

been respectively for sums under Rs. 100, and, therefore, optionally registrable. The decrees of the District and Subordinate Judges having been rested on the assumption that Act III of 1877, s. 50, is retrospective, must be reversed. The case must be remanded for new trial on the question whether the two mortgages (Exs. 7 and 8), relied upon by the defendants, are *bona fide* instruments, and were executed by the Gaurishankar brothers to Haribhai Kalidas, and more especially whether they were so executed on the 20th July, 1871, on which they purport to bear date. The extremely suspicious circumstances connected with those two alleged mortgages we have already noticed. Those circumstances will require the most careful attention of the trying Court, which may receive such further legally admissible evidence (if any) in connection with those mortgages as that Court may deem necessary in order to determine whether or not those two documents are trustworthy.

The costs of the suit and of both appeals should be disposed of on the re-trial in such manner as may be just.

*Decree reversed.*

5 B. 660.

[660] APPELLATE CIVIL.

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

BABAJI BIN NARAYAN (*Original Plaintiff*), *Appellant v.*  
BALAJI GANESH AND ANOTHER (*Original Defendants*), *Respondents.*  
[20th July, 1881.]

*Hindu law—Inheritance—Daughter's rights—Alienation by daughter.*

According to the law of the Presidency of Bombay, the daughter of a Hindu dying without male issue takes absolutely, and may alienate lands by deed, or devise them by will.

*Haribhat v. Damodarbhat* (1) followed.

[R., 9 B. 301; 21 B. 739; 24 B. 192 (F.B.)=1 Bom. L.R. 574.]

THIS was a second appeal from the decision of R. F. Mactier, District Judge of Satara, affirming the decree of Meherjibhai Kovarji, Second Class Subordinate Judge of Tasgaon.

The plaintiff Babaji sued Balaji and Hanmanta to recover possession of certain lands. He alleged that the said lands had belonged to one Yesu, who at his death left a widow Uma and a daughter Saku, but no male issue; that on the death of Uma, he (plaintiff) succeeded to the lands as heir of Yesu; that subsequently Saku sued him and recovered possession of the lands from him; that Saku died on the 29th November, 1877, and that, thereupon, he was entitled to the property as heir of her father Yesu, deceased.

Defendant No. 1 (Balaji) denied that the plaintiff was heir to Yesu, and answered, *inter alia*, that he held a moiety of the lands in dispute under a deed of sale executed to him by Saku on the 14th July, 1874.

\* Second Appeal, No. 470 of 1880.

(1) 3 B. 171, and the cases referred to *in notis*.

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Defendant No. 2 (Hanmanta) answered that the lands in his possession were devised to him by Saku under a will dated the 24th November, 1877. Both the defendants contended that Saku was competent to alienate the lands in dispute as she had done.

The Subordinate Judge found that the plaintiff failed to prove his alleged near relationship to Yesu; that the sale, set up by Balaji (defendant No. 1), and the will, relied upon by Hanmanta [661] (defendant No. 2), were proved; and that it was competent to Saku to make the alienations. He, therefore, dismissed the plaintiff's claim. In appeal, the District Judge confirmed the decision of the lower Court, holding that the evidence did not prove the plaintiff to be a near relation of Yesu.

The plaintiff thereupon appealed to the High Court.

*G. B. Kirloskar*, for the appellant.—It is not shown that there was any legal necessity for the alienation of the property by Saku, and it was not competent to her to *devise* away any portion of it. He referred to *Deo Pershad v. Lujoo Roy* (1).

*V. N. Pandit*, for the respondents, was not called upon.

The following is the judgment of the Court:—

#### JUDGMENT.

WESTROPP, C.J.—It having been found by the Subordinate Judge that Saku conveyed a portion of the land in dispute to Balaji and devised the residue to Hanmanta, which facts have not been disputed on appeal or second appeal, the plaintiff, even if heir of Yesu, the previous proprietor of the lands, who died without male issue and of whom Saku was daughter, must fail in this suit, inasmuch as the daughter of a Hindu without male issue takes absolutely, and may alienate lands either by deed, or devise them by will, according to the law of this Presidency: *Haribhat v. Damodarbhat* (2). Further, the District Judge has found that the plaintiff has failed to prove the fact of his relationship to Yesu, and that finding binds this Court. We affirm the decree of the District Judge with costs.

*Decree affirmed.*

(1) 20 W.E.C.B. 102.

(2) 3 B. 171 and cases there referred to *in notis*. West and Buhler, 471 (2nd ed.).