

*Madura v. Mutta Ramalinga* (1) authority for holding that, in a case like the present, no duty is imposed on the Court to determine whether a great commentary rightly interprets the Rishi, or whether what it declares is deducible from the earliest authorities.

We are of opinion that Ratnagiri being a district where the Mitakshara is pre-eminent, and the rule laid down in the Mitakshara being distinct, and that of the Mayukha being in direct opposition thereto, the Mitakshara rule must be preferred, and the mother held to be the heir, and not the father. This ruling suffices for the disposal of the appeal. We must reverse the decree of the District Court and restore that of the Subordinate Judge. Plaintiff to pay the costs of both appeals.

BIRDWOOD, J.—I concur; and am clearly of opinion that this appeal must be decided in accordance with the rule of succession laid down in the Mitakshara, under which the mother of a childless separated Hindu comes in the order of succession next after, his widow and before his father. (See West and Bühler, 3rd ed., p. 448.) The rule of the Mayukha, that the father is to be preferred to the mother, being directly opposed to the rule of the Mitakshara, cannot be allowed to prevail in the Ratnagiri District. The decree of the lower appellate Court must, therefore, be reversed and that of the Subordinate Judge restored, and the claim rejected with costs.

*Decree reversed.*

14 B. 612.

APPELLATE CIVIL.

*Before Mr. Justice Birdwood and Mr. Justice Jardine.*

JANKIBAI (*Original Defendant*), Appellant v. SUNDRA (*Original Plaintiff*), Respondent.\* [22nd April, 1890.]

*Hindu law—Inheritance—Devolution of daughter's estate—Comparative authority of the Mitakshara and the Mayukha in the Ratnagiri District.*

The Ratnagiri District forms part of the Maratha country where the doctrines of the Mitakshara are paramount, and where the Mayukha, notwithstanding the eminent position it has gained, is still a secondary authority.

[613] According to the Mitakshara, the daughter takes an absolute estate which classes as her *stridhan*, and descends to her own heirs, *i.e.*, to her daughters to the exclusion of her sons.

The plaintiff sued, as the heir of her mother Varuna, to recover certain property which Varuna had inherited from her father. The defence was that plaintiff's brothers excluded her title.

*Held*, that the case being governed by the Mitakshara, the property in dispute descended to Varuna's daughter (the plaintiff), and not to Varuna's sons.

[*Appr.*, 2 S.L.R. 59 (63); R., 21 B. 739 (745); 24 B. 192=1 Bom.L.R. 574; 31 B. 453=9 Bom.L.R. 834; 1 Ind. Cas. 243=5 N.L.R., 13.]

SECOND appeal from the decision of R. S. Tipnis, Acting Assistant Judge of Ratnagiri, in appeal No. 234 of 1884.

The plaintiff Sundrabai sued to recover possession of a half share in certain property, alleging that the whole property belonged to her maternal grandfather Vishram, who died in 1870, leaving him surviving two

\* Second Appeal, No. 612 of 1888.

(1) 12 M.I.A. 397.

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daughters, Sakhubai and Varunabai (the plaintiff's mother); that Varunabai died in 1871, when the first defendant took wrongful possession of Vishram's property and illegally alienated some portions of it to the other defendants.

The first defendant contended (*inter alia*), that plaintiff was not the heir of Varunabai, that her (the plaintiff's) brothers were entitled to inherit, and did inherit Varunabai's share of the property, and that, therefore, the plaintiff had no title to the property in dispute.

Both the lower Courts awarded the plaintiff's claim, holding that under the Mitakshara the property inherited by Varunabai from her father was her *stridhan*, and, as such, passed on her death to her daughter (the plaintiff) to the exclusion of her sons.

Against this decision the defendants appealed to the High Court.

*Branson* (with him *Ganasham Nilkant* and *D. B. Chitnis*), for appellants.—The question is, who succeeds as heir to a daughter in regard to property inherited from her father? Does the property go as *stridhan* to her daughters or to her sons? If to the latter, then the plaintiff in the present case has no title. There are two classes of *stridhan*—(1) the technical *stridhan* of the six kinds mentioned by Manu, and (2) *stridhan* as defined by the Mitakshara, which includes all that a woman obtains irrespective of Manu's six kinds. In Bombay the Mitakshara is interpreted to give the daughter a separate and absolute estate. The other [614] High Courts differ. They give the daughter only a life-estate. But there is no decided case in which there has been a conflict between the daughter's daughter and the daughter's son. The Vyavahara Mayukha gives the preference to the daughter's sons: see Vyavahara Mayukha, chap. 4, s. 10, pl. 26; *Vijiarangam v. Lakshuman* (1). The Mayukha is paramount in Bombay and Gujarat. It is the basis of decisions in cases coming from Ahmednagar, Poona and Dharwar—*Haribhat v. Damodharbhat* (2); *Sakharam Sadashiv v. Sitabai* (3). In Ratnagiri cases the Mayukha is constantly referred to: see West and Bühler, pp. 341, 349, 351, 394, 402, 406, 427, 454, 484, 512, 523, 578, 579, 585 (3rd ed.); see, also, *Bhagirthibai v. Kahnurjarav* (4). The Bombay cases no doubt lay down that the daughter's estate passes on her death to her heir; but they do not say who the heir is: Mayne's Hindu Law, para. 566 (4th ed.) Even if the Mitakshara were held applicable to this case, the Court will have to construe the expression (the *stridhan*) "going on her death to her heirs." I contend that there is no express rule in the Mitakshara for descent of *stridhan* in the larger sense. The Court must, therefore, resort to the Mayukha.

*Ghanasham Nilkant*.—In the Maratha country the Mayukha is a high authority. He is a modern commentator, and his explanation of the original text of Yajnavalkya is to be preferred when there is a conflict between the Mayukha and the Mitakshara; Mandlik's Vyavahar Mayukha, p. 71.

*Manekshah Jahangirshah*, for respondent.—The question is covered by authority. Where the Mayukha and the Mitakshara differ, we must follow the Mitakshara—*Narayan Babaji v. Nana Manohar* (5); *Krishnaji Vyanktesh v. Pandurang* (6); West and Bühler, p. 10 (3rd ed.). No case has been cited in which the Mayukha has been followed when it is in conflict with the Mitakshara. According to the Mitakshara, a woman's

(1) 8 B.H.C.R. O.C.J. 244.

(2) 3 B. 353.

(3) 7 B.H.C.R. A.C.J. 153.

(4) 3 B. 171.

(5) 11 B. 285.

(6) 12 B.H.C.R. 65.

*stridhan* goes to her daughter rather than to her son: West and Bühler, p. 145, (3rd ed). The question, then, is whether the property in dispute in the present case is *stridhan*. I submit that it is *stridhan*: [615] see *Bhagirthibai v. Kahnujirav* (1). Both the Mayukha and the Mitakshara give the daughter an absolute estate, and this estate, according to a long course of decisions in this Presidency, descends to the daughter's daughter, if the case is governed by the Mitakshara. And there is no question that in the Ratnagiri District the Mitakshara is the paramount authority.

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#### JUDGMENT.

BIRDWOOD, J.—The plaintiff, Sundra, sues as heir of her mother Varuna to recover a half share of certain immovable property which had been inherited by Varuna from her father Vishram. She is resisted by the defendants, on various grounds, one of which—and the only one that it is necessary for us to consider—is that the plaintiff's brothers exclude her title. In the judgment of the Full Bench in *Bhagirthibai v. Kahnujirav* (1), delivered by Mr. Justice West, and concurred in by the Chief Justice and myself, reference was made to the passage at 1 Strange's Hindu Law, pp. 139, 140, where Sir T. Strange says that, according to the southern authorities, (as contrasted with the Bengal authorities), a daughter's inheritance "classes as *stridhan*, and descends accordingly." And it was added: "This has been the uniform doctrine of the High Court of Bombay from its institution down to the present day. If the daughter takes an absolute estate, it has been understood she must, in the absence of an express rule to the contrary, transmit it to her own heirs" (1).

The estate taken by Varuna having then been an absolute estate, classing as *stridhan*, the question in this appeal is whether it descended to her "sons or other heirs," as contemplated in the Vyavahara Mayukha, ch. IV, s. 10, pl. 26, or, like the six-fold *stridhan* proper, to Varuna's daughter Sundra, as contemplated in the Mitakshara, which "knows of no distinction between *paribhhasika* and other *stridhan*" (West and Bühler's Hindu Law, 3rd ed., p. 146).

The decision of this question depends on the further question whether the authority of the Mitakshara prevails over that of the Mayukha in the present case, which is one from the Ratnagiri District. As to this point, I have had the advantage of reading [616] the judgment which has been prepared by Mr. Justice Jardine and concur in the conclusions arrived at therein: The Ratnagiri District must be taken to be a part of the Maratha country where the doctrines of the Mitakshara are paramount, and where the Mayukha, notwithstanding the eminent position which it has gained, is still a secondary authority (West and Bühler's Hindu Law, 3rd ed., p. 10). The probable reason suggested at p. 295 of the judgment of the Full Bench in *Bhagirthibai v. Kahnujirav* why the Maratha doctrines of the Mayukha have gained a more undivided sway over Gujarat than among the Marathas themselves, has no application to the Ratnagiri District, which was never subjected to a lengthened Mahomedan rule of the kind which was dominant in Gujarat before the Maratha conquest. In the present case, as the doctrine of the Mayukha is opposed to that of the Mitakshara, we cannot avail ourselves of the aid which it might afford, as was said in the Full Bench case, by shedding "an additional ray of light on any point which the Mitakshara has left obscure"; but must

(1) 11 B. 285 (295, 312).

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decide the question at issue between the parties in accordance with the Mitakshara.

We, therefore, confirm the decree of the Court below, affirming the plaintiff's claim, with costs.

JARDINE, J.—The plaintiff, Sundrabai, claimed certain immoveable property, which, it is admitted, was inherited by her mother Varunabai from Varunabai's father Vishram. The defendants resisted the claim, which, however, was awarded by the Courts below, which followed the rule of descent found in the Mitakshara. Mr. Branson has argued the appeal of these defendants, setting up *jus tertii*,—that is, the right of Varunabai's sons, under the Vyavahara Mayukha, chap. IV, s. 10., pl. 26. The argument will be more readily perceived if I quote the placitum as translated and commented upon by Mr. Justice West in *Vijarangam v. Lakshuman* (1). "Thus there is a great mass of authority, in all the schools except that of Bengal, supporting Vijnaneshvara to this extent at least, that *stridhan* includes other property besides the six kinds specified by Manu, while Nilkantha, the author of the Mayukha, the next weightiest authority in this Presidency, fully accepts the doctrine that property inherited by [617] a woman is *stridhan* (Vyavahara Mayukha *loc. cit.*), though he prescribes a mode of devolution for it different from that laid down in the Mitakshara. Inherited property, Nilkantha says, though it is *stridhan*, not being one of those kinds of *stridhan* for which express texts prescribe exceptional modes of descent, goes, on the woman's death, to her sons and the rest, as if she were a male, and this too notwithstanding her having left daughters (Vyav. May., chap. IV, s. X, pl. 26.) The passage which sets forth this doctrine being somewhat obscure in Mr. Borradaile's translation, it may be as well to say that its true purport is this: 'It is clear that although there be daughters, the sons or other heirs still succeed to the mother's estate, so far as it is distinct from the part already described (as subject to peculiar devolution under texts applicable to particular species of *stridhan*).'"

As stated by Mr. Mayne in s. 565 of his work on Hindu Law, 4th edition, the rule in other parts of India is that where any female takes as heir to a male, she takes a restricted estate, and on her death the property passes, not to her heirs, but to the person who would be the next heir of the last full owner. There are also early Bombay cases in which it was held that a daughter inheriting from her father could not alienate without the consent of her son. See Mayne's Hindu Law, s. 570, (4th ed.), and West and Bühler, p. 336.

There seem to have been doubts on the subject when *Dalpat Narotam v. Bhagvan Khushal* (2) was decided. But the question in doubt was referred to, and the texts and authorities, including the Privy Council case of *Mutta Vaduganadha Tevar v. Dorasinga Tevar* (3), fully considered by a Full Bench of this Court in *Bhagirthiba v. Kahnuijirav* (4), which after a careful examination I think we must now take as settling that in this presidency, whether under the Mitakshara or the Vyavahara Mayukha, a daughter inheriting from her father takes an absolute and not a life estate. We may also, I think, take the case as an authority for holding that the daughter took the estate as *stridhan* in some sense of the word.

[618] The question we have then to decide is that discussed by Mr. Mayne in s. 573 *et seq.*, viz., the line of descent appropriate to property which has been taken as her absolute estate by a female inheriting to a

(1) 8 B.H.C.R. O.C.J. 244 (260).  
(3) 8 I.A. 99.

(2) 9 B. 301.  
(4) 11 B. 285.

male. We may approach the solution from three points of view suggested in the arguments: first, that of the Vyavahara Mayukha; second, that of the Mitakshara; and, third, that of these two books combined. I will deal with the solutions in this order.

Firstly, as to the descent according to the Vyavahara Mayukha. This depends on the passage quoted in *Vijiarangam v. Lakshuman*(1) which was disposed of under the law of the Mayukha. West, J., appears to interpret it as giving the estate inherited by a daughter from her father to the daughter's son. But Mr. Mayne in s. 574 puts a different interpretation on the passage, and in s. 576 notices that Sargent, C. J., has treated the interpretation as still open to question in his judgment in *Dalpat Narotam v. Bhagvan Khushal* (2), where he says: "According to the construction placed upon Mayukha, chap. IV, s. X, pl. 26, by the Court of appeal consisting of Sir M. Westropp, C.J., and West, J., in *Vijiarangam v. Lakshuman*(1), the property would devolve, on the woman's death, on her sons, and the rest as if she were a male. Mr. Mayne, however, in his Treatise on Hindu Law, para. 530, dissents from this view of the passage. He says: 'it is very questionable whether Nilkantha meant anything of the sort,' and explains it as meaning that the estate 'does not devolve according to the rule applicable to *stridhan*, but is taken by such heirs, being sons or otherwise, as would have taken it if the accident of its falling to a woman had never occurred.'"

In *Bhagirthibai v. Kahnujirav* (3) which case was decided in 1886, and came from the district of Ahmednagar where the Full Bench held the Vyavahara Mayukha to be an authority, the view taken of the passage appears to me to be the same as was taken in *Vijiarangam v. Lashuman*(1). At p. 310 of the Report in a discussion of the Mayukha text, West, J., delivering the judgment [619] of the Full Bench, says: "It was to be expected, therefore, that the Vyavahara Mayukha should make property inherited by a woman descend to her heirs, and it does so. The technical *stridhan* falling under special texts it disposes of as they direct; the inherited *stridhan*, not thus provided for, it gives, on the woman's death, to her sons and other heirs as if she had been a male."

Sitting in a Division Court, I treat the judgment of the Full Bench as settling the interpretation of the Mayukha to be that the inheritance descends to the daughter's son, and not to the daughter's daughter.

The second solution we have to find is that under the law of the Mitakshara. Mr. Branson argues that the Mitakshara rule of descent for the technical *stridhan* does not necessarily apply to the other sorts of woman's property mentioned in chap. II, s. 11, pl. 2 of that work. He has adopted the argument of Mr. Mayne in s. 567 of his work on Hindu Law. He asks us to except the inherited property now in suit from the general rule in pl. 12 of the same section of the Mitakshara under which the woman's daughter succeeds. Mr. Manekshah for the respondents argues to the contrary that the point is covered by authority, which requires us to treat the property as *stridhan*, descending to the daughter's daughter.

The reasoning applied by this High Court is thus stated at p. 335 of West and Bühler, 3rd edition. "The absolute estate of a woman is necessarily her *stridhan*, and as she can deal with it as she pleases, so

(1) 8 B.H.C.R. O.C.J. 244 (260).

(3) 11 B. 285 (310).

(2) 9 B. 301 (304).

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it, if anything, must be inherited, as hers, by her heirs." In p. 336 the case *Mutta Vaduganadha v. Dorasinga Tevar* (1) already referred to is mentioned as opposed to this view. But, as before noticed, this has been explained by the Full Bench in *Bhagirthibai v. Khanujirav* (2); and Mr. Manekshah relies on this last case as settling the question as one of the Mitakshara law, although the Full Bench resorted to the Mayukha as an aid to that interpretation. About *Vijiarangam v. Lakshuman* (3) Mr. Mayne points out in s. 575 "as the case was necessarily decided by the law of the Mayukha, of course everything said by the learned Judge as to the different system of the Mitakshara [620] was *obiter dictum*." It may also be added that the question referred to the learned Judges of the Full Bench was rather the allied one of the nature of the estate than the mode of descent.

The opinion of the learned Judges is, of course, to be treated with high respect, and I will, therefore, cite the passages in the Report, some of which deal with authorities. At p. 304 the conclusions of Westropp, C.J., and Nanabhai Haridas, J., in *Gangaram v. Ballia* (4) are mentioned as follows:—"They say that property inherited by a woman from her father is her *stridhan* heritable, by her heirs, not by his." This case is cited in West and Bühler, p. 327, as an interpretation of the Mitakshara. Again at p. 308 of the judgment, with regard to a daughter inheriting from her father, the Full Bench say: "If she does not take an estate as *stridhan*, the Mitakshara gives absolutely no rule for its descent on her death; but, as the Judicial Committee has pointed out a *stridhan* estate is given, and the devolution of this to her heirs is prescribed." Again, at p. 311, Sir T. Strange is quoted as saying (1 Strange H. L. 139, quoted in West and Bühler, p. 106, note.) that, according to the southern authorities, a daughter's inheritance "classes as *stridhan* and descends accordingly." But this remark of the learned Judges refers apparently to the Vyavahara Mayukha. Then they add (p. 312): "This has been the uniform doctrine of the High Court of Bombay from its institution down to the present day. If the daughter takes an absolute estate, it has been understood she must, in the absence of an express rule to the contrary, transmit it to her own heirs." The implication seems to be that the establishment of the proposition, that the daughter takes an absolute estate, establishes also two other propositions, namely, that the property is *stridhan*, and that it descends as such. But see Tagore Law Lectures, 1878, p. 302.

All three propositions are, however, denied by the Judicial Committee of the Privy Council in *Chotay Lall v. Chunnoo Lall* (5), a Bengal case where their Lordships discuss the Bombay decisions, including that in *Vijiarangam v. Lakshuman* (3) and differ from the interpretation placed on the meaning of the disputed [621] text of the Mitakshara, chap. II, s. 11; and remark at p. 32 that the Bombay case, most relied upon, was governed by the law of the Mayukha. The Bombay case referred to seems to be *Vijiarangam v. Lakshuman* (3). In *Chotay Lall v. Chunnoo Lall* the decision related to a daughter's estate inherited from her father, which is the nature of the estate in litigation in the present appeal. The same remark applies to *Mutta Vaduganadha v. Dorasinga* (1) where the Judicial Committee followed *Chotay Lall v. Chunnoo Lall*, and say that the interpretation of

(1) 8 I.A. 99.

(2) 11 B. 285.

(3) 8 B.H.C.R. O.C.J. 244 (260).

(4) P. J. 1876, p. 31.

(5) 6 I.A. 15.

the Mitakshara, Chap. II, s. 11, pl. 2, is completely covered by authority. Their Lordships say:—

“The first question, then, is whether *Kattama*, the daughter of the istimrar zemindar, took the zemindari as her *stridhan*, and for an interest transmissible to her heirs. At the date of her father's death she was a maiden. She was afterwards married twice, and in the year 1850, when the surviving widow died, she had male issue. These circumstances were relied on as constituting her title to be her father's heir in the year 1863, and it is contended by the appellants that the same circumstances constitute her a new stock, from whom, and not from her father, the title is now to be deduced.

“They rely mainly on the much discussed passage in the Mitakshara (Chap. II, s. XI, verse 2), where its author, *Vijnaneshavara*, adds to the text of *Yajnavalkya* by declaring that the character of *stridhan* attaches not only to the acquisitions by a woman which the text specifies as such, but also to property which she acquires by inheritance, or in fact by any other mode. It is not necessary now to state in any detail how impossible it is, whether with regard to the authority of other commentators or to other parts of the Mitakshara itself, to construe this passage as conferring upon a woman taking by inheritance from a male a *stridhan* estate transmissible to her own heirs. The point is now completely covered by authority. In the case of *Mussumat Thakur Dey-hee v. Rai Baluk Ram* (1) such an interest was claimed on behalf of a widow in her husband's immoveable property. In the case of *Bhagwan-deen Doobey v. Myna Bai* (2), such an interest [622] was claimed on behalf of a widow in her husband's moveable property. In the case of *Chotay Lall v. Chunnoo Lall* (3) such an interest was claimed on behalf of a daughter in her father's property. All these cases were governed by the Mitakshara law. And in all it was held that the woman took only a restricted interest, and that on her death the property devolved on the line of the last male owner.

“No attempt has been made to distinguish this case from that of *Chotay Lall*, except the suggestion that decisions upon the Mitakshara, as applicable to *Benares*, are not decisions upon the Mitakshara as applicable to the *Carnatic*. But if there be any ground for taking such a distinction it would be favourable to the restriction of *Kattama's* interest in her father's property. For there are two commentaries which are received as authority in the *Carnatic*, the *Smriti Chandrika* and the *Dayavibhaga* by *Madhaviya*, neither of which follow the cited passage of the Mitakshara in assigning to a woman as her *stridhan* property inherited by her. Their Lordships think then that the Judges of the Courts below were quite right in holding that *Kattama's* interest ceased with her life, and that on her death the root of title is to be sought not in herself but in her father.”

These two decisions of the Privy Council interpret the passage of the Mitakshara which we have to construe in the present case; and if we follow that interpretation we must hold that *Varunabai* took the property in suit not as her *stridhan*; at least not as *stridhan* descending to her heirs. Whatever may have been the nature of her interest, restricted or absolute, the rulings of the Privy Council are clear that on her death the property devolved on the line of the last male owner under the law of the Mitakshara. But these cases were not Bombay

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(1) 11 M.I.A. 139.

(2) 11 M.I.A. 487.

(3) 6 I.A. 15.

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cases, and their Lordships interpreted the Mitakshara without using the Mayukha as a guide to its meaning, as it may be assumed they would if they had been declaring the law of this presidency. This brings me to the third point; and we have to consider the relative authority of the Mitakshara and the Mayukha when in competition.

In *Bhagirthibai's case* (1) the Full Bench held (p. 294) that the Mayukha is of authority in the District of Ahmednagar, [623] though apparently "not of the special and almost paramount authority which it has gained in Gujarat and in the city of Bombay;" and although at p. 295 they say that "without in any way assailing the position of the Mitakshara as the principal authority in the Maratha country, we may properly construe it by the light of the Vyavahara Mayukha." The learned writer of the judgment uses so much of the passage of the Mayukha as defines property inherited by a woman from a male to be *stridhan*, as helping to a construction of what the Mitakshara means by *stridhan*; while, as I think, he does not use the Mayukha rule of descent as helping to explain the rule of the Mitakshara, doubtless because the two rules are absolutely opposed to each other. As pointed out by Couch, C. J., and the Judicial Committee in *Chotay Lall v. Chunnoo Lall* (2) and by Mr. Mayne in *Vijjarangam v. Lakshuman* (3) the decision would, if founded upon the Mayukha alone, be *obiter dictum* so far as it interprets the Mitakshara. But I agree with Mr. Manekshah that it is essentially an interpretation of the Mitakshara, although the Mayukha is resorted to as throwing light on the meaning. It is necessary, then, to advert to the juridical question raised in that judgment about the Hindu text-books deriving their authority from usage, at p. 290. Again at p. 295 it is said of the Mayukha: "The usage of the country has adopted the latter as well as the former (the Mitakshara) *Bhagwandeem Doobey v. Myna Bai* (4), and if it sheds an additional ray of light on any point which the Mitakshara has left obscure, we may thankfully avail ourselves of the aid it affords us."

At p. 10 of West and Buhler, 3rd edition, the relative position of the Mitakshara and Mayukha to each other is described as follows. In the Maratha country and Northern Kanara the doctrines of the Mitakshara are paramount; the Vyavaharamayukha is to be used as a secondary authority only. It serves to illustrate the Mitakshara and to supplement it. But it may be followed so far only as its doctrines do not stand in opposition to the express precepts or to the general principles of the Mitakshara. The authorities for the above are collected in a note. The passage [624] is quoted with apparent approval by Westropp, C. J., in *Narayan Babaji v. Nana Manohar* (5). At p. 167 of that Report the learned Chief Justice speaks of the Mitakshara as "foremost among legal authorities in Maharashtra" and at p. 169 of the Mayukha as ranking "next in authority in the west of India and in the Maratha School." In *Krishnaji Vyan-katesh v. Pandurang* (6) West, J., says, p. 69: "In cases of direct conflict between the two authorities, there can be no doubt, after these expressions of opinions, that preference should, in general, be given to the Mitakshara doctrine, although where the Mayukha's gloss may not seem easily reconcilable with the text, its construction is to be received, if not absolutely contradictory to the 'supreme authority.'" In *Lallubhai*

(1) 11 B. 285 (294).

(3) 8 B.H.C.R.O.C.J. 244.

(5) 7 B.H.C.R.A.C.J. 153 (166).

(2) 6 I.A. 15.

(4) 11 M.I.A. 487.

(6) 12 B. H. C. R. 65 (68).

*Bapubhai v. Mankuwarbai* (1) Westropp, C. J., discusses the subject, and states that "Manu, the Mitakshara, and Mayukha are the reigning authorities in this Presidency." The Privy Council approved this statement in the appeal—*Lallubhai Bapubhai v. Cassibai* (2). In *Sakharam Sadashiv Adhikari v. Sitabai* (3), Westropp, C. J., says: "We are satisfied to abide by what is said in *Lallubhai Bapubhai v. Mankuwarbai* (1) as to Manu, the Mitakshara and the Mayukha when in competition in this Presidency."

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The authorities appear to me to confirm the statement in West and Buhler and support the view taken by the Full Bench in *Bhagirthibai v. Kahnujirav* (4) as to the position of the Mayukha in connection with the Mitakshara in districts where the Mayukha has not the special authority it receives in Gujarat, the island of Bombay, and, as ruled in *Sakharam v. Sitabai* (3), in the Northern Konkan.

A fourth question arises as to the weight of the Mayukha in the district of Ratnagiri. It has been faintly argued by Mr. Branson and Mr. Ghanasham that this special authority of the Mayukha should be held to exist in the Southern Konkan, *i. e.*, the district of Ratnagiri, from which the case before us comes. No authority, legal or historical, has been shown us for this contention [625] and in the absence of any authority I am inclined to hold that *Sakharam v. Sitabai* (3) weighs against the contention, as it would appear from the reasoning in pp. 366 and 367 of the Report that the learned Judges distinguished the Northern Konkan, and its history from the Southern Konkan, south of the river Savitri. In the tenth volume of Mr. Campbell's Gazetteer of the Bombay Presidency there is a History of the Ratnagiri District, p. 192, and of its Land Administration, p. 213. The district does not appear to have been a part of the Gujarat Kingdom, but to have belonged to the Bijapur Kingdom until conquered by the Marathas under Shivaji. Mr. Branson has shown us references in West and Buhler by the Shastris to the Vyavahara Mayukha in Ratnagiri cases, in some of which that book is the sole authority referred to. See pp. 341, 349, 351, 394, 402, 406, 427, 454, 484, 512, 523, 578, 579, 585. I follow the reasoning of the Full Bench in *Bhagirthibai v. Kahnujirav* (4) in treating these references as evidence of the living law. I concede that the Mayukha may be used as in the district of Ahmednagar, to explain the Mitakshara, but that, in accordance with that decision and the other authorities, we must treat the Mitakshara as paramount and the Mayukha as ancillary and subordinate.

Reverting to the third question, we have to determine whether the property in suit descends to Varuna's daughter or Varuna's son,—that is, whether the passage of the Mayukha awarding it to the son shall prevail over the general rule found in the Mitakshara, Chap. II, s. 11, pl. 12 and 13, which awards it to the daughter. The question arising, if we apply the criterion found in the passage from *Krishnaji Vyankatesh v. Pandurang* (5) quoted above and at p. 10 of West and Buhler, is much the same as sometimes arises on the construction of statutes, as in *Churchill v. Crease* (6). Is the particular rule of the Mayukha providing for the descent of this kind of *stridhan* incompatible with the general intention of the Mitakshara? No decision of the question of inheritance now before us under the Mitakshara law

(1) 2 B. 388 (418).

(3) 3 B. 353 (368).

(5) 12 B.H.C.R. 65 (68).

(2) 7 I. A. 212 (230) = 5 B. 110 (117).

(4) 11 B. 285.

(6) 5 Bing. 180.

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has been [626] shown to us. It was not before the Full Bench in *Bhagir-  
 thibai v. Kahnuijirav* (1) as a matter of decision : but it is adverted to in the  
 reasoning leading to the decision. At pp. 3CS, as already noticed, it is said  
 that the property descend as *stridhan* only. Mr. Branson has argued that as  
 that Mitakshara provides certain special rules, as well as the general rule,  
 it would not be incompatible with the general rule if we engrafted, as a  
 special rule, the provision of the Mayukha awarding the property to the  
 daughter's son. But to this it may be replied that, if Vijnaneshvara had  
 thought the Mayukha rule applicable, he would have inserted it, in like  
 manner as he inserted the special rules found in pl. 14, 20 and 30 of  
 s. 11 of Chap. II. This view seems to be taken at p. 307 of the judg-  
 ment of the Full Bench in the following passage :—" He (Vijnaneshvara)  
 recognizes differences of succession according to the different kinds of  
 marriage and certain special rules for particular kinds of property : but  
 these latter exceptions really confirm the general rule for ordinary cases."  
 \* \* \* "Vijnaneshvara having enlarged the contents of *stridhan* was  
 forced, in consistency, to widen proportionally the operation of the general  
 law applicable to it, and thus the rules for particular kinds of *stridhan*  
 appear in the Mitakshara only as special exceptions." At p. 310 it is  
 said that in the Mayukha passage Nilkantha intends to mark his dissent  
 from a Mitakshara doctrine : and the same view is expressed in West  
 and Buhler, p. 528. See, also, Dr. Banerjee's discussion—Tagore Law  
 Lectures, 1878, p. 381. Dr. Jolly states his opinion that property like that  
 in suit descends under the Mitakshara like other *stridhan*, there being no  
 provision to the contrary—Tagore Law Lectures, 1883, p. 264. The same  
 learned writer appears to treat the rule of the Mayukha about descent as  
 exceptional, p. 268. I am of opinion that the rule of descent in the  
 Mayukha stands in opposition to that of the Mitakshara, and ought not  
 in deciding the present case to be used to supplement it. The decision of  
 the Full Bench is an authority for our interpreting the Mitakshara by the  
 aid of the Mayukha where the two are not irreconcilable, and for treat-  
 ing the decisions of the Judicial Committee in the two cases referred to  
 above as [627] interpretations of the Mitakshara unaided by the  
 Mayukha. We may follow the course of decisions of this Court, adopting  
 the reasoning of the Privy Council in *Chotay Lall v. Chunnoo Lall* (2)  
 and by the Full Bench in *Bhagirthibai's case* (1) about *stare decisis*. I  
 would, therefore, confirm the decree of the lower Court with costs.

*Decree confirmed.*

(1) 11 B. 285 (307).

(2) 6 I. A. 15.