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17 B. 687
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us to say that he agrees in the view now expressed, and that in *Hanmapa's* case it was not the intention of the Court to decide the point which has here arisen. The answer to the question put by the Subordinate Judge must be in the affirmative.

Order accordingly.

17 B. 689.

[689] APPELLATE CIVIL.

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

FARDUNJI ASPANDIARJI (*Original Opponent*), Appellant v. NAVAJBAI (*Original Applicant*), Respondent.* [29th September, 1892.]

Letters of administration, grant of—Deceased having no property or fixed place of abode within district—Jurisdiction of the District Judge—S. 240 of the Indian Succession Act (X of 1865).

A District Judge cannot grant letters of administration to a Parsi if the deceased had not at the time of his death a fixed place of abode or any property within his district. See s. 240 of the Indian Succession Act, X of 1865.

APPEAL from an order of J. B. Alcock, District Judge of Surat.

One Aspandiarji died after making a will of his property bequeathing a legacy to his daughter Jaiji, who had possession of part of his estate at Surat. The will was proved and Jaiji received her legacy. Afterwards Navajbai, widow of Mancherji Aspandiarji (son of the testator), brought a suit against Jaiji in the Subordinate Judge's Court at Surat for the administration of Aspandiarji's estate. Jaiji died pending that suit. Navajbai thereupon presented an application to the District Court at Surat under s. 222 of the Indian Succession Act (X of 1865) for the grant to her nominee Thakardas of letters of administration to Jaiji's estate.

The opponent Fardunji Aspandiarji, a brother of Jaiji, contended that the Court had no jurisdiction to grant the application, inasmuch as Jaiji left no property within the jurisdiction of the District Court at Surat, and that she resided at Bombay.

The District Judge of Surat granted the application, observing: "Jaiji had possession of part of Aspandiarji's estate in Surat. She gets nothing under his will except a legacy, which she has received; the will having been proved and the estate administered in Surat. This Court, therefore, has jurisdiction to make an order under s. 222."

The opponent appealed against the order.

Govardhanram M. Tripathi, for the appellant:—The application can only be granted under the provisions of s. 240 of the Indian Succession Act. Jaiji owned no property of her own at [690] Surat, nor was she a resident there. The mere circumstance that the administration suit is going on at Surat, and that Jaiji was in possession of Aspandiarji's property at Surat, could not give to the District Judge the jurisdiction to entertain the application for administration to Jaiji's estate.

Manekshah J. Taleyarkhan, for the respondent.

JUDGMENT.

SARGENT, C.J.—The Court of Surat, in which the suit to administer the estate of Aspandiarji has been brought, had no jurisdiction to grant

* Civil Reference No. 84 of 1892.

administration of Jaiji's estate. Section 222 of Act X of 1865 enables the plaintiff to apply for the issue of letters of administration to his nominee; but the Court, to which such application had to be made, was the Court as determined by s. 240, and as Jaiji had not "a fixed place of abode, nor owned property," within the district of the District Judge of Surat at the time of her death, that Court had no jurisdiction to grant the letters of administration asked for.

We must, therefore, discharge the order appealed from, but without costs.

Order discharged.

17 B. 690 (F.B.).

FULL BENCH.

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

GADADHAR BHAT (*Original Plaintiff*), *Appellant*, v.
CHANDRABHAGABAI (*Original Defendant*), *Respondent*.*

[6th December, 1892.]

Hindu law—Inheritance—Moveable property—Daughter-in-law inheriting moveable property from father-in-law—Estate taken by her in such property—Widow—Widow's estate in moveables—No power to dispose by will of moveables.

Where a son predeceased his father, and the son's widow subsequently succeeds to her father-in-law's property as his heir, she takes the same estate in it as she does in property inherited by her from her husband.

Under the law of Mitakshara a widow has no power to bequeath moveable property inherited by her from her husband.

In the presidency of Bombay, moveable property inherited by a widow from her husband devolves on her death to her husband's heirs.

If the decision of *Damodar v. Purmanandas* (1) is to be regarded as necessarily giving to the heir of a widow on her death such moveable property inherited from her husband as remains undisposed of by her, it must be treated as of no authority.

(F., 28 B. 453=6 Bom. L.R. 460 (462); 8 Ind. Cas. 214 (215)=4 S.L.R. 77; R., 24 B. 192 (204)=1 Bom.L.R. 574; 32 B. 59=9 Bom.L.R. 1305 (1318); 2 Bom. L.R. 888 (890); 10 Bom.L.R. 210 (222); 5 Ind. Cas. 752=6 N.L.R. 46 (47); D., 21 B. 170 (173).]

[691] THIS was a first appeal from the decision of Rao Bahadur Naro Mahadeo Thosar, First Class Subordinate Judge of Ahmednagar.

The plaintiff, Gadhadhur Bhat, sued to recover the property of his paternal uncle Bhatam Bhat Sakharam (see the genealogy given below in the judgment of Jardine, J.), who died in 1881. Bhatam Bhat had a son named Kashinath, who predeceased his father, having died childless in 1878. He left a widow named Vithabai, who on Bhatam's death in 1881 took possession of his property and remained in possession until her death in 1887. On her death her sister, the defendant Chandrabhagabai, took possession, claiming it under the will of Vithabai. The plaintiff now sued for this property, claiming it as the heir of Bhatam.

The Subordinate Judge found that the plaintiff was the heir of Bhatam and that the will of Vithabai was invalid as to the immoveable property, but valid as to the moveable property.

* Appeal No. 34 of 1890.

(1) 7 B. 155.