1890 DEC. 2. APPELLATE CIVIL. 15 B. 201.

in part of the land, having acquired the right to plant cocoanut trees therein. He seems also to have built a family house there, which, when the members of the family separated, was replaced by smaller houses; and the members of the family owning these houses, and the yards round the houses, with the trees in the yards, have dealt with those properties as their own separate properties. On the other hand, it appears that the *makhta* for the cultivated portion of the Juwa Pankhol *thikan* is in the name of Sambhaji, the sixth son of Naroji, and the evidence shows that he and his descendants have continued to enjoy this land to the complete exclusion of the plaintiffs' branch of the family. It is proved that in 1867 the plaintiffs tried in a possessory suit to show that they were in possession of a part of this *thikan*, but failed. In that case the [206] father of the present defendant No. 2 admitted that the land belonged to Vithoji, the son of Sambhaji, mentioned above.

In this state of the evidence we must hold, as the Privy Council did in *Bannoo* v. *Kashi Ram* (1) under similar circumstances, that the defendants 12 to 25 have satisfactorily proved that the Juwa Pankhol and Sidi Mahomad *thikans* were their own separate acquisitions.

With regard to the *factum* of the adoption of the son of Murar (defendant 12) by Yeshwada, we think that, though there may be discrepancies as to details, there can be no doubt that the adoption did take place. The registered deed of adoption, the genuineness and validity of which are not impugned, is almost conclusive on the point. The motive for the adoption is so patent, that it is difficult to understand why the deed should have been registered without the ceremony being performed.

Under the above view of the facts, we must reverse the decree of the Subordinate Judge and reject the plaintiffs' claim. Plaintiffs to bear their own costs and the costs of defendants 1 and 12 to 25 throughout. The other defendants to bear their own costs.

Decree reversed.

---

15 B. 206.

APPELLATE CIVIL.

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

RINDABAI KOM SHRINIVASACHARYA (*Original Defendant No.* 1), *Appellant v.* ANACHARYA BIN PANDURANGACHARYA AND OTHERS (*Original Plaintiffs*), *Respondents.** [2nd December, 1890.]

Hindu law—Inheritance—Succession—Sisters take absolutely in severalty—Daughters.

In the Bombay Presidency sisters take by inheritance from a brother absolute estates in severalty.

"On the death of a son without leaving wife or child his estate goes to his mother and on her death to his sisters as his heirs. The sisters take an absolute estate in severalty and not as joint tenants."

[R., 24 B. 192 (204) = 1 Bom. L.R. 574.]

---

* Second Appeal, No. 855 of 1889.

(1) 3 C. 315.

1890
DEC. 2.
APPELLATE CIVIL.
15 B. 206.

[207] THIS was a second appeal from the decision of Dr. A. D. Pollen, District Judge of Belgaum.

The plaintiffs were the daughters of one Tarabai, who was the daughter of one Bendacharya. They sued for the partition of Bendacharya's property, of which they claimed one-fourth share as the heirs of their mother Tarabai.

Bendacharya left a widow (Casibai) and four daughters, *viz.*, Tarabai, Rindabai, Tulsabai and Gojrabai. His only son (Raghavendracharya) having died leaving neither wife nor child, his widow (Kasibai) succeeded and held possession of the property until her death in 1882. For some time after his death the four daughters held in common. Tarabai, (the plaintiff's mother), died in May, 1886, and after that time her sisters (defendants 1, 3, 4) ceased to give any share of the property to the plaintiffs. The plaintiffs, therefore, as the heirs of Tarabai sought to recover one-fourth share of the land in suit.

The defendants denied that Tarabai and they ever owned the property in common.

The Court of first instance allowed the plaintiffs' claim.

Against the decree of the Court of first instance defendant No. 1, Rindabai, appealed to the District Court, and the District Judge without issuing notice of the appeal to the respondents (plaintiffs) dismissed it.

Against the order passed by the District Court, defendant No. 1 appealed to the High Court.

Daji Abaji Khare, for the appellant.—As Bendacharya left a son, that son took the property to the exclusion of the daughters. The daughters had no claim as heirs of Bendacharya. It is as the heirs of their brother that they may claim on his death without issue. But each sister does not take a separate share. Sisters are joint tenants of property inherited from their brother, and the doctrine of survivorship applies. On Tarabai's death her interest survived to her sisters and did not pass to her daughters (the plaintiffs). So long as the defendants are alive, the plaintiffs cannot claim the inheritance as the heirs of Tarabai. The position of sisters is distinguished by the Vyavahar Mayukha from [208] that of daughters. The Vyavahar Mayukha distinctly says that "if there are more daughters than one, they should divide the wealth and take shares." A similar provision is not made in the case of sisters(1). A sister's sons have no right so long as the other sisters survive(2).

Manekshah Jehangirshah, for the respondents.—The ruling in *Tuljaram* v. *Mathuradas* (3) shows that the contention of the appellant, that so long as the other sisters are living the children of a deceased sister cannot inherit, is unsound. Sisters, as daughters, take an absolute estate, and each sister is entitled to her share of the property inherited from the brother. There is no right of survivorship among them. Sisters may be married into different families, and it cannot be said that they have a right of survivorship when they are so married. They inherit as tenants-in-common and not as joint tenants. Vyavahar Mayukha is the authority on this point—*Bulakhidas* v. *Keshavlal* (4); *Bhagirthibai* v. *Baya* (5).

JUDGMENT.

SARGENT, C.J.—In this case the field in dispute belonged to one Bendacharya, who was stated in the plaint to have had no male issue.

(1) Mandlik's Hindu Law, pp. 79, 81.
(2) West and Bühler, p. 494.
(3) 5 B. 662.
(4) 6 B. 85.
(5) 5 B. 264.

However in the written statement he is asserted to have died, leaving a son Raghavendracharya, who died leaving neither wife nor child, and the appeal has been argued on behalf of the appellant on that assumption. Assuming it to be so, his mother Kasibai, widow of Bendacharya, succeeded as Raghavendracharya's heir on his death, and on her death the succession would vest in the heirs of Raghavendracharya, who by the settled law of this Presidency would be his four sisters, the plaintiffs' mother and defendants 1, 3 and 4. The question raised by this appeal is as to the mode in which they would take, it being contended by the appellant that they would take as joint tenants with right of survivorship.

It is well settled in this Presidency that daughters take by inheritance absolute estates in severalty—*Haribhat* v. *Damodarbhat* (1). In *Vinayek Anandrav* v. *Luxumeebaee* (2), Sausse, C.J., [209] says that as to the mode in which sisters take it appears by analogy that they take as daughters, and in *Tuljaram* v. *Mathuradas* (3) this view is extended to all females who do not become members of the family by marriage. Lastly, in *Bhagirthibai* v. *Baya* (4) it seems, from the form of the decree made in that case, that it was assumed that sisters take as co-parceners with right of partition. In the argument at the Bar, allusion was made to a remark in West and Bühler, 494, "that sister's sons have no right so long as a sister survives, but take before sister's daughter;" but on referring to the case cited in 2 Borr., 515, it appears that the above statement has reference to the right of immediate succession to a brother as between a sister's son and another sister, and has no application to the present case. Mr. Mayne in his work states it to be definitely settled in this Presidency that there is no difference—and no ground for drawing any such difference has been suggested before us—between daughters and sisters in the nature of their right to succeed to their father and brother respectively.

We must, therefore, hold that Tarabai took an absolute one-fourth share, and that the plaintiffs became entitled to this share as her heirs, and we confirm the decree of the Court below with costs.

Decree confirmed.

---

15 B. 209.

ORIGINAL CIVIL.

Before Mr. Justice Farran.

THE GOCULDAS BULABDAS MANUFACTURING COMPANY, LIMITED (*Plaintiffs*) *v.* JAMES SCOTT AND ANOTHER (*Defendants*).*

[16th August and 19th September, 1890.]

Taxation—Practice—Certificate to review taxation—Commission to England to take evidence—Costs of such commission—Party and party taxation, principle of—Onus of proof in respect to item objected to—Production of vouchers in case of commission to England—Costs of obtaining transcript of evidence given and of perusing it—Allowances to witnesses—Commissioner's fees.

Where, in a suit in India, a commission to take evidence has been issued to England, the bill of costs with respect to such commission is to be taxed by the Taxing Master of the Court in India, and not in England. It is to be taxed on

---

* Suit No. 107 of 1887.

(1) 3 B. 171. (2) 1 B.H.C.R. 117. (3) 5 B. 662. (4) 5 B. 264.