

1890  
JUNE 30.  
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APPEL-  
LATE  
CIVIL.  
—  
15 B. 229.

Conservator of Forests in whose hands the matter then was, and, as we cannot doubt, with the plaintiff's full knowledge. Upon the whole, we think that the defendant acted throughout in good faith, and has satisfactorily justified his conduct under s. 73 of the Act.

That the question should have remained with the superior forest authorities in suspense until May, is necessarily matter [234] of surprise, and if Government are unable to give some satisfactory explanation of it, the plaintiff is, to say the least, entitled to favourable consideration at their hands.

We must, therefore, reverse the decree and dismiss the plaint, with costs throughout on plaintiff.

*Decree reversed.*

15 B. 234.

APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Telang.*

MANJAPPA HEGADE BIN DEVAPPA HEGADE (*Original Plaintiff*),  
*Appellant v. LAKSHMI KOM RAMAYA AND ANOTHER (Original*  
*Defendants), Respondents.\** [12 August, 1890.]

*Hindu law—Undivided family—Widow's right—Maintenance—Gotraja sapinda—Purchaser of a co-sharer's interest—Right of.*

The widow of an undivided brother does not take a life estate. She is only entitled to maintenance. She may perhaps succeed her brother-in-law as a *gotraja sapinda*.

A person who purchases the share of a co-parcener in family property is entitled to recover that share on his vendor's succession to the property as against the vendor himself and the widow of his undivided brother.

*Udaram Sitaram v. Ranu Panduji (1), distinguished.*

THIS was a second appeal from the decision of Gilmour McCorkell, District Judge of Kanara.

The facts of the case are as follows:—

Ganapaya, Ramaya and Venkapa were three brothers and lived together as an undivided family. Ganapaya died first, leaving his widow, Lakshmimama. After Ganapaya's death, Venkapa sold his undivided moiety of the family property to the plaintiff, Manjappa Hegade, for Rs. 500 under a registered deed of sale, dated the 3rd July, 1886. In November, 1886, Ramaya died, leaving his widow, Lakshmi, a minor. After Ramaya's death, Lakshmimama died, and also Venkapa, unmarried and without issue.

[235] The plaintiff, Manjappa Hegade, sued the defendant Lakshmi to recover possession of the moiety of family property sold to him by Venkapa, and mesne profits.

The defendant Lakshmi, by her guardian, contended (*inter alia*) that the deed of sale sued upon was without consideration, and that as Ramaya

\* Second Appeal No. 706 of 1889.

(1) 11 B.H.C.R. 76.

was the manager of the family, Venkapa had no authority to pass the deed.

The Subordinate Judge allowed the plaintiff's claim.

Against the decree of the Subordinate Judge, the defendant appealed to the District Court, and the District Judge reversing the decree of the Subordinate Judge disallowed the plaintiff's claim.

The District Judge in his judgment observed: "The case of *Udaram Sitaram v. Ranu Panduji* (1) clearly lays down that the purchaser of the undivided interest of a member of a joint Hindu family cannot claim either partition or joint possession of his vendor's interest after the death of his vendor. It has here been contended that that case applies only to succession by survivorship and not to succession by inheritance. I am unable to distinguish the difference. If a man leaves any heirs at all, his estate vests at the moment of death in them. Now, in the present case, admittedly on the death of Venkapa, Lakshmi, the widow of his predeceased undivided brother Ramaya, takes an estate for life, if there are any reversioners, but otherwise an absolute estate. As the widow of the deceased undivided brother, Lakshmi is a member of the undivided family, and, as such, a co-parcener of Venkapa, and must take the estate as much by survivorship as by succession, and, therefore, I am of opinion that this case is one which is governed by the ruling cited above."

Against the decree of the District Court the plaintiff appealed to the High Court.

*Narayan Ganesh Chandavarkar*, for the appellant.

*Shamrav Vithal*, for the respondent.

#### JUDGMENT.

SARGENT, C.J.—The District Judge is wrong in supposing that on Ramaya's death his widow Lakshmi took a life estate. [236] As Ramaya and Venkapa were joint, the entire property passed to the surviving brother Venkapa, subject only to the right of Lakshmi to maintenance. The case of *Udaram Sitaram v. Ranu Panduji* (1) has, therefore, no application to the present one. The plaintiff, who had purchased a moiety of the estate from Venkapa, became entitled, on Venkapa's succession, to the property to have a half share in it, and is equally entitled against Lakshmi, who may perhaps be entitled to succeed to Venkapa as a *gotraja sapinda*.

As the District Judge framed only one issue, we must reverse the decree of the Court below, and send back the case for a fresh decision. Costs of this appeal to abide the result.

*Decree reversed.*

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