

the reasons already given, see no sufficient ground for departing from the case above cited from West and Buhler, pp. 185, 186, (2nd ed.), in so far as it gave to the half-sister precedence over the step-mother.

[210] From what has been said it follows that, on the death of Avalvahu, the widow of Vandrayan, his sisters Ratan and Ladkuver, and not his step-mother Hassibai or his uncle's widow, the plaintiff, succeeded to the immoveable property, the subject of this suit; and that, on the deaths of Ratan and Ladkuver, they were respectively succeeded by their respective husbands, Lakmidas Kalianji and Laldas Dharsi. The plaintiff, therefore, did not, on the death of Hassibai, acquire any right to the immoveable property of Vandrayan, and, therefore, has not any right to maintain this suit. Having regard, however, to the suppression, by all of the parties to the proceedings at the testamentary and intestate side of the Supreme Court, of the existence of the sisters of Vandrayan and their husbands, and to the very peculiar circumstances of the lease taken by Inderji Narsi, we, while reversing the decree of the Court of first instance, direct the parties to this suit respectively to bear their own costs of the suit and of this appeal.

Decree reversed.

Attorneys for the appellants.—Messrs. *Mulji and Bomanji.*

Attorneys for the respondents.—Messrs. *Balkrishna and Bhagwandas.*

4 B. 210.

APPELLATE CIVIL.

Before Sir Michael Roberts, Westropp, Kt., Chief Justice and Mr. Justice Kemball.

LAKSHMI (*Original Plaintiff*), Appellant v. DADANANAJI AND RADHABAI (*Original Defendants*), Respondents.*

[16th September, 1879.]

Hindu law—Sister's right of succession in preference to step-mother or paternal first cousin.

Under the Hindu law, as prevailing in this Presidency, a full sister is the heir of her deceased brother, in preference either to his step-mother or paternal first cousin.

Vinayak Anantrav v. Lakshmi Bai (1) and *Sakharam v. Sitabai* (2) followed.

[F., 28 B. 82=5 Bom. L.R. 676; R., 4 B. 219.]

THIS was a special appeal from the decision of H. J. Parsons, Senior Assistant Judge of Sholapur, reversing the decree of Lalshankar Umishankar, Subordinate Judge at Pandharpur.

[211] The plaintiff Lakshmi brought this suit for a declaration that she was the heir of her step daughter-in-law Janki, and, as such, was entitled to her property. The plaint stated that the cause of action arose on the 11th October 1873, when Janki died.

The facts of the case are briefly these: The plaintiff's husband Ramchandra and Nana were full-brothers, but divided in interest and separate from each other. Ramchandra died in 1860, leaving behind a

* Special Appeal No. 344 of 1875.

(1) 1 B. H. C. R. 117=9 M. I. A. 516=3 W. R. P.C. 41.

(2) 3 B. 353.

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son Lakshman and a daughter Radhabai (both by his first wife who predeceased him) and his second wife Lakshmi, the plaintiff. Lakshman was a minor at the time of his father's death, and Dada, the son of Ramchandra's divided brother Nana, was appointed his (Lakshman's) guardian and administrator of his property, under a will left by Ramchandra. Lakshman died in 1870 without issue, leaving him surviving his widow Janki, his sister Radhabai, and his step-mother, the plaintiff Lakshmi. Janki succeeded to the estate of her husband, and held it till her death in October 1873. On Janki's death the plaintiff applied to the District Court for a certificate of heirship. Her application was opposed by Dada, and the District Judge rejected it, referring her to the Civil Court to establish her right as heir. She, therefore, brought the present suit for a declaration of her right as heir to Janki. The suit was originally filed against Dada alone; but Radhabai was subsequently joined as co-defendant, at her own request, under s. 73 of Act VIII of 1859. It appeared that, after her husband's death, the plaintiff Lakshmi lived separately from her step-son Lakshman and his wife Janki, and was provided with maintenance by Dada as Lakshman's administrator.

Dada and Radhabai contended that they were entitled to the property in dispute, each to the exclusion of the other and the plaintiff. The other allegations in their written statements are not material.

One of the issues raised by the Subordinate Judge was, which of the parties was Janki's heir according to Hindu law. After taking the evidence offered by the parties, he, on the 14th June 1875, made a decree in the plaintiff's favour, declaring her right to be the heir of Janki, and that, as such, she was entitled to Janki's property.

[212] In appeal, which was preferred by Dada alone, the Assistant Judge raised only one issue; *viz.*, is the respondent (Lakshmi) entitled to the property in suit as heir of Janki? He found this issue in the negative, and dismissed the plaintiff's claim.

The plaintiff Lakshmi preferred a special appeal to the High Court. The point argued in special appeal was, which of the rival claimants had the right of succession.

The Honourable Rao Saheb V. N. Mandlik appeared for the appellant.

Shantaram Narayan and *Bhairavnath Mungesh* appeared for respondent No. 1.

Ghanasham Nilkanth Nadkarni appeared for respondent No. 2.

In the course of the argument the following authorities were cited:—*Vyav. Mayukha*, ch. iv, sec. 4, pl. 19 (Stokes' Hindu Law Books, p. 52); *Mitakshara*, ch. i, sec. 7, pl. 1 (Stokes' Hindu Law Books, p. 397); *Macnaghten's Principles of Hindu Law*, p. 50 (2nd ed.); 2 *Colebrooke's Digest*, Bk. V, ch. ii, verse 85, p. 235 (Madras edition, 1865); 2 *West and Butler*, Intro., p. 34 (1st ed.); *Mitakshara*, ch. ii, sec. 3, pl. 3 (Stokes' Hindu Law Books, p. 442); *Dayakrama Sangraha*, ch. vi, pl. 23; ch. vii, pl. 3 and 7 (Stokes' Hindu Law Books, pp. 512, 513); *Dayabhaga*, ch. iii, sec. 2, pl. 30 (Stokes' Hindu Law Books, p. 231); 1 *Strange's Hindu Law*, p. 144; *Elberling*, para. 174, p. 77; 1 *Morley's Digest*, para. 136, and note, p. 323; *Lala Joti Lal v. Mussamat Durani Kover* (1), *Mussamat Thakoor Deyhee v. Rai Baluk Ram* (2).

(1) Beng. Full Bench Rulings (1862), 67.

(2) 11 M. I. A. 189.

JUDGMENT.

The judgment of the Court was delivered by WESTROPP, C.J.—Dhondi died, leaving two sons, Ramchandra and Nana, who were separate in estate. Ramchandra married twice. Both of his wives were named Lakshmi. By Lakshmi, the first wife (who predeceased him), he had a son, Lakshman, and a daughter, Radhabai, the second defendant. By Lakshmi, the second wife, he had not any issue. He died, leaving his son Lakshman, his daughter Radhabai, and his second wife Lakshmi, surviving him. His son Lakshman (who had succeeded to his estate died [213] in 1870 without issue, but leaving surviving him a widow Janki, and his sister Radhabai, and step-mother Lakshmi the second. Janki having succeeded to the estate of her deceased husband Lakshman, died in October 1873, and was survived by her sister-in-law Radhabai, and her husband's step-mother Lakshmi the second, and also by the first defendant Dada, who was son of Nana (the separated brother of Ramchandra). Consequently, Dada was paternal first cousin of Lakshman. Dada was also executor of the will of Ramchandra, and had been guardian of Lakshman in his minority. The questions in the present suit, which was instituted by Lakshmi, the second wife of Ramchandra, are whether she, on the death of Janki, Lakshman's widow, succeeded to the property of Lakshman, or whether Radhabai, as his sister, or Dada, as his paternal first cousin, has a better claim.

The Subordinate Judge of Pandharpur went into several other questions, which it is not necessary that we should consider. On the question of inheritance he treated the property as the *stridan* of Janki, and being of opinion that her heir, and not the heir of Lakshman, was to be sought, he by a process of reasoning, which it is unnecessary to state, held that the plaintiff, Lakshmi the second, was the heir of Janki, and he made a decree declaratory of her title.

The Senior Assistant Judge at Sholapur reversed that decree. He rightly looked for the heir, not of Janki, but of Lakshman (11 Moore's Ind. App. 139), and held that Radhabai, his sister, should be preferred to his step-mother, the plaintiff. He also seemed to be of opinion that Dada, as paternal first cousin of Lakshman should be preferred to his step-mother, the plaintiff. Whether in this latter supposition he was right or not, it is unnecessary for us to consider.

Vinayak Anandrav v. Lakshmi Bai (1), which applies to this Presidency at large (2), settles the priority of the sister over the first cousin, and, therefore, Radhabai must be preferred to Dada. And in *Kesserbai v. Valab Raoji* (3), decided to-day by Sir [214] Charles Sargent and myself, we, following a case in West and Buhler (4), have held that even a half-sister is to be preferred in this Presidency to a step-mother, in which ruling my brother Kemball concurs. It follows, *a fortiori*, that the full-sister, such as Radhabai is, must be preferred to the step-mother. It is unnecessary to repeat here the authorities and reasons given in *Kesserbai v. Valab Raoji*.

We affirm the decree of the Senior Assistant Judge, and direct the plaintiff Lakshmi to pay the costs of this appeal:

Decree affirmed.

(1) 1 B.H.C.R. 117 (126).

(2) *Sakharam v. Sitabai*, 3 B. 353.

(3) 4 B. 188, *supra*.

(4) West and Buhler (2nd ed.), pp. 185, 186; 1 West and Buhler (1st ed.) 154, 155.