Mayukha, ch. iv, sec. viii, pl. 16 to 20). That text of Brihaspati receives some support from Manu, (ch. ix, pl. 212,) where the uterine brothers and sisters are classed together. At a later stage in the Mayukha (ch. iv, sec. ix, pl. 25), Nilkantha, in dealing with partition after reunion, does refer to that text of Brihaspati in this manner : "25. In default of a wife, the sister; according as Brihaspati says : 'His *sister* also is entitled to take a share of it. This law concerns one who leaves no issue, nor wife, nor parent.' Some read his *daughter*. In default (therefore) both of daughter and sister, the nearest *sapinda* succeeds." Although both Brihaspati in his text and Nilakantha in his comment on it are both treating of partition after reunion, yet it would rather appear that they were dealing with a period when all the original re-united parceners were dead. The aid derivable in the present case, however, from the introduction of the sister in that text and the comment on it, simply depends upon the analogy thereby afforded. The text of Manu also relates to partition, but seem to have been intended to apply as well where there are not as where there are re-united parceners. The aid derivable from it, too, rests solely on analogy.

(1) Goleb. Dig., Bk. V, ch. viii, pl. 423.

(2) *Ibid.* pl. 497, Comm.

(3) Coleb. Dig., Bk. ch. viii, pl. 407.

The decision in *Vinayak Anandray v. Lukshnibai*(1) was partly rested upon the Mayukha, and partly, as we have seen, on the special construction given to the Mitakshara by Nanda Pandita and Balambhatta, and has been frequently followed. The opponents of the sisters of Gajanan, the deceased *propositus* there, were his male paternal first cousins, the sons of his father's brother. The opponent of the sister of Nana, the deceased *propositus* here, is his and her half-brother. But the Mayukha, which was, as we have said, the main foundation of the decision of the Supreme Court and Privy Council, expressly gives to the sister a place in the orders of heirs above half-brothers (*vide* Vyav. May., ch. iv, sec. viii, pl. 16, 20.) The authority of pl. 19 and 20 having been recognized by the Supreme Court and Privy Council as fixing the sister's position with reference to male paternal cousins, we think that it is impossible to ignore the same passage in relation to her position with respect to brothers of the half-blood, and, therefore, that the District Judge was right in considering that he was bound to take as his guide the decision in *Vinayak Anandray v. Lukshnibai*. On the construction of the term "brethren" in the Mitakshara as including sisters, which construction was adopted in that case both by the Supreme Court and Privy Council, we must treat the Mitakshara also as preferring sisters to half-brothers, whom it brings in after brothers (ch. ii, sec. iv, pl. 6) Their is, no doubt, some difficulty in this, for the Myukha introduces the paternal grandmother and the sister after brother's sons and before the half-brother, who is by its author placed in a coparcenery with the paternal grandfather, which coparcenery, however, is wholly unknown in practice; and the Mitakshara, places both half-brothers and brothers' sons before the paternal grandmother. But, as both the Mayukha and the Mitakshara, the great authorities here, must be regarded as preferring the full-sisters to the half-brothers, we think that we are bound to do so likewise. That decision was not any innovation, as will be seen on examining the *vyavasthas* of the shastris collected in the valuable work of Messrs. West and Buhler,(2) where we find that not only the

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(1) Bom. H. C. Rep. 126; S. C. 9 Moore's In. Ap. 516; 3 Calc. W. R. (P. C.) 41.

(2) West & Buhler (2nd ed.), pp. 182 to 185; (1st ed.) Vol. I, pp. 149 to 153.

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shastris of Surat and Ahmedabad,(1) both in Gujarat, but also the shastri of Ahmadnagar, in the Deccan, relies on the same passage in the Mayukha as that first above mentioned, in support of the position of the sister in the order of heirs.(2) The Shastri of the Bombay Sadar Adalat in 1844, in giving the preference to a step-sister (half-sister) to a step-mother, said: "The right of a sister is also admitted by the shastra, and by inference a step-sister may be considered an heir."(3) In a table of succession, given by the Ahmedabad shastri in reply to Question 4, he places the step-mother before the sister or her son, and in so doing departs (as we think erroneously) from both the Mayukha and the Mitakhara as interpreted by Balambhatta and Nanda Pandita. No case from any part of the Presidency of Bombay other than Gujarat or Bombay has been cited to us to show that the law of such other part differs from that of Gujarat and Bombay (whatsoever it may be) in regard to the succession of a sister.(4) Several of the shastris refer to the Mitakhara in support of their *vyavasthas* in favour of the sister. Their usual and apparently only relevant reference to it is fol. 55, p. 2, l. 1, (5) which is the same as ch. ii., sec. 1, pl. 2, of Colebrook's translation, being the enumeration of heirs to a separated person dying without leaving issue taken from Vijnyanesvara. The only item in that enumeration which supports their preference of the sister if "brothers", and that upon Balambhatta's and Nanda Pandita's construction. Gentiles (*i.e. gotrajas*) would not do so according to Vijnyanesvara's meaning of that terms viz., "belonging to the family".

Although we are clearly of opinion that the decision in *Vinayak Anandray v. Lakshmi Bai* must be regarded as founded not only on the Mayukha but also on the special interpretation of the Mitakhara already mentioned, and of general authority

(1) West & Buhler (2nd ed.), pp. 182 to 115, answer to Q. 1, Q. 2, Q. 3.

(2) *Ibid.* Answer to Q. 5. (3) *Ibid.* (2nd ed.), p. 186; (1st ed.), Vol. I, p. 154

(4) See further, as to the succession of a sister in Western India, 1 W. H.

Macnaghten H. L., p. 35; *Laroo v. Sheo*, 1 Borr., p. 71 (1st ed.), p. 80 (2nd ed.) and *Icharam Shambhudas v. Pramanund Bhaichund*, 2 Borr., p. 471 (1st ed.) p. 515 (2nd ed.)

(5) W. J. B. (2nd ed.) p. 182, Q. 1 pl. 2, p. 183; Q. 2, p. 184, 185; Q. 4, Q. 5, Q. 6, and Q. 7.

in this Presidency, except where an invariable and ancient special usage to the contrary is alleged and proved by him who avers it, yet may be satisfactory to the parties to know that, were we to take specially into our consideration the locality whence this appeal comes, there are, we think, strong reasons for considering that the law of the Mayukha, as that admitted to be highly prized in Gujarat and Bombay, should prevail in this case.

The island of Bombay and the Northern Konkan, including in the latter the island of Karnaja, formed part of the kingdom of Gujarat. Karanja, the locality in which the property in dispute in this cause lies, constitutes a portion of the southern side of the harbour of Bombay. Still further south lie the ruins of the city of Chaul (*alias* Chivel, Chevul, Chawal, Cheuwal, Chaupavati, Saimur,(1) and the Revdanda in which Chaul is situate. Colonel Yule, in his second edition of Marco Polo, p. 353, note, says: Lar Desa, 'the country of Lar', property *Lar Desa*, was an early name for the territory of Gujarat and the Northern Konkan, embracing *Saimur* (the modern Chaul as I believe), Thana and Broach. It appears in Ptolemy in the form *Larike*. The sea to the west of that coast was in the early Mahomedan times called the sea of Lar, and the language spoken on its shores is called by Masudi *Lari*. Abulfeda's authority, Ibn Said, speaks of Lar and Gujarat as identical;" and in the note to page 383 he says: "Gujarat is mentioned as if it were a province adjoining Malabar, and before arriving at Thana, Company and Somnath; though, in fact, it includes those three cities and Company was then its great mart. Wassaf, Polo's contemporary, perhaps acquaintance, speaks of Gujarat which is commonly called Kambayat' (Elliot, III, 31)." Colonel Yule, in his note on Polo's chapter on the Kingdom of Thana at p. 386, says: "The Konkan is, no doubt, what was intended by the Kingdom of Thana. Albiruni speaks of that city as the capital of the Konkan; Raschid-ud-din calls it *Konkan-Thana*; Ibn Batuta *Kukin-Thana*, the last a form which appears in the Carta Catalana as *Cucin-Thana*." Subsequently he adds: "Barbosa gives it the compound name of Thana-Maiambu, the latter part being the indication I know of the name of Bombay (Mambai)." Even in pre-historic times the Konkan so far south as

(1) Gerson Da Cunha's History of Chaul and Bassein, pp. 5, 6, 8, 10, 18, 19.

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Revadanda is by tradition connected with Gujarat. In speaking of the etymology of the word 'Revdanda' Mr. Gerson Da Cunha, in his History of Chaul and Bessein, mentions "a tradition current among the Brahmans of the coast to the effect that when Krishna was reigning in Gujarat he had assigned the southern part of his kingdom, which embraced a considerable portion of the Northern Konkan, for the support of Revati, the wife of his brother Balarama ; and that the Revatikshatra, or country of Revati, which is often mentioned in the Puranas, corresponds to the modern Revdand." Coming down to historical times we find that Mr. Nairne, in his learned work on the Konkan, p. 10, says: "In the travels of the merchant Sulliman, written in A. D. 851, the country of Konkan is given as part of the kingdom of Balhara. The name is identified as being that of the dynasty reging at Walabhai (Balabhipma) in Gujarat; but the kingdom of the Konkan is belivered to have been originally an independent one. Raschile-ud-din about A. D. 1300 mentions 'Konkan of which the capital is Thana on the sea-shore.' But, further on, he mention Gujarat as large country within which are Cambay, Somnath, Konkan, 'Thana and several other cities and towns;' and, again, 'Beyond Gujarat are Konkan and Thana, beyond them the country of Malabar.' Though it is not clear from this whether the Konkan was tributary to Gujarat or not, yet that it was a separate province, with a capital called Thana, is plain." As to the explusion of the Bahmini dynasty from the Konkan by the sovereigns of Gujarat, see the same work, pp. 24 to 26. Mr. Mairne, in speacking of the fifteenth (Christain) century says: "About this time also the Gujarat kingdom was divided into five Governments, one of which, including, no doubt, the whole of the North Konkan, had Thana as its capital." Mr. Mountstuart Elphinstone says (1) of the Konkan: "I suppose the inhabitants were always Marathas." Referring to this remark Mr. Nairne observes:(2) "But there is a great difference between the inhabitants of the northern and those of the southern half. The latter may properly be called purely Maratha, and the castes are few and very exactly defined; but in the north there are several somewhat mixed castes, and, except for compa-

(1) Hist., p. 213, 4th ed.

(2) The Kokan, p. 3, Indtrd.

ratively recent settlers, a total absence of pure Marathas and Brahmins." Formerly, the boundary between the Northern and Southern Konkan was deemed to be the Savitri River, which divides the Habshi's territory from the Ratnagiri Collectrate (1) and enters the sea at Bankot. Mr. Eriskine, in his History of the Emperors Baber and Humayun, says: (2) "After the death of Muzaffar Sha, several of his descendants increased the territory of Gujarat. His grandson, Ahmed Shah, a very distinguished prince and the founder of Ahmedabad, reduced under his power nearly the whole country that forms the present Gujarat, including the low lands to the south below the ghats, the Northern Konkan (Konkan) and the island of Bombay." Mr. Kinloch Forbes, in addition to Bombay and the Konkan, specifies the island of Salsette (which, no doubt, ordinarily is deemed part of the Northern Konkan) as belonging to the kings of Gujarat. (3) And when Sultan Bahadur, one of the successors of Ahmed on the throne of Gujarat, ceded, in A.D. 1534, to the King of Portugal, "the city of Bacaim (Bassein) with all its territories, continental as well as islands and seas," (4) Salsette, Bombay, Karanja, Elephanta, &c., and a portion of the adjacent main land of the Northern Konkan passed, under that treaty, to the Portuguese as part of the dependencies of Bassein; and subsequently, when (A.D. 1661) the King of Portugal ceded the island of Bombay to Charles the Second, it was a matter of dispute between the English and the Portuguese whether or not Salsette and Karanja passed to the English monarch as part of the appurtenances of the island of Bombay. (5) Connected, then, as Karanja and the rest of the Northern Konkan so frequently were with Gujarat and Bombay down to that period, we should scarcely expect to

(1) The Konkan, p. 2. (2) Vol. II, p. 20, and see Elph. Hist., p. 674, 4th ed.

(3) Ras-Mala 2nd ed., p. 269; 1st ed., Vol. I, p. 350.

(4) *Secretary of State v. Bombay Landing Co.*, 5 Bom. H. C. Rep., O.C.J. 32, 33. De Couto, 4th Decada, Pt. II, Lv. IV, c. xxvii, pp. 527, 533 *et seq.*, Lisbon ed. of 1777. De Couto, General Index, p. 310 and Vol. II, Pt. II, p. 234.

(5) Warden's Essay on the Landed Tenures of Bombay, p. 3, para. 8. Eventually after the fall of Bassein in A. D. 1739, the Portuguese ceded it, Salsette, Karanja, Revdanda, &c. &c., to the Peishwa (Gerson DaCunha's Hist. of Chaul and Bassein, pp. 72, 73); and finally, in A.D. 1774 Salsette and Karanja were ceded by the Peishwa to the Government of Bomay.

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find a Hindu law of succession prevailing at one side of Bombay harbour different from that existing in the island of Bombay and in Gujarat.

However, independently of the extent to which Karanja may in past times have been connected with Gujarat and Bombay, we think, as we have already said, that the doctrine in *Vinayak Anandrav v. Lakshmibai* must be deemed the general rule of succession as to sisters in this Presidency; and, without overlooking *Krishnaji v. Pandurang*,<sup>(1)</sup> we are satisfied to abide by what is said in the case of *Lallubhai Bapubhai v. Mankuverbai*<sup>(2)</sup> as to Manu, the Mitakshara and the Mayukha when in competition in this Presidency.

It is also settled law that Mathurabai, on succeeding, on the death of her son Nana, to his moiety of the immoveable property, took only such a limited estate in it as a Hindu widow takes in the immoveable property of her husband dying without leaving male issue (*Narasappa Lingappa v. Sukharam Krishna*)<sup>(3)</sup>, and that, on the death of Mathurabai, her son's heir is the person who succeeds to such property: *Bachiraju v. Venkattapadu*.<sup>(4)</sup> The latter point in the present case is not of much importance, inasmuch as Sitabai, as daughter of Mathurabai, would be her heir, and, as we have already said, is, as full-sister of Nana, his heir, and, therefore, *quacunqve via* the inheritance be traced, takes the moiety claimed by the plaintiff as lately held by the Mathurabai, his step-mother.

We affirm the decree of the District Judge with costs.\*

*Decrees affirmed.*

(1) 12 Bom. H. C. Rep. 65.

(3) 6 Bom. H. C. Rep. 215, A. C. J.

(2) Ind. L. R. 2 Bom. at pp. 418, 419, 420. (4) 2 Mad. H. C. Rep. 402, 406.

\* NOTE—This case was followed in *Mahantapa v. Nilgangava* (special Appeal 180 of 1876) decided on the 1st July 1879 by Westropp. C. J., and Kemball, J., which was appeal from the decision of Mr. Crowe, Senior Assistant Judge at Kaladgi (Belgaum), preferring the claim of a sister of the deceased to that of the widow of his separated paternal until. The decree of Mr. Crowe was affirmed with costs. The High Court referred to *Vinayak Anandrav v. Lakshmibai* (1 Bom. H. C. Rep. 117, and to the above case of *Sakharam Sadashiv Adhikari v. Sitabai* as authority for that affirmance. See Printed Judgments for 1879, p. 390. See also the next case.