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.

1892
DEC. 6.
FULL BENCH.
17 B. 690 (F.B.).

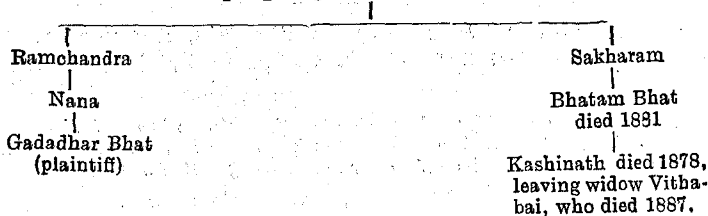
The plaintiff appealed.

In appeal the case came before Jardine and Parsons, JJ., who referred the following question to a Full Bench :—

"Whether under the law of the Mitakshara, Vithabai had power to bequeath to the defendant by her will moveable property inherited by her from her husband."

In referring the case the Judges stated their opinion as follows :—

JARDINE, J.—This appeal is made by the plaintiff from an original decree of the Subordinate Judge of the First Class at Ahmednagar. The plaintiff claimed certain ancestral moveable and immoveable property from the defendant, alleging that he was entitled as heir of Bhatam Bhat. The defendant pleaded title under the will of her sister Vithabai, the deceased widow of Kashinath, the son of Bhatam Bhat, who survived Kashinath. Kashinath seems to have left no issue. The relationships are shown in the following table :—



The Subordinate Judge found that the plaintiff was not united in family with Bhatam Bhat; that on the death of Vithabai he was the proper heir of Bhatam Bhat; that the will purporting to be made by Vithabai was proved; that it was invalid as regards the devise of the immoveable and valid as regards the bequest of the moveable property.

The only question argued before us, in appeal, is one of law, namely, whether Vithabai had power to bequeath the moveable property, which includes some bonds that have come into the defendant's possession.

The reasons for this part of his decision are recorded by the Subordinate Judge as follows :—"Bhatam Bhat had only a money interest in the property taken in mortgage. So what he left to his daughter-in-law, Vithabai, was simply a money interest,—that is, so much money converted into a mortgage-right shape. So these mortgage-bonds as well as the other moveable property, consisting of ornaments and simple money bonds, were a sort of property which I regard Vithabai as competent to devise in favour of the defendant. If she had disposed of this property in her lifetime, I think no one could have questioned her competency to do so. If this was the case in her lifetime, I think the same may be said to hold good after her death."

Mr. Jardine contended for the appellant that moveable property inherited by a widow from her husband's family is not *stridhan*, and, therefore, is not her absolute property to dispose of as she pleases by will. Mr. Branson argued the contrary of these propositions on behalf of the respondent. In dealing with the authorities, some of which are collected in the judgment of [693] Mr. Justice Scott in *Damodar* v. *Purmanandas* (1), Mr. Jardine conceded that moveable property taken by a widow under *gift or will* of the husband is *stridhan*, and at the widow's disposal, and

(1) 7 B. 155.

that the above decision was right as regards the property in suit before Mr. Justice Scott, which had come to the widow by bequest of her husband, but he contended that the learned Judge went too far in the *obiter* remark at p. 164, that "the *resume* of recent decisions shows a consensus of authority deciding that a widow may deal absolutely with moveables *inherited* from her husband."

Mr. Jardine began by citing the authority of Mr. Mayne, s. 370, Mayne's Hindu Law (5th Ed.), which quotes three cases out of 1 Borradaile—*Chooneelal* v. *Jussoo* (1), *Dhoolubh* v. *Jeevee*(2), *Umroot* v. *Kalyandas* (3)—and *Venkata Rama* v. *Venkata Suriya* (4) for the following statement:—

"A married woman may make a will of her *stridhana* or any other property which is absolutely at her own disposal. But she cannot devise property inherited from males, since her interest in it ceases at her death."

Mr. Mayne's views are more fully stated in chap. 20 about Woman's Estate where the definition of *stridhan* in the Mitakshara is fully discussed. In s. 567 he comes to the power of a widow over moveables, and in s. 598 observes, in conclusion, as follows:—

"Whenever the question arises for final decision, it will be well to bear in mind the observations of the Judicial Committee in *Bhugwandeen* v. *Myna Baee* (5). These show that the texts which authorize a woman to dispose absolutely of moveable property *given* to her by her husband are different from those which control her disposition of property *inherited*, and that she may probably have larger powers over the former than over the latter. Also, that reliance can no longer be placed upon the much canvassed text of the Mitakshara (ii 11. s. 2), as raising any [694] analogy between property inherited by a woman and her *stridhanum*, as regards her right to dispose of it."

The rulings referred to are those mentioned in s. 567 at p. 706, *Thakoor* v. *Rai Baluk Ram* (6), *Bhugwandeen* v. *Myna Baee* (5), *Collector of Masulipatam* v. *Cavaly Vencata* (7), *Keerut* v. *Koolahul* (8), To the above I would add *Muttu Vaduganadha* v. *Dora Singa* (9). See the passage at pp. 108, 109, quoted in *Jankibai* v. *Sundra* (10).

Mr. Branson, however, relies on the views expressed in *Vijiarangam* v. *Lakshuman*(11) by Mr. Justice West that all property acquired by a woman by inheritance is classed by the Mitakshara as *stridhan*. On this subject I will presently refer to the discussion by the Full Bench in *Bhagirthibai* v. *Kahnujirav* (12) and the interpretation of that decision in *Jankibai* v. *Sundra*. However, it does not follow, as a consequence from the property being *stridhan*, that the widow has unrestricted power to alienate. At p. 266 of the report of *Vijiarangam's* case, West, J., says: "A widow may dispose as she pleases of property as to which this power is expressly conferred, but to recognize inherited property as part of her *stridhan* by no means involves the consequence that she can alien it without good reason." See West and Buhler, 317 to 322, for this discussion and cf. s. 584, Mayne's Hindu Law. The same reasoning was also applied to the devolution, on the death of the widow, of moveables inherited from

(1) 1 Bor. 60. (2) 1 Bor. 75. (3) 1 Bor. 314.
(4) 2 M. 333. P.C. (5) 11 M.I.A. 487,510 (514)=9 Suth. W.R. (P.C.) 23.
(6) 11 M. I.A. 139 (173). (7) 8 M.I. A. 529.
(8) 2 M. I. A. 331. (9) 8 I.A. 99, 108 (109)=3 M. 290.
(10) 14 B. 612 (621). (11) 8 B H.C.R. O.C.J. 244 (260, 271) (12) 11 B. 285.

1892
DEC. 6.

FULL BENCH.

17 B. 690 (F.B.).

the husband and treated as *stridhan* in *Harilal* v. *Pranvalavdas* (1) by Sargent, C.J.

The earlier cases in Borradaile's Reports are not of much importance as authorities; they are reviewed in *Bhagirthibai's* case (2). In the case of *Pranjivandas* v. *Devkuvarbai*.(3), which arose in the Island of Bombay, Sir M. Sause, Chief Justice of the Supreme Court, comes to the following conclusion:—"On the [695] whole, I think the spirit and practice of Hindu law, as recognized in Western India, will be best construed by treating the widow as having uncontrolled power over the moveable estate." In *Vinayak* v. *Lakshmibai* (4) that Chief Justice says the above decision was passed after lengthened consideration of all the accessible authorities, and that the doctrine about daughters was mainly based on the authority of the Mayukha. The case of *Bechar* v. *Bai Lakshmi* (5) was from Gujarat. It came before Forbes, Erskine and Westropp, JJ. They were "of opinion that the Hindu law existing on this side of India gives a widow absolute power over the moveable property of her deceased husband which has been inherited by her." In *Lakshmibai* v. *Ganpat* (6), Arnould, J., decided that the widows of separate Hindus who died without male issue are entitled as heirs, *absolutely* to their husbands' shares of the moveable property. The case arose in this island.

The above decisions are those in which the present question has been actually decided in the Courts of this Presidency. In other cases there are *dicta* on which Mr. Branson relies. In *Balvantrav* v. *Purshotam* (7), where the Full Bench decided a question of limitation, they say: "The widow in this Presidency takes a limited estate only in the immoveable property of her childless husband, or son, but she takes his moveable estate absolutely—*Bechar* v. *Bai Lakshmi* (5); *Vinayak* v. *Lakshmibai* (4), *Pranjivandas* v. *Devkuvarbai* (3); *Chandrabhagabai* v. *Kashinath* (8). In the case of *Mayaram* v. *Motiram* (9), immoveable property only was in suit. So in *Tuljaram* v. *Mathuradas* (10), the question before the Court related only to immoveable property received by a widow in gift. The following passage in Westropp, C. J.'s judgment at p. 670 seems not to have been required for the decision of the case:—"Here in this Presidency, the widow, who as such takes the property of her husband dying without leaving male issue and separated from his kinsmen, is, except for certain limited purposes, restrained from alienating such portion [696] of that property as is immoveable. In it she has only an estate *durante viduitate*, but she is entitled to his moveable estate absolutely—*Pranjivandas* v. *Devkuvarbai* (3); Mayukha, Ch. IV, s. 8, pl. 3, 4; see also 8 Bom. H. C. Rep. at p. 156, O. C.J.; 4 Bom. H.C. Rep. at p. 163, O.C.J. and 6 Bom. H.C. Rep. p. 1; Act XV of 1856, s. 2."

The next case is that of *Damodar* v. *Purmanandas* (11) decided by Scott, J., in 1883. The *dictum* already quoted is *obiter* as regards *inherited* moveables. The learned Judge expressly says that the question of law before him related to property left to the widow by her husdand's will. The following authorities which he cites deal with wills and gifts;—*Koonjbehari Dhur* v. *Premchand* (12); *Venkata Rama* v. *Venkata Suriya* (13);

(1) 16 B. 229.
(2) 11 B. 285 (298).
(3) 1 B.H. C. R. O. C. J. 130.
(4) 1 B.H. C. R. O. C. J. 117 (124).
(5) 1 B. H. C. R. A. C. J. 56.
(6) 4 B. H. C. R. O. C. J. 162.
(7) 9 B. H. C. R. 99 (111).
(8) 2 B. H. C. R. 323.
(9) 2 B.H. C. R. 313.
(10) 5 B. 662.
(11) 7 B. 155.
(12) 5 C. 684.
(13) 1 M. 281, and in the Privy Council on appeal 2 M. 333.

Vyavahara Mayukha, Ch. IV, s. 10, pl. 9. The following, which he also cites, relate to property inherited, and the last of the three is *obiter*—*Bechar* v. *Bai Lakshimi* (1), *Pranjivandas* v. *Devkuarbai* (2), and *Balvanrav* v. *Purshotam* (3). The text of Katyayana, which Scott, J., restricts to immoveables "certainly includes both moveable and immoveable property" according to the Privy Council in *Bhugwandeen's* case (4) and has since been interpreted to include moveables by Turner, C. J., and Muttusami, J., in *Narasimha* v. *Venkatadri* (5), who at p. 292 also observe that "in Vyavahara Mayukha, Ch. IV, s. 8, sloka 4, Katyayana's text is expressly stated as applying to moveable and immoveable property." Mr. Justice Scott also quotes some decisions of the Privy Council. To meet Mr. Mayne's argument in s. 598, he remarks that the Judicial Committee strictly limited their decision in *Bhugwandeen's* case to the cases governed by the Benares School, and he quotes the well-known remark in *Thakoor* v. *Rai Baluk Ram* (6), that "the result of the authorities seems to be, that although according to the law of the Western Schools the widow may have the power of disposing of moveable property inherited from her husband, which she has [697] not under the law of Bengal, she is by the one law, as by the other, restricted from alienating any immoveable property which she has so inherited; and that on her death the immoveable property, and the moveable, if she has not otherwise disposed of it, pass to the next heirs of her husband."

This quotation fitly leads to a discussion of the Privy Council cases to which I now turn . At p. 174 of the same Report, their Lordships say generally that there are many cases to "show that, according to the Benares and other Western Schools, the power of a widow over property inherited from her husband is limited, and that on her death it passes to his heirs." In interpreting the Mitakshara, Ch. II, s. 11, pl. 2, their Lordships exclude the widow's inherited property from peculium or *stridhan* proper. This judgment and the two cases mentioned in it and *Bhugwandeen's* case are the basis of the statement of Mr. Mayne, which, as regards immoveables, I take to be correct (s. 567) that it is thoroughly settled that a widow takes only a restricted estate, and that at her death it passes to her husband's heirs.

In *Bhugwandeen's* case (4) decided in 1867, the Judicial Committee interpret the meaning of the word *stridhan* and define the widow's power of disposal. After alluding to the Mitakshara and discussing the texts of Nareda and Katyayana found in Colebrooke's Digest, Texts 476—477, they say that "the preponderance of authority is certainly in favour of the proposition that, whether the widow has or has not the power to dispose of inherited moveables, they as well as the immoveable property, if not disposed of, pass on her death to the next heirs of the husband." At p. 512 it is remarked that "both the Vivada Chintamani and the Mayukha confine *stridhan* within the definitions of Manu and Katyayana. They exclude property inherited and the other acquisitions which are comprehended in the last clause of the paragraph of the Mitakshara, but are excluded by Sir W. Macnaghten." At p. 513 the opinion is expressed that "the reasons for the restrictions which the Hindu law imposes on the widow's dominion over her inheritance from her husband, whether

(1) 1 B. H. C. R. A. C. J. 56.
(2) 1 B.H. C.R. O. C. J. 130.
(3) 9 B. H. C. R. 99 (111).
(4) 11 M.I.A. 487 (511).
(5) 8 M. 290.
(6) 11 M.I.A. 139 (175).

1892 DEC. 6. — FULL BENCH. — 17 B. 690 (F.B.).

founded on her natural dependence on others, her duty to lead [698] an ascetic life, or on the impolicy of allowing the wealth of one family to pass to another, are as applicable to personal property, invested so as to yield an income, as they are to land. The more ancient texts importing the restriction are general. It lies on those who assert that moveable property is not subject to the restriction to establish that exception to the generality of the rule." These remarks were apposite to the decision as regards the moveable property in suit.

There are some decisions of the Privy Council which are not noticed by Mr. Justice Scott. In *Chotay Lall* v. *Chunnoo Lall* (1), the Bombay cases were reviewed by the Judges at Calcutta, and the different views held by Sir J. Arnould in *Bhaskar* v. *Mahadev* (2) and by Mr. Justice West in *Vijiarangam's* case (3), which is treated as decided on the Mayukha, are considered. At p. 31 the Privy Council say of the daughter's estate: "No doubt in the Courts of Bombay there have been rulings and *dicta* in favour of the view that she takes the entire property. Their Lordships do not think it necessary, especially after their own decisions as to widows' estates, to go into an examination of the Indian cases."

Muttu Vaduganadha's case (4) related, like the last, to the nature of a daughter's estate inherited from her father. The Privy Council deal with the passage of the Mitakshara about *stridhan*, Ch. II, s. 11, pl. 2, and say, p. 108, 'it is impossible to construe it as conferring upon a woman taking by inheritance from a male a *stridhan* estate transmissible to her own heirs.' They say of the cases of *Thakoor Deyhee*, *Bhugwandeen*, and *Chotay Lall*, that all these cases were governed by the Mitakshara law. *Bhugwandeen's* case is treated by the Calcutta Judges as authority that a Hindu widow under that law has no power to alienate the moveable estate inherited from her husband, to the prejudice of his heirs—*Sheolochun Singh* v. *Saheb Singh* (5).

In discussing *Chotay Lall's* and *Muttu Vaduganadha's* cases in *Jankibai's* case (6) I remarked that they were not Bombay cases, and that their Lordships interpreted the Mitakshara without [699] using the Mayukha, as it may be assumed they would if they had been declaring the law of this Presidency. In the present judgment I have pointed out that in *Bhugwandeen's* case they did resort to the Mayukha as well as to Katyayana and Nareda. Mr. Justice Scott in *Damodar's* case says he follows the Mayukha and he cites Ch. IV, s. 10, pl. 9, which relates to gifts only. What he cites is a text of Nareda, but he does not notice the comment of the Privy Council on the very same text in *Bhugwandeen's* case (7), which confines that text to gifts and expressly excludes inheritance.

The present case comes from Ahmednagar, where the law is based on the Mitakshara, and the Mayukha may be used in construing the Mitakshara, though the Mayukha has not the special and almost paramount authority it has acquired in Gujarat—*Bhagirthibai's* case (8). The Mayukha is only a secondary authority in the Maratha country—West and Buhler, p. 10. It serves to illustrate and supplement the Mitakshara there. But it may be followed so far only as its doctrines do not stand in opposition to its express precepts or to the general principles of the Mitakshara —*Jankibai's* case. This consideration diminishes the weight of *Pranjivan* v. *Devkuvarbai* and *Damodar* v. *Purmanandas* as well as of cases decided on

(1) 6 I.A. 15. (2) 6 B.H.C.R. O.C.J. 1. (3) 8 B.H.C.R. O.C. J. 244.
(4) 8 I. A. 99. (5) 14 C. 387 (390). (6) 14 B. 612 (622).
(7) 11 M.I.A. 487 (510 and 511). (8) 11 B. 285 (294).

the law of the Island of Bombay and other regions where the Mayukha has special authority. It also detracts from the value of *dicta* of distinguished Judges when based on the Mayukha, as in *Tuljaram* v. *Mathuradas.* The decision in *Bhugwandeen's* case, which Scott, J., confines to the Benares School, is really an interpretation of the Mitakshara after some consideration of the Mayukha, and has been applied by the Privy Council to cases arising in the Madras Presidency.

It becomes, therefore, an important question whether the supposed weight of authority is sufficient to require this Court to adhere to the Bombay decisions rather than follow those of the Privy Council as regards cases governed, as this is, by the Mitakshara. Now, of the three cases in which the Supreme Court and the High Court have actually decided the question before us, two arose in this island and the other in Broach. The *dicta* in the [700] three other cases where the question was not before the Court, *viz., Balvantrav* v. *Purshotam, Tuljaram* v. *Mathuradas*, and *Damodar* v. *Purmanandas*, are substantially based on these Mayukha cases. *Vijiarangam's* case was decided on the Mayukha, and all that West, J., said therein about the Mitakshara is treated as *obiter* by Couch, C. J., and Ainslie, J., in *Chotay Lall's* case, and as like *Devkuvarbai's* case, a decision on the Mayukha. Sir R. Couch treats the opinion expressed by West, J., as opposed to that of Sir J. Arnoald and contrary to the decision of the Privy Council in *Bhugwandeen's* case, and adds: " He argues, as I understand him, that this case was not rightly decided." I lay stress on these words of so eminent a Judge as Sir R. Couch, because they show that he was not prepared to accept the *dicta* of Judges however learned, when they conflicted with the interpretations of the Mitakshara by the Privy Council. In *Jankibai's* case, I have expressed my belief that the remark of the Privy Council at p. 32 of the report of *Chotay Lall's* case referred to *Vijiarangam's* case, namely, that the Bombay case most relied upon was governed by the law of the Mayukha. As pointed out in *Jankibai's* case (p. 618), Sargent, C.J., in *Dalpat* v. *Bhagvan* (1) treats the decision on the Mayukha as to the *stridhan* including inherited property in *Vijiaranagam's* case as reopened by the decision of the Privy Council in *Muttu Vaduganadha's* case. See Mayne's Hindu Law, s. 576. The above observations of the Judicial Committee, by whose decisions we are bound, confining one of the most carefully considered Bombay cases to the Mayukha, seem to me to neutralize to a large extent those of the Judges of this Court who have confined the decision in *Bhugwandeen's* case to the Benares School. Doubtless we must give due weight to the rule *stare decisis*, but the question remains to which ?—those of the Privy Council directly interpreting the Mitakshara, or those of this Court applying the peculiar law of the Mayukha? Whether there has been a long course of decisions operating outside this island and the other regions governed by the Mayukha, I am unable to pronounce. None have been shown to us. Those mentioned in the two digests of unreported decisions appear to relate to immoveables. *Bai Jamna* [701] v. *Bhaishankar*(2), decided by Birdwood and Parsons, JJ., quotes *Damodar* v. *Purmanandas* with approval as stating the law about inherited moveables disposed of during the widow's lifetime, but does not apply that doctrine to the widow's bequest by will of inherited moveables, and on the contrary follows *Thakoor Deyhee's* and *Bhugwandeen's* cases on that point.

(1) 9 B. 301 (303). (2) 16 B. 233.

1892
DEC. 6.
FULL
BENCH.
17 B. 690
(F.B.).

The three rulings, as already remarked, are under the Mayukha Law; the three *dicta* are substantially based on Mayukha cases. So was *Vijiarangam's* case; and there Mr. Justice West says the consequence does not follow, from his view of the extent of the term *stridhan*, that the widow has unrestrained power of disposal, p. 269. Thus he limits the words "absolute estate."

It was after the decision in *Dalpat* v. *Bhagvan* in this Court and of *Chotay Lall's* and *Muttu Vaduganadhas'* by the Privy Council that *Bhagirthibai* v. *Kahnujirav*(1) came before a Full Bench of this Court consisting of Sargent, C.J., West and Birdwood, JJ. In *Jankibai's* case, where I sat with Birdwood, J., I gave my reasons, p. 623, for treating the decision as substantially based on the Mitakshara, the Mayukha being used where it does not conflict as a secondary authority. The Full Bench consider the Privy Council rulings. At p. 617, I personally express the opinion that we must take the decision "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." At p. 620 I quote this sentence from the Full Bench judgment—

"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." Then I add: "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, page 302."

[702] If I am right in this remark, the question whether the property inherited by Kashinath's widow in the case before us is *stridhan* in the narrow and technical sense as in the Mayukha, Ch. IV, s. 10, pl. 1, 2, or in its etymological and larger sense as in the Mitakshara, Ch. II, s. 11, pl. 3 and 4, is of less consequence in dealing with the Full Bench decision. So far as the present question is analogous, the first requirement is to show that the widow took an "absolute estate." That being proved, the Bench would have held it to be *stridhan*; and I think Mr. Branson's argument is inverted and is opposed to authority when he contends that if the property is *stridhan* then the widow has unrestricted power of disposal. It is true that the Full Bench judgment discusses with approval (pp. 293—311) *Devkuvarbai's* case as to power to alienate. But as I understand the judgment, this point, *viz.*, the widow's power to alienate, was not the question referred or decided. On considering the reference and arguments, as well as the language of the judgment, I come at length to the opinion that the question whether a daughter inheriting from her parents takes an absolute estate, means whether it descends to her heirs, and not to those of her father. At p. 309 the learned Judge says: "The completeness of a woman's estate in property taken by inheritance does not necessarily involve complete independence in dealing with it. The Mitakshara is careful to demonstrate that dependence is as consistent with full ownership in the case of a woman as of a child; and it seems likely that Vijnaneshvara looked to this dependence as a safeguard for the enlarged estate which he assigned to women." This view of Mr. Justice West's language is that which consists with what he said in *Vijiarangam's* case. At p. 310 he says that "the

(1) 11 B. 285.

subjection of a woman to restrictions on alienation is quite consistent with full ownership in her." I may here observe that Dr. Jolly, while affirming West J.'s view as to what the Mitakshara includes in *stridhan* as against Mr. Mayne (Tagore Law Lectures, 1883, p. 243), concludes his history of Female Property with the statement that the Mitakshara School has, by putting restrictions on dominion, removed the consequences of that identification of *stridhan* with woman's property in general. He also points out that there is [703] no authority for observing in Bombay and South India the distinction found in the Law of Mithila between moveable and immoveable property inherited by a widow. He discusses the Mayukha, pp. 252—259, and says: "It may be confidently asserted, therefore, that there is no more reason for observing this distinction in regard to property inherited from males in Bombay and South India, where this point seems to be still open to question, than in Bengal and Benares, where the non-existence of such a distinction as this has long been settled by authority." The above impairs Scott, J.'s remark, so far as it relates to the question of inherited moveables, about the commentators being all of one opinion. So also do the decisions in Bengal and the more recent in Madras. *Narasinha* v. *Venkatadri* (1) decided in 1884 is an interpretation of the Mitakshara, as to moveables inherited from a husband, by the light of the Mayukha and the southern authorities. It does not, however, notice the Bombay rulings and *dicta*. The learned Judges say: "The Mitakshara doctrine seems to be that the widow has a complete vested ownership, as contra-distinguished from a mere right to use, though her power over it to make a gift or sale at her pleasure is restricted by express texts. Hence those who considered the text of Katyayana to be applicable only to immoveable property doubted whether the widow was precluded from alienating moveable property. Having regard, however, to the extent to which the widow's power of disposition is treated, as restricted in the leading commentaries in the south, there appears to be little or no difference in the result. Hence the Judicial Committee observed in the *Collector of Masulipatam* v. *Kavali* that the restrictions on the widow's power of alienation are of the very substance of her heritage. Assuming for a moment that she has a large power over moveable than over immoveable property, it can by no means be larger than that possessed by the father of a Hindu family under the text of Yajnavalkya cited in Mitakshara, Ch. I, s. 1, sl. 27. It is observed by Mr. Mayne in s. 229 that the power must generally be taken to be limited to such necessary or suitable purposes as would come within the ordinary power of the head of a household. We should prefer to say [704] that the nature of moveable property being such that in many cases conversion is essential to its enjoyment, the widow is not precluded from converting it, but must preserve the capital, unless the expenditure of it is necessitated by the insufficiency of the income to provide for her maintenance, subject, nevertheless, to a power to dispose of a moderate portion for works of piety"—*Narasinha* v. *Venkatadri* (1).

It may be noted, in passing, that the Privy Council decision in *Lakshman Dada Naik's* case (2) and *Gurivi Reddi* v. *Chinnama* (3) were cited to us by Mr. Apte for the appellant as to the father's power to alienate by will.

The present case has been argued substantially on the judicial authorities, and I do not think it necessary now to enter on examination of the texts of Hindu law. As regards the authorities, it appears to me

(1) 8 M. 290. (2) 5 B. 48. (3) 7 M. 93.

1892 DEC. 6.

FULL BENCH.

17 B. 690 (F.B.).

that the solution of the question of the widow's power of alienation does not depend so much on the definitions of *stridhan* as on the reasons of the Hindu law, restricting the widow's dominion. These are given by the Privy Council in *Bhugwandeen's* case and elsewhere. The Privy Council rulings are based on the Mitakshara. The three Bombay rulings are based on the Mayukha. They deal more with the definition of *stridhan* and less with the restrictions on dominion. The various *dicta* are supported substantially by these rulings on the Mayukha, and though most of these *dicta* on the point before us are deliberate and well-considered opinions, yet they as well as the rulings have been questioned in other Courts. I do not consider the question about inherited moveables to be so firmly settled by the Bombay decisions as to require us to follow the current. It has always been met by the opposing current of Privy Council decisions. As pointed out by Scoble *arguendo* in *Vijiarangam's* case, some of the authorities are remarks of a single Judge. The case of *Narasinha* v. *Venkatadri* (1) and Dr. Jolly's lectures have seen the light since Mr. Justice Scott decided *Damodar's* case. The books show that the question has always been one in debate. I do not think it is touched by the Full Bench decision in *Bhagirthibai's* [705] case, which I may remark was not quoted before us. The inclination of my own views is to follow the Privy Council in *Bhugwandeen's* case. I say this on the assumption that, in cases falling under the Mitakshara law, no fixed doctrine has been established on the faith of which property has passed, and a practice grounded. The question is certainly one of general importance, and considering the opinions expressed and the rulings passed in this Court and the Supreme Court, some of them by Full Benches, in favour of the widow's power to dispose as she pleases of moveable property inherited from the husband, I am now of opinion that we should now refer to a Full Bench the following question:—

Whether, under the law of the Mitakshara, Vithabai had power to bequeath to the defendant by her will moveable property inherited by her from her husband?

PARSONS, J.—I concur in the proposed reference. Assuming that Vithabai had power to dispose of the moveable estate in suit in her life-time, it does not, I think, follow that she could dispose of it by will. In my opinion, she could not, for at the moment of her death the estate would vest in the heirs of her husband, and no estate of hers would remain to pass under the will. In the case of *Bai Jamna* v. *Bhaishankar* (2), Birdwood, J., and myself held that "there is a difference between property inherited by a woman from her husband and property acquired by her as *stridhan*. Both may be called *stridhan*, but that only can legally be held to be her personal property which is such at the time of her death, and passes as such to her own heirs." As, however, there are decisions of this Court now brought to our notice which imply the power to a widow to dispose by will of such property, the point is one that ought to be determined finally by a Full Bench.

The case being thus referred, it came on for argument before a Full Bench consisting of Sargent, C. J., and Parsons and Telang, JJ.

Jardine (with *Mahadev Chimnaji Apte*) for the appellant (plaintiff):—Under the Mitakshera, which is the paramount authority in the Deccan, a Hindu widow has no power to alienate [706] moveable property which she has inherited from her husband. Even a Hindu father,

(1) 8 M. 280. (2) P.J. (1891), 77=16 B. 233.

whose rights under the Hindu law are more extensive than those of a widow who merely gets a life estate, is not entitled to dipose of all ancestral moveables—*Lakshman Dada Naik* v. *Ramchandra Dada Naik* (1). Though a widow may alienate moveables inherited by her from her husband or his relatives during her life-time, she cannot do so by will: her power of disposition comes to an end at her death. Property nherited by a widow in her husband's family is not her *stridhan*—Mayne's Hindu Law (4th Ed.,) s. 370: *Choonilal Jussoo* (2); *Dhoolubh* v. *Jeevee* (3); *Umroot* v. *Kalyandas* (4); *Venkata Rama* v. *Venkata Suria* (5); *Narasinha* v. *Venkatadri* (6); *Bhugwandeen* v. *Myna Baee* (7); *Sheolochan Singh* v. *Saheb Singh* (8); *Harilal* v. *Pranvalavdas* (9). See also *Isri Dut Koer* v. *Hansbutti Koerain* (10); *Gurivi Reddi* v. *Chinnamma* (11); *Mussumat Thakoor Deyhee* v. *Rai Baluk Ram* (12) and *Chotay Lall* v. *Chunnoo Lall* (13).

Gangaram B. Rele, for the respondent (defendant):—In Western India a widow has power to alienate moveable property inherited by her in her husband's family—*Bhugwandeen* v. *Myna Baee* (7). It has been an established rule that a Hindu widow can dispose of moveables during her life time, and such disposition cannot be impugned after her death. If a widow has got absolute power during her life time, why should she not have the power to dispose away by will? To say that she cannot do so by will, though she is the absolute owner during life time, would be to restrict her power, and the two positions would be conflicting. There is no direct ruling that a widow can devise away by will moveable property inherited from her husband, but such disposition would seem to be merely an exercise of her acknowledged absolute right, and it is reasonable to infer that she has the power which is consistent with that right—*Bechar Bhagvan* [707] v. *Bai Lakshmi*(14); *Vinayak Anandrav* v. *Lakshimibai* (15); *Pranjivandas* v. *Devkuvarbai* (16); *Mayaram* v. *Motiram* (17); *Chandra Bhagabai* v. *Kashinath* (18); *Lakshimibai* v. *Ganpat Moroba* (19); *Bhaskar Trimbak* v. *Mahadeo Ramji*(20); *Vijiarangam* v. *Lakshman*(21); *Balvantrao* v. *Purshotam* (22); *Tuljaram* v. *Mathuradas* (23); *Damodar* v. *Parmanandas* (24); *Bhagirathibai* v. *Kanhujirao* (25); *Harilal* v. *Pranvalavdas* (9); West and Buhler, pp. 312, 314, 317.

JUDGMENT.

SARGENT, C. J.—As Kashinath predeceased his father, Bhatam Bhat, Vitha's title to succeed was as daughter-in-law to Bhatam Bhat, and, as she was introduced into the family by marriage, she could not, on any rational principle, take a different estate from that to which she would have succeeded had her husband survived him. See the remarks of Westropp, C. J., in *Tuljaram Morarji* v. *Mathuradas and others* (23). It becomes, therefore, necessary to consider what is the estate a widow takes in the moveable property which she inherits from her husband.

(1) 5 B. 48. (2) 1 Bor. 60. (3) 1 Bar. 75.
(4) 1 Bar. 314. (5) 2 M.P.C. 333. (6) 8 M. 290.
(7) 11 M.I.A. 487. (510.) (8) 14 C. 397. (9) 16 B. 229.
(10) 10 C. 324. (11) 7 M. 93. (12) 11 M.I.A. 139.
(13) 6 I. A. 15. (14) 1 B.H.C.R.A.C.J. 56.
(15) 1 B.H.C.R.A.C.J. 117. (16) 1 B.H.C.R.A.C.J. 130. (17) 2 B.H.C.R.A.C.J. 313.
(18) 2 B.H.C.R.A.C.J. 323. (19) 4 B. H. C. R. O. C.J. 150.
(20) I.B.H.C.R. O.C.J. 1. (21) 8 B. H. C. R. O. C. J. 244.
(22) 9 B. H. C. R. 99. (23) 5 B. 662 (670). (24) 7 B. 155.
(25) 11 B. 285.

1892
DEC. 6.
—
FULL
BENCH.
—
17 B. 690
(F.B.).

Before proceeding to consider the authorities in this Court, it will be convenient to refer to certain important judgments of the Privy Council on the subject.

In *Bhugwandeen Doobey* v. *Myna Baee* (1), the question was (see p. 495), whether, according to the law of the *Benares* School, a Hindu widow is competent to dispose, by will or deed of gift, of either moveable or immoveable property, inherited from the husband to the prejudice of her next heirs—and their Lordships, after referring to the decisions in the High Courts of Madras and Bombay, in which a distinction was said to have been drawn between moveable and immoveable property and pointing out that the authorities upon which that distinction is based were not accepted at Benares, proceed to discuss the law, as they say, "independently of those decisions." and arrive at the conclusion that such a distinction was not tenable, and that the widow's [708] "power of disposition over both moveable and immoveable property is limited to certain purposes, and on her death both pass to the next heirs of her husband."

More recently in *Mutta Vaduganatha Tevar* v. *Dorasinga Tevar* (2), where the question was as to the estate of a daughter, the Privy Council after referring to *Bhugwandeen Doobey* v. *Myna Baee* (1), broadly lay it down as settled that "as regards *both moveable and immoveable* property, a woman, taking by inheritance from a male, takes only a restricted interest which, on her death, devolves on the heir of the last male owner." It is plain, however, as shown by their Lordships' remarks in the second paragraph of their judgment at p. 109, that this decision was based on the Mitakshara as applicable to Benares, and that they did not intend to shut out the possible contention that such a construction of the Mitakshara was not applicable to other parts of India, and they proceed to remark that, as regards the Carnatic, where the case before them arose, the other authorities in the Carnatic besides the Mitakshara, *viz.*, the Smriti Chandrika and Daya Vibhaga, afford no reason for holding that "the root of the title was to be found in the woman and not in her father." This examination of the above important judgment of the Privy Council shows clearly, we think, that their Lordships considered that the law as to the nature of the widow's estate in the property inherited from her husband might not only be different in the Benares and other Western Schools from what it is in Bengal, but that the law might also differ in the Benares and Western Schools according as the Mitakshara, which was, for the most part, the principal authority in those schools, might receive different constructions by being read by the light of the other authorities in those schools in conjunction with local usage and custom. This conclusion from the Privy Council authorities is developed more at length in the judgment in *Bhagirthibai* v. *Kahnujirav* (3).

Passing, then, to the consideration of the Bombay authorities on the subject, we find it laid down as far back as 1859 by Sir Matthew Sausse in *Pranjivandas* v. *Devkuvarbai* (4), that "according to the spirit and practice of Hindu law, as recognized [709] in Western India, the widow has an uncontrolled power over the moveable estate, but has nothing more than a life estate in the immoveable estate." In 1863, Forbes, Erskine and Westropp, JJ., in *Bechar* v. *Bai Lakshmi* (5), also held that "the Hindu law on this side of India gives a widow absolute power over the moveable property of her deceased husband which has been inherited

(1) 11 M. I. A. 487 (507). (2) 8 I. A. 99. (3) 11 B. 285 (292).
(4) 1 B.H.C.R. 130. (5) 1 B. H. C. R. 56.

by her, but no power to alienate immoveable property, except under certain circumstances."

Since these decisions, the question as to the estate of the widow in moveable property inherited from her husband would not appear to have called for judicial decision in this Presidency. However, in the judgments delivered in *Lakshmibai* v. *Ganpat Moroba* (1), *Lalchand Ramdayal* v. *Gumtibai* and *Ghela Pema* v. *Gumtibai* (2) and *Tuljaram Morarji* v. *Mathuradas and others* (3) we find Sir M. Westropp stating the law to be well settled that the widow inherits "an absolute interest" in the moveables. It is difficult to read this statement of the law otherwise than as meaning that the widow took the moveables as her own property in the largest sense of that expression, and indeed in *Morarji Gokuldas* v. *Parvatibai* (4) it was assumed that the widow could make a valid will of the moveable property of her husband, the only disputed questions in that case being whether she could inherit owing to her blindness and whether her will was established. However, in *Mussumat Thakoor Deyhee* v. *Rai Baluk Ram* (5) the Privy Council had already expressed the opinion that the result of the authorities seemed to be that although, according to the law of the *Western Schools*, the widow might have a power of disposing of *moveable* property inherited from her husband which she has not under the Bengal law, she is by the one law, as by the other, restricted from alienating any *immoveable* property, and that on her death the immoveable property and the moveable, if she has not otherwise disposed of it, pass to the next heirs of her husband. And again in *Bhugwandeen Doobey* v. *Myna Baee* (6), after referring to the Bombay **[710]** cases in 1 Bom. H. C. Rep., their Lordships say: "The preponderance of authority is certainly in favour of the proposition that, whether the widow has or has not the power to dispose of inherited moveables, they, as well as the immoveable property, if not disposed of, pass on her death to the next heirs of her husband." In *Jaikisondas Gopaldas* v. *Harkisondas Hullochandas and another* (7), Mr. Justice Green states this to be settled law on the authority of the above statements in 11 M. I. A. at pp. 139 and 487, and of those also in *Vijiarangam* v. *Lakshman* (8); and the above view of the law as regards the devolution of the moveable property on the widow's death was also followed by Sargent, C. J., and Nanabhai, J., in *Harilal Harjivandas* v. *Pranvalabdas Parbhudas* (9) in a case from Ahmedabad, and again by Birdwood and Parsons, JJ., in *Bai Jamna* v. *Bhaishankar* (10).

There is, doubtless, great difficulty in reconciling the views which, the above authorities show, have prevailed in this Court as to the absolute estate of the widow in the moveable property and the devolution of that estate on the death of the widow—a difficulty which cannot be got over by drawing a distinction between the Mitakshara when construed by itself and the same authority when construed by the light of the Mayukha, as both of these authorities treat woman's property as including other property than her technical *stridhan*, and both leave the question—whether that "other property" includes property inherited by a widow from her husband—in precisely the same state for decision as may be seen by comparing Ch. IV, s. 8, paras. 1 and 2, of the Mayukha,

(1) 4 B.H.C.R. O.C.J. 150 (163).
(2) 8 B.H.C.R. O.C.J. 140 (156).
(3) 5 B. 662 (670).
(4) 1 B. 177.
(5) 11 M.I.A. 139 (175).
(6) 11 M. I. A. 487 (511, 512).
(7) 2 B. 9 (12).
(8) 8 B.H.C.R. 244.
(9) 16 B. 229 (232).
(10) 16 B. 233 (237).

1892
DEC. 6.
FULL BENCH.
17 B. 690 (F.B.).

with Ch. II, s. I, para. 39, of the Mitakshara. The Mayukha cannot, therefore, be said to afford any assistance in construing the Mitakshara in a different sense from what has been given to it by the Privy Council, and, indeed, the judgment of West, J., in *Vijiarangam* v. *Lakshman* (1), where that learned Judge is disputing the correctness of the Privy Council construction of the Mitakshara, shows that no fresh argument was to be derived from the Mayukha in aid of the view he was contending for, *viz.*, that property inherited by [711] a widow from her husband was woman's property based on Mitakshara, Ch. XI, s. 11, paras. 3 and 4. As to the conclusion arrived at by Sir Matthew Sausse that the widow has the power of alienation over the moveables, the judgment shows that it was the result of the statement in Steele's Law and Customs of Hindu Castes.

In this state of the authorities, we think that the ruling of the Privy Council, that the property inherited by a widow from her husband devolves on his heirs at her death, must have effect given to it throughout the Presidency with regard to the devolution of the moveables so inherited and to that extent, if the decision in *Damodar* v. *Purmanandas* (2) is to be regarded as necessarily giving the moveables that remain to the widow's heirs, it must be treated as of no authority. Assuming then, as we think we must, that the moveables existing at the time of the widow's death devolve, by inheritance, on her husband's heirs, we think the widow's power of alienation over the moveables cannot be regarded as including the power of willing them away at her death so as to displace the right of inheritance by her husband's heirs. We must, therefore, answer the question referred to us in the negative.

The reference being answered in the negative, the Division Bench reversed the decree.

---

17 B. 711.

ORIGINAL CIVIL.

Before Mr. Justice Starling.

MUNCHERJI FURDOONJI MEHTA AND PEROZBAI (*Plaintiffs*) *v.* NOOR MAHOMEDBHOY JAIRAJBHOY PIRBHOY AND OTHERS (*Defendants*)* [12th June, 1893.]

Mortgage—Sale by mortgagee—Notice of sale—Subsequent mortgage of same property—Notice of sale to mortgagors—Notice of sale to subsequent mortgagees—Delay in selling—Rescission of notice of sale—Suit by second mortgagee to prevent sale—Offer to redeem joint mortgage—Right of mortgagee to sell mortgaged property.

Certain property was mortgaged to the defendants in 1885 for Rs. 60,000, and the mortgage-deed contained the usual power of sale on notice to the mortgagors or their [712] assigns. The debt was not paid, and the defendants on the 31st August 1891, gave notice of sale to the mortgagors, but did not then proceed further in the matter. Three days after this notice, *viz.*, on the 3rd September, 1891, the mortgagors mortgaged the property to the plaintiffs for Rs. 10,000. On the 18th November, 1892, the plaintiffs by letter offered to transfer their mortgage to the defendants or to join with them in selling the property. In the event of their being unwilling to accept either of these proposals, the plaintiffs requested the defendants to render an account of the sum due to them in order that they (the plaintiffs) might, if so advised, redeem the defendant's mortgage. On the 3rd December, 1892, the plaintiffs by letter enquired whether the defendants

---

* Suit No. 236 of 1893.

(1) 8 B.H.C.R. 244 (257). (2) 7 B. 155.