

APPELLATE CIVIL.

(72)

Before Sir M. R. Westropp, Kt., Chief Justice, and Mr. Justice F. D. MeNeill.

DHONDU GURAV (ORIGINAL DEFENDANT), APPELLATE, *v.* GANGABAI, DECEASED, BY HER HEIRS, HER SONS SHANKAR AND OTHERS (ORIGINAL PLAINTIFFS), RESPONDENTS.*

1879
July 9.

Hindu Law—Inheritance—Sister's right of inheritance—Viramitrodaya.

Under the Hindu law prevailing in Western India, a sister succeeds to the estate of her deceased brother in preference to a separated and remote male relative of the deceased.

The Viramitrodaya is an authority in Benares rather than in Bombay, and its doctrine—that, where there has been an intervening holder between a brother and sister, or a father and daughter the inheritance opens, and the sister and daughter are excluded, and the next male heirs come in—has not been followed in this Presidency.

Vinayak Anandray v. Lakshmbai (1) and *Sakharam Sudashiv v. Sitabai* (2) followed.

THIS was a special appeal from the decision of H. J. Parsons, Assistant Judge at Thana, in appeal No. 56 of 1874 reversing the decree of Balaji Raghunath, Second Class Subordinate Judge at Alibag, in original suit No. 378 of 1871.

The plaintiffs Gangabai and Savitri brought this suit in the Subordinate Judge's Court at Alibag, and sought to establish their right to one-half of certain property situated at Chaul, in the taluka of Alibag. They alleged that they were the sisters of one Vishvanath Bala Gurav, deceased, and, therefore, entitled to hold and enjoy the said property as heirs of their brother; that they were disturbed in their enjoyment by the defendant Dhondu, who was a very distant and divided member of their father's family.

Dhondu contended that he had a right to succeed as heir to the deceased Vishvanath Gurav.

One of the issues laid down by the Subordinate Judge was, whether the plaintiffs were entitled to succeed as heirs to their deceased brother. He decided this issue in the negative,

* Special Appeal, No. 92 of 1875.

(1) 1 Bom. II. C. Rep. 117, 126; S. C. 3 Calc. W. Rep. P. C. 41; 9 Moore In. Ap. 531.

(2) *Supra*, p. 353.

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although he found that Dhondu had been divided in interest from the family of plaintiffs' father and brother. He also found that the property in dispute was ancestral, and not the self-acquired property of Bala Mukund, the plaintiffs' father. He referred to *Vinayak Anandrav v. Lakshmibai*(1) and *Bhaskar Trimbak Achappa v. Mahadev Ramji*(2) as having been urged on his attention on behalf of the plaintiffs' right. But he was of opinion that the said decisions did not apply to the case before him. He observed that the rule laid down in those decisions as to the sister's right of succession, applied only in the island of Bombay and not in the Mufussil, and to self-acquired and not ancestral property. He, according, on the 23rd December 1873 dismissed the plaintiffs' claim with costs.

In appeal the Assistant Judge reversed that decree, and awarded the plaintiffs' claim, holding that *Vinayak Anandrav v. Lakshmibai* governed the case, and that the Subordinate Judge was wrong in supposing that the decision applied only to the town and island of Bombay.

Rao Saheb *Vishvanath Narayan Mandlik* for the appellant.

Ghanasham Nilkanth Nadkarni, for the respondents, relied upon *Sakharam Sadashiv v. Situbai*.(4)

WESTROPP, C.J.—Bala Mukund Gurav died, leaving surviving him a son, Vishvanath, and two daughters, the plaintiffs Gangabai and Savitri. Vishvanath, who succeeded to his father's property situated at Chaul, in Alibag, in the district of Thana, has since died, leaving a widow Chimi and no issue. Chimi, as widow having next taken the estate, died on the 8th July 1865, and the plaintiffs took possession on her death; but, being disturbed in their enjoyment by the defendant Dhondu, who disputes their heirship, have brought this suit to quiet their possession.

The Subordinate Judge made a decree for the defendant Dhondu.

The Assistant Judge (Mr. Parsons) has reversed that decree,

(1) 1 Bom. H. C. Lep. 117, 119; S. C. 3 Calc. W. Rep. P. C. 41.

(2) 6 Bom. H. C. Rep., O.C.J. 1.

(3) 1 Bom. H. C. Rep., 117, 119; S. C. 3 Calc. W. Rep. P. C. 41.

(4) *Supra*, p. 353.

and made a decree for the plaintiffs, holding, on the authority of *Vinayak Anandrav v. Lakshmibai*(1) that the plaintiffs, as sisters of Vishvanath, are to be preferred to Dhondu, an alleged, but more remote, male relative of Bala, their father, and not united in family with him or Vishvanath.

Dhondu has made a special appeal to this Court.

The only question argued before this Court, in support of that appeal, is whether the plaintiffs, as sisters of Vishvanath, are entitled to succeed.

Rao Sahab *Vishvanath Narayan Mandlik*, on behalf of the appellant, cites the *Viramitrodaya*(2) as authority for the proposition that where there has been an intervening holder, such as Chimi was here, between a brother and sister, or a father and daughter, the inheritance opens, and the sister and daughter are excluded, and the next male heirs come in. But the *Viramitrodaya* is a Benares rather than a Bombay authority, and if its doctrine in this particular be, as contended by Mr. Mandlik, it has not been followed here. In *Vinayak Anandrav v. Lakshmibai*(3) the *propositus* Gajanan was, in the first instance, succeeded by his mother, and the sisters of Gajanan were nevertheless held to be his heirs, on her death. So in *Sakharam Sadashiv v. Sitabai*,(4) recently decided here, Nana was, in the first instance, succeeded by his mother Mathurabai, and on her death, his full-sister Sitabai was preferred as his heir to his separated half-brother Sakharam.

Upon the authority of those cases we affirm the decree of the Assistant Judge with costs.

Decree affirmed.

(1) 1 Bom. H. C. Rep., 117, affirmed on appeal by H. M.'s Privy Council, *ibid* 119.

(2) Fol. 195, p. 1, lines 1 to 11.

(3) 1 Bom. H. C. Rep. 117, 126; S. C. 9 Moore In. Ap. 561; 3 Calc. W. Rep. P. C. 41.

(4) *Supra*, p. 253.