1894.

RAGHUNA'TH LALMAN v. NATHU HIRJI BHA'TE.

Mr. Chandáwarkar urged that, even if the agreement were void, the plaintiff could at least recover the price of the opium supplied to the defendant, but since the case of *Collins* v. *Blantern*[1] it seems to have been settled law that advances made for an illegal purpose subsequently carried out cannot be recovered (*vide Begbie* v. *The Phosphate Sewage Co., Limited*[2] ; *Herman* v. *Jeuchner*[3] ; *Scott* v. *Brown, Doering, McNab and Co.*[4]). In the present case the plaintiff admits that the object of the agreement was carried out, and his claim is based on that assumption.

Under these circumstances, much as it is to be regretted that a dishonest defence of this sort should succeed, we must reverse the decrees of the Courts below and reject the claim, but at the same time direct that the parties do bear their own costs throughout.

Decree reversed.

(1) Smith's Leading Cases I, p. 399.
(2) L. R., 10 Q. B., 491.
(3) 15 Q. B. D., 561.
(4) L. R. (1892), 2 Q. B., 724.

APPELLATE CIVIL.

Before Mr. Justice Bayley, Acting Chief Justice, and Mr. Justice Fulton.

1894.

August 14.

PAROT BA'PA'LA'L SEVAKRA'M (ORIGINAL DEFENDANT), APPELLANT, *v.* MEHTA HARILA'L SURAJRA'M (ORIGINAL PLAINTIFF), RESPONDENT.*

Hindu law—Inheritance—Succession—Father's sister's daughter's son—Bandhu—Bhinna gotra sápinda.

Harisukhrái, a Hindu, died leaving a widow and a son of a first cousin, *viz.*, the son of his father's sister's daughter.

Held, that on the death of the widow the latter, *viz.* the son of his father sister's daughter being a *bandhu* or *bhinna gotra sápinda* of Harisukhrái, was entitled to succeed to his property.

In regard to the succession of cognates, there seems to be no difference in the rules laid down in the Mayukha and the Mitákshara, and under the Mitákshara law succession depends upon propinquity and not upon religious efficacy.

SECOND appeal from the decision of Gilmour McCorkell, District Judge of Ahmedabad, confirming the decree of Ráo Sáheb Mánéklál Narottamdás, Joint Subordinate Judge.

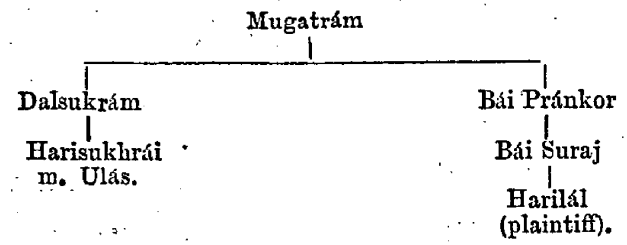
This action was instituted by plaintiff Mehta Harilál Surjarám to recover possession of certain houses as the reversioner of one

* Second Appeal, No. 523 of 1892.

1894.

PAROT BA'PA'LA'L SEVAKRA'M v. MEHTA HARILA'L SURAJRÁM.

Harisukhrái Dalsukhrám who died leaving him surviving a childless widow named Bái Ulás. The following table shows the relationship of the parties:—



The plaintiff was the great-grandson,—that is, the son of a daughter's daughter—of Mugatrám, the grandfather of Harisukhrái, and as such asserted his right to the houses, there being no other nearer heir of the deceased. The plaint alleged that after the death of Harisukhrái his widow Bái Ulás alienated the houses to the defendant and that the alienation was not warranted by law.

Defendant admitted that he had bought from Bái Ulás, and resisted the claim on the ground that the plaintiff was not the heir of either Harisukhrái or Bái Ulás, and that necessary parties were not joined in the suit.

The Subordinate Judge allowed the claim. In his judgment he observed as follows:—

"The plaintiff is the grandson of the paternal aunt of Ulás' husband Harisukhrái by her daughter Suraj, and as such is a *bandhu* within the sixth degree in the line of descent from Harisukhrái's grandfather Mugatrám. He reckons only third in descent from Mugatrám, and is entitled to succeed to the property of Harisukhrái on the death of his widow Ulás as a reversioner (West and Bühler, 3rd Ed., pages 133 and 487, *et seq.*; *Umaid Bahádur* v. *Udoi Chand alias Manman*, I. L. R., 6 Cal., p. 119). There is no nearer relation than plaintiff * * and the plea of non-joinder, therefore, fails."

On appeal by the defendant the Judge confirmed the decree.

The defendant preferred a second appeal.

Branson with *Sitanáth G. Ajinkya* for the appellant (defendant):—The plaintiff's claim has been allowed on the ground that he is a *bandhu* of Harisukhrái. We contend that according to the Mitakshara and the rulings commencing with *Vijiáran-*

gam's case[1], the property in dispute would devolve on the heirs of Harisukhrái's widow as if she were a male. The correctness of the decision of the Calcutta Full Bench in *Umaid Bahádur* v. *Udoi Chand*[2], on the strength of which the plaintiff's claim is allowed, is questioned: West and Bühler, p. 498. Two females having intervened between Mugatrám and the plaintiff, the latter cannot succeed even as a *bandhu*: West and Bühler, pp. 133, 134. No authority can be found in this Presidency to support the plaintiff's claim. The plaintiff's family is totally different from that of Harisukhrái, and, therefore, he cannot claim Harisukhrái's property as his heir. He may be a relation of Harisukhrái, but he cannot come in as a *bandhu*.

Chimanlál H. Setalvad for the respondent (plaintiff):—The property belonged to Harisukhrái. His widow had only a life-interest in it, and, therefore, any alienation by her beyond her life-time is illegal. That being so, the property must devolve on the heir of the last male holder, that is, Harisukhrái. There is no other nearer heir of Harisukhrái than ourselves, and, therefore, we are entitled to claim the property—*Umaid Bahádur* v. *Udoi Chand*[2]; *Lallubhai* v. *Mánkuvarbái*[3]. It was contended that because two females had intervened, we cannot succeed. But in *Umaid Bahádur* v. *Udoi Chand*[2] two females had intervened, and yet the contention of the reversioner was allowed. That decision is, therefore, on all fours with the present case. Further, the intervention of two females cannot deprive a man of his *sápind* relationship—West and Bühler, p. 488; Mayne's Hindu Law, para. 472. The defendant is a total stranger, and is in no way related either to Harisukhrái or to his family. He cannot, therefore, defeat our claim.

FULTON, J.:—The houses in dispute belonged to Harisukhrái, the husband of the deceased Ulás, who succeeded to them on his death. They are now claimed by the plaintiff, who is the nearest relative, being the son of the daughter of Harisukhrai's father's sister.

(1) 8 Bom. H. C. R., O. C. J., 244. (2) I. L. R., 6 Calc., 119.

(3) I. L. R., 2 Bom., 388.

1894.

PAROT BA'PA'LA'L SEVAKBA'M v. MEHTA HARILA'L SUBAJRÁM.

For the defendant it is contended that the plaintiff is not included in the list of persons entitled to inherit, but we think we must follow the principle laid down in *Umaid Bahádur* v. *Udoi Chand*[1] and hold that the plaintiff is a *bandhu* or *bhinna gotra sápinda* of Harisukhrái, and as such entitled to succeed on the death of Harisukhrái's widow.

The decision above referred to was, it is true, based only on the Mitákshara, but in regard to the succession of cognates there seems no difference in the rules laid down in the Mayukha (*vide* Mayukha, Ch. IV, sec. 8, pl. 22, and Mitákshara, Ch. II, sec. 6, pl. 1), which, as pointed out in *Lallubhai* v. *Mánkuvárbai*[2], has on most questions of inheritance adopted the doctrines of the Mitákshara. At pages 425 and 445 of the case just referred to, the learned Judges point out how Nilkantha has accepted Vijnyaneswara's theory of *sápinda* relationship as arising from blood or bodily connection rather than from sharing in common oblations.

The remarks at page 498 of West and Bühler's Digest of the Hindu Law appear to question the correctness of the decision in *Umaid Bahádur* v. *Udoi Chand* that the intervention of two females in the line of descent is no bar to inheritance, but it seems that this doubt cannot now be entertained; for, as stated by Mr. Mayne in his note to section 472 of the 4th edition of his Treatise on Hindu Law and Usage, the principle that succession under the Mitákshara law depends upon propinquity, and not upon religious efficacy, has been settled by distinct rulings—*Lallubhai* v. *Mánkuvarbái*[2]; *Lullubhoy* v. *Cássibái*[3]; *Nallanna* v. *Ponnal*[4]; *Ramáppa* v. *Arumugath*[5]. Accepting this principle we can see no ground for rejecting the claim of the plaintiff who is within four degrees of the common ancestor who was the maternal grandfather of the plaintiff's mother[6].

Mr. Branson for the appellant drew our attention to the case of *Vijiárangam* v. *Lakshman*[7] to show that the property in-

(1) I. L. R., 6 Calc., 119.
(2) I. L. R., 2 Bom., 388.
(3) L. R., 7 I. A., 212.
(4) I. L. R., 14 Mad., 149.
(5) I. L. R., 17 Mad., 182.
(6) *Vide* Tágore Law Lectures, 1880, Raj Kumar Sarvadhikari, p. 701.
(7) 8 Bom. H. C. R., O. C. J., 244.

herited by Ulás from her husband became her *stridhan* in the larger sense in which the word is used, but assuming this to be the case, it does not appear that she could alienate it without sufficient cause, or that on her death it would descend otherwise than to her husband's heirs. We confirm the decree with costs.

1894.

PAROT BAPÁLÁL SEVANRA'M v. MEHTA HARILA'L SURAJRA'M.

Decree confirmed.

ORIGINAL CIVIL.

Before Mr. Justice Bayley (Acting Chief Justice) and Mr. Justice Farran.

BHAWANJI HARBHUM (PLAINTIFF) *v.* DEVJI PUNJA (DEFENDANT).*

1894. *September* 28.

Stamp—Stamp Act I of 1879, *Secs.* 11 *and* 16—*Hundi—Execution—Time of execution—Stamp affixed and subsequently cancelled—Evidence—Practice.*

Where a *hundi* was written by the defendant and stamped by him with a one-anna stamp which was left uncancelled and the *hundi* was subsequently taken by him to the plaintiff's son who received it from him and at the time of receiving it cancelled the stamp by writing the date across it,

Held that the *hundi* was duly stamped under sections 10 and 16 of the Stamp Act (I of 1879) and was admissible in evidence. If at the time of delivery, which completed its legal character, the *hundi* was stamped, and if the cancellation took place at that time as part of the same transaction, it was sufficient.

A deed is duly stamped if the stamp is affixed and cancelled at the time of execution, or if having been at any time previously affixed, it is cancelled at the time of execution.

When applied to a document the term 'execution' means the last act or series of acts which completes it. It might be defined as formal completion. The contract on a negotiable instrument until delivery is incomplete and revocable. Until delivery a *hundi* is not clothed with the essential characteristics of a negotiable instrument.

CASE stated for the opinion of the High Court under section 69 of the Presidency Small Cause Courts Act (XV of 1882) by C. W. Chitty, Chief Judge :—

"1. This was a suit brought by the plaintiff to recover from the defendant a sum of Rs. 914-2-9, the amount of principal and interest due on a *hundi* passed by the defendant to the plaintiff.

"The suit was filed as a summary suit, but on the defendant's application he was granted leave to defend.

"2. At the hearing the defendant admitted passing the *hundi* to the plaintiff, but pleaded no consideration, and denied liability

* Small Cause Court Suit, No. 16254 of 1894.