

## APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Ránade.

VENILAL (ORIGINAL PLAINTIFF), APPELLANT, v. PARJARA'M (ORIGINAL DEFENDANT), RESPONDENT.\*

1894.

December 11.

*Hindu law—Inheritance—Son's daughter—Great-grandson of a brother—Gotrája-sapinda—Bandhu.*

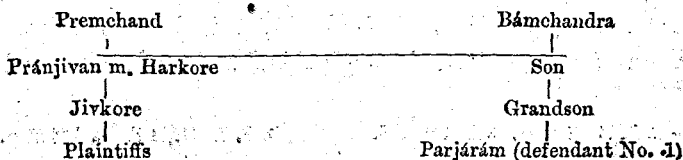
According to Hindu law, the daughter of a predeceased son of the *propositus* is not a *gotrája-sapinda*, and is not entitled to inherit in preference to the great-grandson in the male line of a separated brother.

SECOND appeal from the decision of P. Kháregat, Assistant Judge of Broach, in Appeal No. 63 of 1889.

Suit for an injunction directing the first defendant to pay annually to the plaintiffs and their heirs the sum of Rs. 17-8-10 as their share of the *mazmundári hak* paid by Government to the first defendant and for the arrears thereof for the years 1885-87.

The plaint alleged that a *mazmundári hak* of Rs. 123-7-0 stood in the names of three persons, *viz.* Parjárám (defendant No. 1) and two others, and was duly paid each year; that of this total amount the sum of Rs. 54-4-7 was received by Parjárám (defendant No. 1) and that in this latter sum the plaintiffs were sub-sharers, their share being Rs. 17-8-10; that this sub-share originally belonged to their grandfather Pránjivan Premchand, who received it annually from Parjárám (defendant No. 1); that after Pránjivan's death his widow Harkore received it until her death in 1877; that after her death her daughter Jivkore (plaintiffs' mother) received it until 1884, and that on the 26th May, 1885, by a deed of gift of that date she gave it to the plaintiffs. They now sued to recover payment from Parjárám (defendant No. 1).

The defendant (*inter alia*) denied the plaintiffs had right to the *hak* in question, and contended that he was a nearer heir of Premchand than the plaintiffs or their mother Jivkore. The following table shows the relationship of the parties:—



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Both the Court of first instance and the lower appellate Court rejected the plaintiffs' claim, holding that the defendant was a *gotrája-sapinda* of Premchand, and as such entitled to succeed in preference to Jivkore, who as daughter of a predeceased son ranked as a *bandhu* of the *propositus*.

Against this decision the plaintiff preferred a second appeal to the High Court.

*C. H. Setalvad* for appellants:—We claim through Jivkore. Jivkore is the nearest blood-relation of the *propositus*. She is the daughter of a predeceased son of Premchand. She is, therefore, entitled to succeed in preference to the remoter kinsmen. She is a *gotrája-sapinda* and not a *bandhu* as held by the lower Courts. The word *gotrája* means one born in the same family. The sister, though she passes by marriage into a different *gotra*, still ranks as a *gotrája-sapinda* according to the Vyavahára Mayukha, and succeeds immediately after the paternal grandmother on account of her propinquity of relationship. On the same principle I contend that a son's daughter would inherit as a *gotrája-sapinda* in preference to the remoter *gotrája-sapindas*. Refers to Mandlik's Vyavahár Mayukha, p. 81; West and Bühler's Digest, (3rd Ed.) p. 130; *Lallubhai Bápudhai v. Mánkuvarbái*<sup>(1)</sup>; *Kesserbái v. Valab Ráoji*<sup>(2)</sup>. In Yadnavalkya's shloka 175, the word 'daughter' includes grand-daughter.

*Vicáji* (with him *M. M. Munshi*) for respondent:—A son's daughter is not in the list of heirs. The general rule is that females are excluded from inheritance, unless they are specially named as heirs. A son's daughter is a *bandhu*—West and Bühler's Digest, pp. 137, 496; Mayne's Hindu Law, p. 574: see also *Mohandás v. Krishnabái*<sup>(3)</sup>.

JARDINE, J.:—It has been argued for the appellants that the reasoning of the Vyavahára Mayukha in regard to the inclusion of sisters among *gotrája-sapindas* logically includes the daughter of a son of a *propositus*, although this daughter is not mentioned

(1) I. L. R., 2 Bom., 388 at p. 445.

(2) I. L. R., 4 Bom., 188 at p. 199.

(3) I. L. R., 5 Bom., 597.

as such in any of the sacred texts. We are, however, of opinion that this argument goes beyond the principles on which *Lallu-đhai v. Mánkuwarbái*<sup>(1)</sup> was decided; see pp. 422 and 446 of the Report. We, therefore, confirm the decree with costs.

*Decree confirmed.*

(1) I. L. R., 2 Bom., 388 at p. 445.

## APPELLATE CIVIL.

*Before Mr. Justice Jardine and Mr. Justice Ránade.*

SHIVRA'M CHINTA'MAN (ORIGINAL PLAINTIFF), APPELLANT, v.  
SARASVATIBA'I (ORIGINAL DEFENDANT), RESPONDENT.\*

1894.  
December 3.

*Execution—Decree—Application for execution—Obstruction—Suit to remove obstruction under Section 331 of Civil Procedure Code (Act XIV of 1882)—Failure of such suit—Subsequent application for execution of original decree—Limitation—Limitation Act (XV of 1877), Sch. II, Arts. 178, 179—Time occupied in suit under Section 331 not excluded where such suit fails.*

On the 7th March, 1889, a decree-holder presented a *darkhást* for execution of a decree which awarded him possession of certain immoveable property. This *darkhást* was opposed by a third party, who was in possession of the property.

The decree-holder thereupon applied to the Court to have the obstruction removed. This application was registered under section 331 of the Code of Civil Procedure (Act XIV of 1882), as a suit between the decree-holder as plaintiff and the party who offered the obstruction as a defendant.

On the 22nd January, 1891, the decree-holder withdrew this latter suit. Thereupon his *darkhást* of the 7th March, 1889, was struck off the file. On the 12th November, 1892, he presented a second *darkhást* for execution.

*Held*, that the second *darkhást* was barred by limitation. The decree-holder having failed to remove the obstruction under section 331 of the Code of Civil Procedure, the second *darkhást* could not be treated as a continuance or revival of the first.

*Kalyanbái v. Ghanashámdál*<sup>(1)</sup> and *Chintáman v. Bálshástrí*<sup>(2)</sup> distinguished.

APPEAL from the decision of Ráo Bahádur N. N. Nánávati, First Class Subordinate Judge of Poona, in *darkhást* No. 655 of 1893.

\* Appeal No. 149 of 1894.

(1) I. L. R., 5 Bom., 29.

(2) I. L. R., 16 Bom., 204.