ORIGINAL CIVIL.

Before Mr. Justice Birdwood.

1884. *July* 3, 5, 7, 8.,

CHATTURBHOOJ MEGHJI, PLAINTIFF, *v.* DHARAMSI NA'RANJI AND HARJIVAN DHARAMSI, DEFENDANTS.*

Hindu law—Joint family—Ancestral property—Joint property earned by a father and his sons—Effect of contribution by the father of a nucleus of property earned by himself exclusively—On division of such property a son's share is ancestral, and cannot, in the Town of Bombay, even though it consist of moveables, be disposed of by will, to the prejudice of the rights of an existing grandson.

D., (defendant No. 1), lived at Jámnagar jointly with his father and brother until the year 1850. In that year his father died, and D. separated from his brother. At the time of separation D. took nothing out of the family estate, which was very small. He subsequently supported himself by practising medicine, which he taught himself from some medical books which his father had bought for him before his death. D. had two sons, *viz.*, Meghji, born in 1846, and Harjivan, born in 1849. At the end of the year 1850, D. and his two sons came to Bombay, where D. continued to practise medicine, and established a dispensary. In 1862, having saved Rs. 5,000 by his medical practice, he set up business as a merchant and acquired a considerable fortune. His two sons Meghji and Harjivan, who were joint with him, assisted him in his business. On the 7th October, 1882, Meghji separated from his father and brother, and received, as his share of the property, a sum of Rs. 6,000 and jewels and clothes worth about Rs. 5,000. On the same day Meghji made his will, whereby he appointed his father D. executor, and disposed of the whole of the portion of the property so allotted to him, directing that it should be invested and paid over to his son (the plaintiff) on his attaining majority; and, in the event of his dying without issue, that it should go to his (Meghji's) brother, Harjivan, (defendant No. 2). On the 16th October, 1882, Meghji died, leaving the plaintiff, his son, him surviving. The plaintiff in this suit contended that the whole of the said property was ancestral property in the hands of Meghji, and, as such, came to him (the plaintiff) unaffected by the will. The defendants contended that the property previously to the division was the joint, but not the ancestral, property of Meghji, his father and brother; that it was property, earned by the joint exertions of D. and his sons; that at the division in October, 1882, the portion taken by Meghji was his self-acquired property; and that he was entitled to dispose of it by will.

Held, that whether, previously to the division in October, 1882, the joint property of D. and his two sons was ancestral or not, as soon as a portion of such joint property was divided off by the father (D.) and given to his son Meghji, it became ancestral in Meghji's hands. For, assuming the truth of the defendants' story as to the mode in which the whole property was acquired, it could not be held that it was acquired by the equal exertions of the father and his two sons. The father contributed the nucleus of Rs. 5,000, and on that nucleus the property was formed by the joint exertions of himself and his sons. The portion, therefore,

* Suit No. 404 of 1883.

that came to Meghji did not represent the equivalent of his own exertions only. It represented also a portion of the father's original capital. The property thus being ancestral in the hands of Meghji, he could not, in the Town of Bombay, dispose of it by will, even though it consisted of moveables, to the prejudice of the plaintiff's rights.

THE plaintiff was the infant son of one Meghji Dharamsi, deceased, by his wife Ratanbái. The first defendant was the father and the second defendant was the brother of the said Meghji Dharamsi.

The plaint stated as follows :—

Prior to the 7th October, 1882, the first defendant and his two sons, Meghji, (the deceased father of the plaintiff), and the second defendant Harjivan, were joint in food, worship and estate. On the 7th October, 1882, Meghji separated from his father and brother, and received, as his share of the family property, the sum of Rs. 6,000; and by agreement retained the jewels and clothes, worth about Rs. 5,000, then in his and his wife's possession. A deed of release was executed by the parties.

Meghji died on the 16th October, 1882, leaving his wife Ratanbái and his infant son, the plaintiff, Chatturbhooj, surviving him

By his will, dated the day on which the alleged separation took place, *viz.*, the 7th October, 1882, he appointed the first defendant his executor and trustee, and directed that ornaments of the value of Rs. 2,000 should be retained for the use of Ratanbái for her life, and that the remaining ornaments should be sold. The executor was also directed to invest the residue of the estate, including any moneys standing to Meghji's credit in the firm of Dharamsi Náranji, in Government promissory loan notes. Provision was also made for the marriage expenses of the testator's infant son Chatturbhooj (the plaintiff), to whom the estate with all accumulations was to be made over on his attaining his majority. In the event of his dying without issue, the estate was to go to the second defendant Harjivan.

The plaint in this suit was originally filed by Meghji's widow, Ratanbái. She alleged that the jewels and clothes, disposed of by her husband's will, never belonged to her husband or to his family, but were her *stridhan*. She contended that Meghji had no power to deal with that property by his will. She further con-

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tended that the will was also inoperative as to the Rs. 6,000, which she alleged was ancestral property in Meghji's hands, and, as such, belonged to her infant son, Chatturbhooj, subject to her right of maintenance. She made Chatturbhooj the third defendant in the suit.

The plaint further charged the first and second defendants with retaining and using the said Rs. 6,000 in their business, and prayed that the said sum might be forthwith invested in Government paper for the benefit of Ratanbái and her son Chatturbhooj.

Ratanbái died on the 30th December, 1883, after the institution of the suit; and by an order of Court, subsequently made, the plaint was directed to be amended. Chatturbhooj was made plaintiff in the place of his deceased mother, and a guardian *ad litem* was appointed, by whom he now sued both in his own right and as heir and legal representative of his deceased mother.

In the plaint, as amended, Chatturbhooj claimed the sum of Rs. 6,000 as being ancestral property; and, as to the jewels and clothes, he contended, in the event of the Court holding that they were not the property of Ratanbái, first, that they were ancestral property, and could not be dealt with by Meghji's will; or, secondly, if not ancestral property, then that he was entitled to them by Meghji's will.

In their written statement, the defendants contended that the property, out of which Meghji Dharamsi received a share consisting of the Rs. 6,000 and the jewels, &c., mentioned in the plaint, was not ancestral property, but was the self-acquired property of the first defendant, who, they alleged, came to Bombay in the year, 1850, without any property, and who, until 1862, maintained himself as a practitioner in medicine. In that year, he set up a piece-goods shop, in which he was assisted by Meghji Dharamsi, and, at a later date, by the second defendant also. On the 7th October, 1882, Meghji Dharamsi retired from the business, and separated in estate from the defendants; and it was arranged that he should receive, in full, a sum of Rs. 6,000, and be allowed to retain all the jewels and clothes then in his wife's possession, considered as of the value of Rs. 5,000. The defendants denied that the jewels were the *stridhan* of Ratanbái, but alleged that they

and the clothes had been purchased out of funds acquired in the business, and were allowed to be retained by Meghji as his share of the profits of its business, and not as part of the ancestral estate, there being no ancestral estate whatever. They also denied that the Rs. 6,000 were ancestral property in the hands of Meghji, and contended that, since his death, they had not been guilty of any breach of trust with respect to this sum, but had acted with due regard to the plaintiff's interest.

In his evidence, the first defendant stated that he was born, and had lived, until the year 1850, at Jámnagar, in his father's ancestral family house there; that his son Meghji, (father of the plaintiff), was born about the year 1846, and the second defendant Harjivan in 1849; that he came to Bombay in 1850, his father having died twelve months previously; that he had inherited no property on his father's death; that on his arrival in Bombay he established a dispensary, and for several years practised medicine, which he was enabled to do with the aid of certain medical books which his father had purchased for him at Jámnagar; that having saved money he set up business as a merchant in 1862, which business had been carried on ever since. His sons when they grew up assisted him in the business.

Kirkpatrick and *Inverarity* for the plaintiff.—The main question is as to the Rs. 6,000. We contend it was ancestral property. The first defendant and his sons were joint, and the first defendant had been joint with his father and brother. The presumption in an united family is of continued unity of estate—*Mussumat Cheetha* v. *Báboo Miheen Lálll*[1]; *Taruck Chunder* v. *Jodeshur Chunder*[2].

The first defendant admits that his father at Jámnagar had no property except ancestral property, but he denies that he received any of it on his father's death. He admits, however, that the medical books, which enabled him to practise in Bombay, were purchased for him by his father. The money made by his medical practice enabled him to establish the business by which he has made his fortune. All his property is, therefore,

(1) 11 Moore's Ind. Ap., 369. (2) 11 Beng. L. R., 193.

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ancestral—*Lakshman Mayárám* v. *Jamnábái*[1]; *Pauliem* v. *Pauliem*[2].

Even if the property of the first defendant had been self-acquired, the Rs. 6,000, which he made over to his son Meghji, would be ancestral in Meghji's hands, and could not be disposed of by will. It came to Meghji from his father, and, therefore, was ancestral—*Muddun Gopál Thákoor* v. *Rám Baksh Panday*[3]; Norton's Leading Cases, Vol. I, p. 234. The following authorities were also referred to:—Lewin on Trusts, pp. 227-276-647; Williams on Executors (7th ed.), 1796, 1814.

Farran, (Acting Advocate General), and *Jardine* for the defendants.—The Court is asked to declare Meghji's will invalid as to Rs. 6,000. The question should not be determined now; the plaintiff is now only two years old. When he is of age he can elect whether to take under the will, or seek to upset the will. The Court has a discretion—section 42, Specific Relief Act I of 1877. It would not be a wise discretion to take the property from the trustee, to whom the plaintiff's father entrusted it—*Isri Dut Koer* v. *Mussumat Hanstruth*[4].

But if the Court will make any declaration now as to the validity of the will, we submit that the property was self-acquired in Meghji's hands, and that he could bequeath it. Property may be joint without being ancestral—Mayne's Hindu Law, p. 250. Property cannot be ancestral unless it has descended from father to son, or has been acquired by the aid of such property. Here there was no nucleus of ancestral property. The property that was made over to Meghji in October, 1882, was merely a portion of the joint property of the first defendant and his two sons.

If, at the time the property was earned, the members of the family were separate, the property would have been self-acquired. It makes no difference that the property is earned jointly. The property made over to Meghji only represents his share of the result of their joint exertions—*Pauliem* v. *Pauliem*[5]; Mayne's Hindu Law, para. 290; *Lakshman Dádá Náik* v. *Rámchandra*[6].

(1) I. L., R., 6 Bom., 225.
(2) L. R., 4 Ind. Ap., 109.
(3) 6 Calc. W. R. C. R., p. 71,
(4) L. R. 10 Ind. Ap., 150.
(5) L. R. 4 Ind. Ap., 256.
(6) I. L, R., 1 Bom., at p. 568.

July 17, 1884. BIRDWOOD, J.—The principal issue in this case is the third, and it will be convenient to decide it before dealing with the other issues. It has reference to the validity of a will executed by Meghji Dharamsi, the father of the plaintiff Chatturbhooj, on the 7th October, 1882.

Meghji was the son of the first defendant Dharamsi and the brother of the second defendant Harjivan. Up to the 7th October, 1882, the father and two sons had, according to the plaintiff's contention, been joint in food, estate and worship. On that date, Meghji separated from his father and brother, and immediately afterwards disposed by his will, which is the subject of contention in this suit, of the property which then came to him, consisting of a sum of Rs. 6,000, which was at once placed to his credit in the books of the firm of Dharamsi Náranji, and of jewels and clothes then in the possession of Meghji or of his wife Ratanbái, which were considered to be worth Rs. 5,000.

Meghji died on the 16th October, 1882, leaving his wife Ratanbái and his infant son Chatturbhooj surviving him.

The first defendant Dharamsi was appointed by Meghji executor and trustee of his will, and was required by it to retain, out of the ornaments left by Meghji, ornaments worth Rs. 2,000 for the use of Ratanbái, during her life-time, and to sell the remainder. He was also required to invest the residue of the estate, including any moneys standing to Meghji's credit in the firm of Dharamsi Náranji, in Government promissory loan notes. On the marriage of Chatturbhooj, the executor was to provide ornaments worth Rs. 3,000, out of the estate, for his wife. So long as Meghji's widow and her son remained in Dharamsi's house, the income of the estate was to accumulate in Government loan notes. If they left the grandfather's house, provision was to be made for their maintenance. Provision was also made for Ratanbái's funeral expenses. The estate, with all accumulations, was to be made over to Chatturbhooj on his attaining his majority; and, finally, in the event of his dying without leaving issue him surviving, then, subject to proper provision being made for Ratanbái and for the widow of Chatturbhooj, the estate was to be handed over to the second defendant Harjivan; or, in the event of his death, to his son then living.

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The suit was instituted by Ratanbái on the 19th November, 1883. She claimed the jewels and clothes disposed of by her husband's will as her own property—the former as her *stridhan*. She alleged, also, that the will was inoperative so far as the sum of Rs. 6,000 was concerned, as that money was ancestral property.

Ratanbái made her infant son the third defendant in the case, and claimed for him that he was entitled to the sum of Rs. 6,000, and, further, for herself, that she was entitled to be maintained thereout. She further charged the first and second defendants with using the said sum of Rs. 6,000 on their piece-goods business, and asked that it might be forthwith invested in Government paper for the benefit of herself and her son. The further allegations and prayers of the plaint it is not necessary to refer to in connection with the present issue.

Ratanbái died after the institution of the suit.

After her death, an order was made by Bayley, J., on the 6th March last, for the revival of the suit and for the amendment of the plaint. The name of Ratanbái was struck out as plaintiff. The infant defendant Chatturbhooj was made the plaintiff in her place, and his guardian *ad litem*, his maternal uncle, became his next friend, by whom he now sues both in his own right and as legal heir and representative of his deceased mother.

In paragraph 6 of the plaint, as it now stands, the plaintiff asserts his right to the sum of Rs. 6,000, left by his father; and as regards the ornaments and clothes, he puts forward two alternative contentions, in the event of the Court holding that they were not the property of Ratanbái, *viz.*, (1) that they were ancestral property, which could not be disposed of by Meghji by will; or, (2), if not ancestral property, that the plaintiff was entitled to them under the will.

At the hearing, the plaintiff's counsel argued that the ornaments, as well as the money, were ancestral property, and did not press the plaintiff's claim to the ornaments as heir of his mother or as legatee under a will executed by his mother, or as a legatee under his father's will.

There is no evidence forthcoming to show that the ornaments formed Ratanbái's *stridhan*; and in the deed of release executed

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by Dharamsi Náranji and his two sons on the 7th October, 1882, the jewels and clothes given by Meghji are treated as forming, with the sum of Rs. 6,000 given at the same time, the equivalent of Meghji's share in the joint family estate, including the partnership business carried on by the father and his two sons.

The first question for consideration is, therefore, whether, at the time when Meghji made his will, the sum of Rs. 6,000 and the ornaments and clothes, referred to in the will, were ancestral or self-acquired property in the hands of the testator.

It was contended for the defendants that the property, of which Meghji obtained a share on the 7th October, 1882, could not be treated as ancestral property, which had descended from father to son, or had been acquired by the aid of property which had so descended; that it was joint property which had been earned jointly by Dharamsi and his two sons; that there was no nucleus of ancestral property around which the joint property had accumulated; and that the share received by Meghji only represented his share of the joint exertions of the three members of the family.

In the release, which was executed by the parties on the 7th October, 1882, they are described as having been up to that time joint in food, estate and worship, and as having, for some time past, carried on business as piece-goods merchants in partnership. Meghji is further described as having then retired from the partnership, and also become separate from his brother and father in food, estate and worship; but, at the same time, the property coming to him under the deed is referred to as having been paid to him, and is agreed to be retained by him, "for his share of the joint family estate, including the said partnership". There is no evidence to show that the parties were members of an ordinary trade partnership resting on contract. If the sons had a joint interest with their father in the piece-goods business, it was apparently because they were members of an undivided family carrying on business jointly in that capacity. If the property of the family firm had been acquired by the equal exertions of the three members, without the aid of any nucleus of property other than acquired by themselves, then, no doubt, the property

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of the firm with its accumulations would be self-acquired property even though it was owned jointly. And on a partition such property would apparently remain self-acquired property in the hands of the several members, even though one of them was the father of the other two.

Having regard to the language of the release just referred to, and to the circumstance that the first defendant admits that it was with the aid of certain medical books, bought at a great cost by his father from ancestral funds, that he was able, on arriving in Bombay, thirty-four years ago, to start business as a medical practitioner, and so accumulate a capital of Rs. 5,000, with which he started the piece-goods business, I am inclined to think that the property, from which a share was given to Meghji in October, 1882, was really ancestral property in Dharamsi's hands. If this view be correct, then the share which came to Meghji must have been ancestral property also. In the *Rájáh of Shivgangá's* case[1], it is stated, at p. 609 of the Report, that when property belonging in common to a united Hindu family has been divided, the divided shares go in the general course of descent of separate property; and this decision was relied on by Sir Joseph Arnould in *Lakshmibái* v. *Ganpat Moróbá*[2], as tending to show that the same power of alienation by gift, or disposal by will, must exist in the case of divided ancestral property as in the case of other separate property. But this view was dissented from by this Court in the case on appeal[3], as is pointed out at pp. 716, 717 of the third edition of West and Bühler's Digest of the Hindu Law, where it is remarked, with reference to the passage I have just quoted from the *Rájáh of Shivgangá's* case[3], that it "must not be understood that the nature of the property, as ancestral, is changed on a partition. The share taken * * * is, indeed, separate estate as regards the other branches of the family; but in the branch to which it belongs it is ancestral estate * * *." And in a later case—*Baijun Dobun* v. *Brij Bhukan Lall Awarti*[4]—decided by the Privy Council in 1875, one of two brothers is stated, on a partition, to have obtained a "separate

(1) 9 Moore I. A., 139.
(2) 4 Bom. H. C. Rep., O. C. J., 150.
(3) 5 Bom H. C. Rep. 128 O. C. J.
(4) L. R., 2 I. A., 275

estate". But, a little later on in the judgment, that brother's son is stated to have acquired the estate by inheritance, and it is described as "ancestral estate," derived from his father. (See also Mayne, §. 249).

The expressions contained in the deed of release, (exhibit A), which is signed by both Dharamsi and his two sons, are good evidence as to the nature of the property therein referred to; but if, for the moment, they be disregarded, and if Dharamsi's own evidence be accepted as to the origin and growth of that property and as to the circumstances under which Meghji took a share of it, then, also, I think that, on partition, the property which went to Meghji became ancestral property in his hands.

What Dharamsi says is this:—"My brother and I are divided in interest. We divided about a month after my father's death in Samvat 1906, (A.D. 1850). When my brother and I divided, the ancestral house was not divided, as it belonged to our fathers and forefathers. The furniture also remained in the house. I got no part of it. There was hardly anything to be divided. I took nothing out of the family estate. * * After my father's death and my separation, I began to practise medicine in my native country. I taught myself from my books. The books were bought for me before my father's death. My father bought them; and with the medical knowledge so obtained I began to practise medicine in my own country and afterwards in Bombay. I practised this medical business for eleven years. I saved Rs. 5,000 at the end of eleven years. I made the whole of this by my medical practice.

"The Rs. 5,000 was the capital with which I began my piece-goods shop. I had only about Rs. 5 or 6 when I left Jámnagar. I got that out of my practice as a medical man at Jámnagar, and I arrived in Bombay with Rs. 1-12-0 in my pocket.

"* * * It was of my own free will that I gave the Rs. 6,000 and the ornaments and clothes referred to in the release to Meghji. All that property was given to Meghji in the lump, *that he might make no claim in the future.* * * * As he had lived with me jointly for so many years, he asked to take a certain sum from me. I consented to give that sum and give

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(? take from), him a release. His claim was based on the ground of his having lived with me all his life. The property that he got under the release was given only because he had lived with me so many years, and also because he assisted me in the business. No profits of the business were calculated in Samvat 1938 (A.D. 1882). A lump sum was fixed for him as his share. After that, he could not make any claim against me, on the ground of his having been joint with me from birth. I took a release to that effect. There is no account in any of my books of Harjivan and Meghji as my partners in any year. No account was ever opened in their names. They contributed no capital to the firm. The entire control of the business was in my hands."

And again he says: "It is usual in a Hindu family to have the pots engraved with the name of the head member of the family. As soon as the Rs. 6,000 were paid to him, the pots belonged to me. * * They were bought out of dispensary funds. * * The payment of Rs. 6,000 to Meghji got rid of and paid off any claim he had against the dispensary funds, or articles bought therewith. That is why I say the plaintiff is not entitled to the silver pot.* * * There has never been any difference in the ownership of the shop and dispensary. I am owner of both, and always have been. I used to spend the moneys derived from the dispensary on household expenses, including the expenses of my sons and their families. I similarly spent the shop funds.* * * The books from which I taught myself medicine were eight in number, worth 5,000 corees, (coree = 4 as.) They are manuscript books * * and cost more. My father paid 5,000 corees for them * * *; he told me he paid 5,000 corees."

Now, notwithstanding this last admission, it seems to me to be Dharamsi's contention that the sum of Rs. 5,000, which he acquired by the practice of medicine with the aid of the books bought by his father, was his own self-acquired property. If it be treated as self-acquired property, the property which accumulated around it as a nucleus while Dharamsi was carrying on the piece-goods business with the aid of his sons would, at first at all events, be self-acquired property too. Dharamsi contends that it was all his own exclusive property, up to the

time that he gave a share to Meghji; but this contention is inconsistent with the circumstance that he gave a share to Meghji, to get rid of and pay off the claims he had been putting forward. By giving him a share under such circumstances, he practically admitted that the property was held jointly by himself and his sons before the partition; and Harjivan, who has been examined as a witness in this case, says: "I sit in my father's shop, and do such business as he directs me to do. I have assisted in that business from my infancy. Meghji also took part in the business. Meghji and I did no other business, and until just before his death, Dharamsi, Meghji and I were joint in estate. By that I mean joint in the piece-goods shop and household things. I remember Meghji being paid a certain sum, when my father said: 'You will have no further claim on the property after the Rs. 6,000 are paid'"; and again he says: "I claim to be joint with my father from my birth in all the property he possesses. Meghji made the same claim. When he was paid Rs. 6,000, it was intended that, in future, he should have no claim at all."

Though, therefore, Dharamsi is unwilling to admit that his sons had a joint interest with him in the property, it is clear that, whether the property was ancestral or not, their interest in it was practically recognized in October, 1882. What was given to Meghji was not given—to quote the language of the Calcutta High Court in *Muddun Gopál* v. *Râm Baksh*[1]—"simply by the favour of the father". It was given upon consideration of Meghji "surrendering some interest, a right to share in" Dharamsi's estate, "which he did by acceptance of this separate parcel." If Dharamsi's property was really self-acquired, and originally belonged to him alone, still, at some time after his sons had begun to help him to increase it, he must have admitted them to a share in it. Whether at such time, (if such supposition be correct), the property became ancestral estate for the sons, it is not necessary in this suit to consider; but certainly, as soon as a portion of the joint property was divided off and given to a son, it became, whether it was ancestral or self-acquired up to that time,

(1) 6 Calc. W. R., 74.

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ancestral in the hands of the son. For, assuming the truth of Dharamsi's story as to the mode in which the whole property was acquired, it cannot be held that it was acquired by the equal exertions of the father and his two sons. The father says he contributed the nucleus of Rs. 5,000, and on that nucleus the property was formed by the joint exertions of himself and his sons; and as to this, Dharamsi's evidence is not contradicted. The portion that came to Meghji did not, therefore, represent the equivalent of his own exertions only. It represented also a portion of the father's original capital.

In *Rájmohan Gosámi* v. *Gourmohun Gossain*(1) the Privy Council say of the term "ancestral", in an agreement among brothers: "Ancestral is here employed * * * in the sense of 'paternal', that is, as meaning the property of the father in whatsoever manner or by whatsoever title the father had acquired it." In commenting on this passage, the authors of the Digest of Hindu Law remark: "To him"—that is, the father—"it might be self-acquired, but to the sons it was ancestral estate. Thus, in the case of a father, head of a family, property inherited from his father or grandfather, is ancestral property, however acquired by its previous possessors," (West and Bühler, 3rd ed., pp. 709, 710). "Property is not the less ancestral, because it was the separate or self-acquired property of the ancestor from whom it came. When it has once made a descent, its origin is immaterial" (see Mayne, §. 248, and *Rájáh Rám Náráin* v. *Pertum Singh*(2) quoted in note *x* to that section). And the term "ancestral property", says Mr. Mayne, "in its technical sense, is applied to property which descends upon one person in such a manner that his issue acquire certain rights in it as against him" (*Ib.*, §. 248).

Now, in the present case, Meghji did not inherit any property from his father, who is still alive. But such a case is declared by the Mitákshara, Ch. I, sec. v, art. 3, to be provided for by the text of Yajnavalkya, quoted therein. In art. 1 of the section, Yajnavalkya's special rule concerning the division of the grandfather's effects by grandsons is quoted, *viz.*, "Among grandsons by different fathers, the allotment of

(1) 8 Moo. I. A. at p. 96.

(2) 20 Calc. W. R., 189.

shares is according to the fathers.". This text is expounded in art. 2 in such a way as to show that grandsons share the allotments which their deceased fathers would have had. The latter part of art. 3 then meets a particular objection. It settles the doubt which might arise if the grandfather, father, and son were all alive, (as in the present case), at the time that partition of the grandfather's estate takes place. "To obviate this doubt", writes Vijnáneshvar, "the author says: 'For the ownership of father and son is the same in land which was acquired by the grandfather, or in a corrody, or in chattels (which belonged to him).'" The word *dravya*, translated "chattels" by Borradaile, is translated "wealth" by the Hon. Ráv Sáheb V. N. Mandlik, and is explained in a foot-note at p. 32 of his translation of the Mayukh, (Ch. IV, sec. i, §. 3, where also the text of Yajnavalkya is quoted), as signifying "property of any kind".

The plaintiff Chatturbhooj, therefore, acquired equal rights with his father Meghji in the property which came to him in the partition of the 7th October, 1882, when Chatturbhooj was alive. That is, the property was ancestral property in Meghji's hands, and could not be dealt with by him in the manner in which he at once proceeded to dispose of it by his will. That he had no power to dispose of the whole of it by will, to the prejudice of his son's rights, would seem to follow from the passage in the Mayukha, (which, where it differs from the Mitákshara, is of paramount authority in the island of Bombay), quoted at p. 567 of the report in *Lakshman Dádá Náik's Case*[1]. The passage is thus translated by Mr. Mandlik:—"As for the text, 'The father alone is master of all gems, pearls, and corals; but neither the father nor the grandfather is so of all immoveables,' it signifies the father's independence only in wearing and otherwise using ear-rings, rings, [&c.], but not in giving or otherwise [alienating them.]"

I find, therefore, on the third issue that the provisions of the will of Meghji Dharamsi are not operative so far as regards the Rs. 6,000 and the ornaments referred to in the plaint. (His Lord-

(1) I. L. R., 1, Bom., 561.

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ship then disposed of the other issues, which are not material to this report.)

Judgment for the plaintiff.

Attorneys for the plaintiff.—Messrs. *Little, Smith, Frere, and Nicholson.*

Attorneys for the defendants.—Messrs. *Hore, Conroy, and Brown.*

APPELLATE CIVIL.

Before Sir Charles Sargent, Knight, Chief Justice, and Mr. Justice Birdwood.

1885. *March* 31.

RAGHUNA'TH GOPA'L (ORIGINAL PLAINTIFF), APPELLANT, *v.* NILU NA'THA'JI (ORIGINAL DEFENDANT), RESPONDENT.*

Appeal—Limitation Act, XV of 1877, *Sec.* 14—*Civil Procedure Code, Act XIV of* 1882, *Secs.* 2, 582, *and* 540—*Presentation of appeal beyond time—Order rejecting appeal as barred—Statement of reasons for order necessary,*

The plaintiff's claim to redeem certain lands was rejected by a Subordinate Judge on 21st December, 1882. On the 1st February, 1883, the plaintiff, who was an agriculturist, presented an application for review to the Special Judge appointed under the Dekkhan Agriculturists' Relief Act. His application was rejected by that Judge, who was of opinion that the plaintiff's remedy lay in an appeal to the District Judge. The plaintiff was not informed of the result of his application to the Special Judge until the following May, at which time the Court of the District Judge was closed for vacation. On the 3rd June, 1883, he presented an appeal on the opening of the District Court. The District Judge dismissed the appeal as barred by limitation. On appeal to the High Court a preliminary objection being taken that a second appeal would not lie,

Held, that the order of the District Judge, having the force of a decree within the meaning of section 2 of the Civil Procedure Code, Act XIV of 1882, was appealable under section 540 of the Code.

Order discharged under the circumstances, the District Judge having given no reasons for making the order.

THIS was a second appeal from the decision of R. F. Mactier' District Judge of Sátára.

The plaintiff, (an agriculturist), sued to redeem certain lands alleged to have been mortgaged to the defendant by the brothers of the plaintiff.

*Appeal No. 493 of 1883.