

12 B. 505=13 Ind. Jur. 72.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Nanabhai Haridas.

BAI NARMADA (*Original Plaintiff*), Appellant v. BHAGWANTRAI
AND OTHERS (*Original Defendants*), Respondents.*
[6th March, 1888.]

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Hindu Law—Mayukha—Stridhan—Inheritance—Property given to a woman by a stranger—Devolution of such property—Daughter's daughters not entitled to it—Son's widow preferred as gotraja sapinda.

By the law of inheritance laid down in the Mayukha, a house given to a married woman by a stranger to the family and her own earnings devolve on her death as if she had been a male. The daughter-in-law of the deceased owner succeeds, therefore, in preference to the daughters of a deceased daughter.

[R., 25 A. 468 (474); 20 Ind. Cas. 557=9 N.L.R. 102; 5 M.L.T. 169 (175); 4 N.L.R. 31 (35).]

THIS was a second appeal from a decision of W. H. Horsley, Acting Assistant Judge at Broach, confirming the decree of Rav Saheb Chandulal M., Subordinate Judge at the same place. In 1881 one Rajkore, the widow of one Keshavram, died at Broach possessed of a house, which had been given to her by a *yajman*, and of a sum of money deposited in the Savings Bank consisting of fees which had been paid to her by *yajmans*. Her son Dhaneshwar married the plaintiff Bai Narmada, and died two years after his marriage. Her daughter Rewa was married to the defendant Bhagwantrai. Rewa predeceased her mother Rajkore, who died, as above stated, in 1881. On her death the defendant Bhagwantrai, (her son-in-law), took possession of the house, and withdrew the money from the Savings Bank, apparently on behalf of his minor daughters.

In 1883 the plaintiff Bai Narmada, (the daughter-in-law of Rajkore), sued the defendant to recover possession of the house and the money.

[506] The defendant contended (*inter alia*) that the house and the money belonged to Rajkore as her *stridhan*, and that his daughters were entitled to this property in right of their mother Rewa, who was Rajkore's daughter; that he had expended money on the funeral expenses of Rajkore, and that at Rajkore's request he had paid the debts of her son Dhaneshwar.

Both the lower Courts held the property in dispute to be the *stridhan* of Rajkore, and rejected the plaintiff's claim.

The plaintiff preferred a second appeal to the High Court.

Gokuldas Kahandas, for the appellant.—The property left by Rajkore was not her *stridhan* proper, and did not devolve upon her daughters. The house was given to her by a stranger to the family. The law of Mayukha governs the case, as it is from Gujarat, and according to that law the property vests in the plaintiff as *gotraja sapinda* of Rajkore: see *Vithaldas Manickdas v. Jeshubai* (1).

Nagindas Tulsidas, for the respondents.—The house here was a gift to Rajkore, and she took it absolutely as her *stridhan*. Her earnings

* Second Appeal No. 747 of 1885.

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invested in the bank were also her *stridhan*. The property left by Rajkore falls within one of the six classes of *stridhan*: see Mayne's Hindu Law, para. 288. This is her separate acquisition, and comes within the term "any other acquisition" under the Mayukha, pl. 2 and 3. The daughter's daughters are, therefore, the persons to succeed to it. The defendant Bhagwantrai has paid Rajkore's funeral expenses, and has also paid the debts of the plaintiff's husband, and is entitled to be recouped if the plaintiff is held entitled to the house and the money.

JUDGMENT.

SARGENT, C.J.—It has been found by the Assistant Judge that the house in question was given to Rajkore by a stranger to the family; and that the moneys invested in the Government Savings' Bank were earned by Rajkore herself. The law of inheritance as laid down in the Mayukha, (which would determine the course of inheritance in this case), prescribes that the devolution of such property should be as if Rajkore had been a male; it would, therefore, vest in the plaintiff as the nearest *gotraja sapinda*—*Vithaldas Manickdas v. Jeshubai* (1). It is clear, however, and [507] indeed was not disputed, that it would be contrary to equity and good conscience to allow her to recover the property from defendant No. 1 without permitting him to recoup himself out of it as to such moneys as he had expended either on Rajkore's funeral expenses or had paid at her desire to discharge the debts of her son Dhaneshwar. As the Assistant Judge has not recorded a finding on the fourth and fifth points raised by him, we must send down the case for a finding on the following issues:—

1. Did defendant No. 1 pay Rs. 269-6-6, or any and what sum for Rajkore's funeral expenses?
2. Did defendant No. 1 pay sums amounting with interest to Rs. 1,054, or any and what sum, in satisfaction of Dhaneshwar's creditors?
3. Was such last payment made at Rajkore's desire?

Findings to be sent to this Court within two months of the date of this order.

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ORIGINAL CIVIL,

Before Mr. Justice Scott.

KESSOWJI DAMODAR JAIRAM (*Plaintiff*) v. KHIMJI JAIRAM (*Defendant*).^{*} [16th and 17th April, 1888.]

Jurisdiction—High Court of Bombay, jurisdiction of—Letters Patent, 1865, cl. 12—Persons not British subjects resident outside the jurisdiction, but carrying on business by an agent within the jurisdiction—British subjects resident outside the jurisdiction, but carrying on business by an agent within the jurisdiction—Cause of action arising wholly outside the jurisdiction.

In cl. 12 of the Letters Patent, 1865, of the Bombay High Court, the words "if the defendant...shall...carry on business" must be interpreted to mean "if the defendant being a British subject...shall...carry on business," and where the liability of a foreigner is in question, the "carrying on business" must include actual residence.

^{*} Suit No. 299 of 1886.