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the 15th August, 1879, claiming the property to belong to him, and not to Rachápá; and the decision in the summary proceeding being adverse to him, he omitted to bring a suit within a year. It has been contended for the defendant that, under these circumstances, the plaintiff cannot now be heard to dispute his title. But the plaintiffs' father purchased under an attachment, dated the 24th March, 1879, and thus acquired, by his purchase, Sakhoji's interest at that date, which could not be affected by any subsequent act or omission of the judgment-debtor, Sakhoji. The decree must, therefore, be confirmed with costs.

Decree confirmed.

APPELLATE CIVIL.

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

1886. *July* 26.

RAKHMA'BA'I, (ORIGINAL DEFENDANT), APPELLANT, *v.* TUKA'RA'M AND ANOTHER, (ORIGINAL PLAINTIFFS), RESPONDENTS.*

Hindu law—Inheritance—Step-mother preferable to widow of half-brother—Evidence Act I of 1872, *Sec.* 92, *Proviso* 4*—Oral agreement to rescind registered document.*

As between the widows of specified heirs who are *gotrajá sapindás*, the step-mother, being the widow of the father who is higher on the list than the half-brother, is preferable to the widow of the half-brother.

Where the defendant claimed the property as a preferential heir, and also set up an alternative defence of an alleged oral agreement cancelling a registered deed of sale of property by her co-widow to the plaintiffs, the lower Court was of opinion that proviso 4 of section 92 of the Evidence Act I of 1872 was a bar to any inquiry into the merits of this defence.

Held, that the lower Court was wrong. The object of the oral agreement was not to rescind the original transaction, but to transfer any rights, acquired by the plaintiffs, to the defendant, and was an entirely new transaction.

THIS was a second appeal from the decision of S. Tagore, Judge of the district of Sholápur-Bijápur at Sholápur.

One Yashvantráv died, having had two wives, Rakhmábái and Saguná. At his death he left him surviving his widow Rakhmábái, his son Shripatráv (the child of Saguná) and Sugandhá-

*Second Appeal, No. 421 of 1884.

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bái, the widow of his predeceased son, Bhagvantráv. Shripatráv succeeded to the estate, and died, leaving him surviving his widow, Sakhubái. Sakhubái died, leaving her surviving her husband's step-mother, Rakhmábái, and Sugandhábái, the widow of his deceased half-brother, Bhagvantráv. Rakhmábái and Sugandhábái jointly succeeded to the estate.

The following table will show the relationship of the widows :—

Saguna	m.	Yashvantráv	m.	Rakhmábái
|				|
Shripatráv died, leaving widow Sakhubái				Bhagvantráv died, leaving widow Sugandhábái

By a registered deed of sale, dated the 23rd April, 1880, the plaintiffs purchased the property in dispute from Sugandhábái alone. They brought the present suit to recover possession of the same from the defendant, alleging that they had been dispossessed of it by an order of a Mámlatdár; that Yashvantráv had divided his property between his two sons, and the property, which they had purchased, was given to his predeceased son, Bhagvantráv, who lived with his father, and died, leaving his widow, their vendor, his sole heir.

The defendant denied that any such division of the property had been made, and alleged that the family remained undivided. They contended that, on the death of Sakhubái, the widow of Shripatráv, the inheritance devolved on Rakhmábái and Sugandhábái jointly, they being the sole surviving members of the family, and that the alienation by Sugandhábái, without Rukhmábái's consent, was invalid; and, lastly, that the plaintiffs having relinquished their right, under the sale deed, before the *panch* they could not maintain the suit.

The Court of first instance rejected the plaintiffs' claim. They appealed, and the District Judge reversed the lower Court's decree with the following remarks:—", * * * It is argued that, according to Hindu law, a step-mother does not succeed to her step-son, but is postponed to half-brothers and half-sisters, so that, of the two widows, Sugandhá would have a preferential right to succeed. I think that the contention is good, and must be allowed. It is admitted that Yashvantráv died before his

son Shripatráv, leaving the latter as the sole surviving male member. On the death of Shripatráv, his widow Sakhubái succeeded him. At the death of Sakhubai were left the two widows, the step-mother of Shripatráv and the widow of his half-brother. I think, under these circumstances, the step-mother would be excluded by the sister-in-law.

"The plaintiffs allege that a partition was effected between Shripatráv and Bhagvantráv during their father's life-time. The defendant contends that the family was left undivided. But, in either view of the case, Sugandhábai's right would prevail over that of the defendant, Rakhmábái—in the one case as the widow of a separated member; in the other as the widow of the half-brother of the last owner. The plaintiffs are, therefore, entitled to succeed, unless effect were given to the subsequent compromise by which the sale is alleged to have been rescinded. I am, however, of opinion that the conveyance to the plaintiffs having been registered, no oral agreement to rescind it could be proved under the Indian Evidence Act I of 1872, section 92, proviso 4—*Umed-mal Motirám* v. *Davu*[1].

"I find that Sugandhábái was the owner and competent to sell the property; that the deed of sale having been registered, no evidence of a subsequent oral agreement to set aside the sale was admissible; and that the plaintiffs are entitled to recover."

From this decision the defendant preferred a second appeal to the High Court

Dáji Abáji Khare for the appellant:—Both the widows being *gotrája sapindás*, the father's widow is preferable to the half-brother's, the father being higher on the list of specified heirs. According to Manu, the nearer excludes the remoter. The family remained undivided, and on the death of Yashvantráv the inheritance vested in his surviving son, Shripatráv. Sugandhábái could not alienate without the consent of the defendant.

Náráyan Ganesh Chandávárkar for the respondents:—The right of the step-mother to inherit, is questioned: see West and Bühler's Hindu Law, p. 472 (3rd ed.)

(1) I. L. R., 2 Bom., 547.

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BIRDWOOD, J.:—We are unable to agree with the District Judge that the question—whether the deceased Yashvantráv and his two sons, Shriprtráv, who died after him, and Bhagvantráv, who predeceased him, were united or not,—is immaterial for the purposes of this case, and that, in either view, the plaintiffs, who claim the property in suit as vendees of Sugandhábái, the widow of Bhagvantráv, who was the half-brother of Shripatráv, must succeed. For, assuming, for the moment, that, as contended by the plaintiffs, the father and his two sons were separate, and that the property in suit fell, on a partition, to Bhagvantráv's share, and was inherited by his widow, and that she could sell it to the plaintiffs, still it would be necessary to inquire into the truth of the alternative defence set up by the defendant, Rakhmábái, the mother of Bhagvantráv, and step-mother of Shripatráv, who claims the property, not only by right of inheritance from her step-son, on whom, she says, the whole ancestral property devolved, he being the last male survivor of an undivided family, but also under an alleged oral agreement, whereby she says she acquired any rights which the plaintiffs had obtained under their deed of sale from Sugandhábái. The District Judge thought that proviso 4 of section 92 of the Evidence Act I of 1872 was a bar to any inquiry into the merits of this defence; but, in so holding, he was clearly wrong; for the object of the alleged oral agreement would have been, not to rescind the original transaction, as effected between Sugandhábái and the plaintiffs, but to transfer any rights acquired by the plaintiffs to the defendant. The alleged agreement must be taken to have been, according to the defendant's real contention, an entirely new transaction, which it was perfectly competent to the parties to enter into, even though the sale deed executed by Sugandhábái in favour of the plaintiffs was registered. It was, therefore, competent to the defendant to prove her alternative defence, if the plaintiffs succeeded in establishing the special case set up by them.

But if that special case failed,—that is, if it appeared that Yashvantráv, Shripatráv, and Bhagvantráv were united, and that the family property devolved on Shripatráv,—then it would not follow, as supposed by the District Judge, that Sugandhábái

would still succeed to Shripatráv's property on the death of his own widow, Sakhubái. The Judge has given no reason and cited no authority for his opinion, that, in the order of succession to Shripatráv's estate, the widow of his half-brother must be preferred to his step-mother. In the present case, if the family property devolved on Shripatráv, the rule of descent would be the same as in the case of a divided family; and, as neither the step-mother nor the widow of the half-brother is included in the list of specified heirs, neither could come into the order of succession, except as a *gotrájá sapindá*. If they are both *gotrájá sapindás*, they occupy that position as widows of specified heirs. And the step-mother, as being the widow of the father, who is higher on the list than the half-brother, ought, apparently, to be preferred to the widow of the half-brother. We have to decide whether this view is correct. It is now well-established law in this Presidency, that the wives of *sapindás* have rights of inheritance. In *Lakshmibái* v. *Jairám Hari*(1), Melvill, J., observes that the doctrine, that "the wives of all *sapindás* and *samanodakas* must be held to have rights of inheritance co-extensive with those of their husbands," is drawn by the commentator Vishveshvarabhatta, in his Subodhini, from a passage in the Mitákshara (Ch. II, sec. 5, para. 5), where the paternal great-grandmother is included in the order of succession. It is also "laid down by West and Bühler at pages lii and liii of their Introduction" (1st ed.), "and discussed by them at considerable length in the introductory remarks to Digest, Ch. II, sec. 14." The Judges who decided *Lakshmibái's Case* felt bound to follow that doctrine, as being drawn from the work which is the principal source of law in this Presidency, and held that Lakshmibái, who was the widow of "the great-grandson of the deceased Hari's paternal grandfather's grandfather," was entitled to succeed before the defendants, who were fifth in descent from the father of the same ancestor. The decision in *Lakshmibái's Case* was followed and approved in *Lallubhái* v. *Mankuvarbái* (2), in which the rights of the widows of *gotrájá sapindás* in this Presidency to inherit are discussed at great length, and conclusively established in the

(1) 6 Bom. H. C. Rep., A. C. J., 152. (2) I. L. R., 2 Bom., 388.

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judgments of the late Chief Justice, Sir M. Westropp, and West, J., on the ground, principally, that a wife becomes by her marriage a *sagotrá sapindá* of her husband and of his *sagotrá sapindás*, and in that capacity succeeds as a widow to property which he would have taken as a *sapindá*, before the male representative of a remoter branch. The widow of a first cousin *ex parte paternâ* of the deceased *propositus* was, therefore, preferred to a fifth male cousin *ex parte paternâ*. That decision was affirmed by the Privy Council in *Lallubhoy* v. *Cásibái* (1). The doctrine, on which it ultimately rests, *viz.*, that the preferential right to inherit in the classes of *sapindás* is to be determined by family relationship or the community of particles, and not alone by the capacity of performing funeral rites, is shown, by the several judgments in the case, to have been so sanctioned by usage and decisions as to have acquired in this Presidency the force of law. If, therefore, in the present case, the ancestral property devolved on Shripatráv, then both Rakhmábái and Sugandhábái were his *gotrájá sapindás*, and are entitled to inherit in their proper order. Presumably, neither of them could come in while any person, whose succession is settled by special texts, was alive. Such a principle was not, however, followed in *Roopchand Tilukchund* v. *Phoolchund Dhurmchund* (2), where the widow of a predeceased son was preferred to the brother of the *propositus*. Though the Privy Council observes, in the judgment in *Lallubhoy* v. *Cásibái*, that that case "seems to be a direct decision on the right of the widow to inherit," their Lordships question the propriety of the preference given to the widow in the order of heirs (3). In the present case, however, there is no contest between Rakhmábái and any male heir in the specified list of heirs of lower order than her husband Yashvantráv. We are not, therefore, called upon to decide the exact position of a step-mother among the heirs. According to the opinion of the learned Shástri who assisted in the original compilation of the "Digest of Hindu Law," "the step-mother ought to be placed, on account of her near relationship to the deceased, immediately after the paternal grandmother,

(1) L. R., 7 I. A., 212. (2) 2 Borr., 670. (3) L. R., 7 I. A., at p. 238.

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up to whom only the succession is settled by special texts." (West and Bühler, 3rd ed., p. 472.) If that view be correct, the step-mother, as heading the list of non-specified heirs, would necessarily precede the half-brother's widow. But, even if her correct place be not at the head of such *gotrajá sapindás*, there can be no reason why she should be postponed to one whose husband was not so nearly related to the deceased as was her own husband. We are of opinion, therefore, that, in the present case, if the family was united, and Shripatráv was the last surviving male, his step-mother, the defendant, would succeed to the estate before the plaintiffs' vendor Sugandhábái.

As the District Judge has taken a wrong view of the law, and has, in consequence, omitted to try the several questions of fact, of which a determination is necessary for a right decision of the case, we reverse his decree, and direct that the appeal be reheard with reference to the foregoing remarks. Costs to abide the result.

Decree reversed.

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Nánábhái Haridás.

1886. *July* 28.

VENKATRA'V RA'JE GHORPA'DE, CHIEF OF MUDHOL, (ORIGINAL PLAINTIFF), APPELLANT, *v.* MA'DHAVRA'V RA'MCHANDRA *ALIAS* BA'PA'JI PARGA'VKAR AND OTHERS, (ORIGINAL DEFENDANTS,) RESPONDENTS.*

Minors' Act XX of 1864—The authority of the Political Agent appointed by Government as manager of the estate of a minor Chief to sue in respect of the Chief's property in British territory—Civil Procedure Code (Act XIV of 1882), Sec. 37, Cl. (c)—Recognized agent

A suit was brought by the Political Agent, Southern Marátha Country, as administrator of the estate of the Chief of Mudhol, who was described in the plaint as being nineteen years of age, to eject the defendants from certain lands, belonging to the Chief, situated in the Sátára District. The defendants raised a preliminary objection to the institution of the suit by the Political Agent, on the ground that he was neither a certificated guardian of the Chief under the Bombay Minors Act XX of 1864, nor a *recognized agent* within the meaning of section 37 of the Civil Procedure Code.

*Second Appeal, No. 544 of 1884.