

APPELLATE CIVIL.

Before Sir² Lawrence Jenkins, K.C.I.E., Chief Justice, and
Mr. Justice Beaman.

PARMAPPA BIN BASANGAUDA NEGLORE AND ANOTHER (ORIGINAL DEFENDANTS NOS. 1 AND 3), APPELLANTS, v. SHIDDAPPA BIN GIRIAPPA NEGLORE AND OTHERS (ORIGINAL PLAINTIFFS), RESPONDENTS.*

1906.
August 15.

Hindu Law—Stridhan—Succession—Full brothers of the husband are entitled to succeed in preference to his half-brothers—Mitakshara.

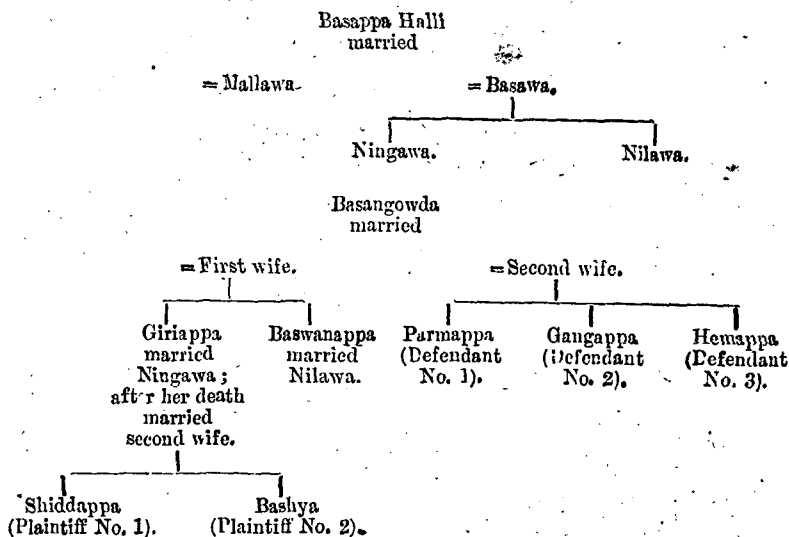
A Hindu widow died without issue leaving her surviving one whole brother and three half-brothers of her deceased husband :

Held, that under the Mitakshara by which the parties were governed, for the purpose of succession to the non-technical stridhan of a widow who has died without issue, the whole brother of her deceased husband is to be preferred to his half-brother.

SECOND appeal from the decision of V. V. Phadke, First Class Subordinate Judge at Dhárwár with A. P., reversing the decree passed by V. V. Kalyanpurkar, Subordinate Judge of Haveri.

This was a suit to recover possession of certain lands.

The following two geneological trees show the relationship of the parties concerned in this suit:—



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Basappa Halli originally owned the property in dispute. He had two wives named Mallawa and Basawa and two daughters named Ningawa and Nilawa. These daughters were married respectively to Giriappa and Basappa, who were sons by the first wife of one Basangowda. Basangowda also had a second wife, by whom he had three sons, defendants Nos. 1—3. After the death of Basappa Halli and his daughter Ningawa, Mallawa, the elder widow, transferred five pieces of land to the name of Giriappa and five to the name of Baswanappa. This was in 1881. In 1888, she sold five more lands to Giriappa, Baswanappa and defendant No. 1.

After the death of Ningawa, Giriappa married Shiddawa, by whom he had two sons, Shiddappa and Bashya (plaintiffs Nos. 1 and 2).

Mallawa died in 1891. Baswanappa died in 1893. Nilawa died in 1897, and Girappa died soon after.

Disputes then arose between plaintiffs Nos. 1 and 2 on the one hand and defendants Nos. 1, 2 and 3 on the other, as to the estate left by Nilawa.

The Subordinate Judge decided against the plaintiffs' contentions, holding that both the plaintiffs' father (who was a full brother of Nilawa's husband) and the defendants Nos. 1 to 3, who were his half-brothers, were entitled to the estate left by Nilawa.

This decree was, on appeal, reversed by the lower appellate Court, for reasons stated as under :—

“Giriappa, the father of plaintiffs, and defendants Nos. 1—3 were alive at death of Nilawa. Giriappa was her husband's full brother and defendants Nos. 1—3 were his half-brothers. The lower Court relying on the decision in *Vithalrao v. Ramrao* (I. L. R. 24 Bom. 317) has held that full brothers of the deceased husband of a widow are not to be preferred to half-brothers. That was, however, a case in which uncles were to succeed to the property of a deceased nephew and the High Court held that uncles of full blood have no right of preference over those of half blood. The present case is however a case of succession to a woman and the law provides that the heirs of the husband succeed. Hence the heirs must come in according to their ranks in the list of enumerated heirs. That was the principle followed in *Gojabai v. Shrimant Shahajirao Maloji Raje Bhosle* (I. L. R. 17 Bom. 114). I, therefore, hold that the father of the plaintiffs as the full brother of Nilawa's husband was her

only heir to the exclusion of defendants Nos. 1—3. His interest has passed to plaintiffs and they alone have become owners of the property."

The defendants appealed to the High Court.

Setalvad (with *G. S. Mulgaonkar*), for the appellants (defendants):—We submit that the succession to a woman's *stridhan* passes first to her husband, and failing him to her heirs in the family of the husband. These heirs would be plaintiffs' father as well as defendants, who were all brothers of her husband. The preference of full brothers over half-brothers is limited to the case where the property belongs to the propositus and not where the property belongs to the widow of the last male holder. See *Vithalrao v. Ramrao*⁽¹⁾ and *Gojabai v. Shrimant Shahajirao Maloji Raje Bhosle*⁽²⁾ and *Manilal Rewadat v. Bai Rewa*⁽³⁾.

Sellur (with *K. H. Kelkar*), for the respondents (plaintiffs):—We contend that the heirs to a woman's *stridhan* are the same as the heirs of the husband in his line. The cases of *Krishnai v. Shripati*⁽⁴⁾ and *Bai Kesserbai v. Hunsrai Merarji*⁽⁵⁾ show that whoever is nearest to the husband is also nearest to the wife in the husband's family, and even according to the ordinary principle of propinquity a full brother is certainly nearer than a half-brother.

JENKINS, C. J.:—The principal point that arises on this appeal is whether for the purpose of succession to the non-technical *stridhan* of a widow who has died without issue the whole brother of her deceased husband is to be preferred to his half-brother.

This case comes from Dhárwár and must be determined by the rules of the Mitakshara so far as they apply.

Now it is not disputed that the deceased was married in an approved form, and where that is so the Mitakshara in Ch. II s. 11, pl. 11, as translated by Mr. Colebrooke, says "Of a woman dying without issue as before stated, and who had become a wife by any of the four modes of marriage denominated Brahma,

(1) (1899) 24 Bom. 317; 2 Bom. L. R. 139.

(2) (1892) 17 Bom. 114.

(3) (1892) 17 Bom. 753.

(4) (1905) 30 Bom. 333; 8 Bom. L. R. 12.

(5) (1906) 30 Bom. 431; 8 Bom. L. R. 446 at p. 449.

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Daiva, Arsha and Prajapatya, the whole property, as before described, belongs in the first place to her husband. On failure of him it goes to his nearest kinsmen, *Sapindas* allied by funeral oblations."

It is pointed out by Mr. Justice Telang in *Gojabai v. Shrimant Shahajirao Maloji Raje Bhosle*,⁽¹⁾ that the rendering of *Sapindas* as 'kinsmen allied by funeral oblations' is not correct in this Presidency.

But if we ask who, as between his brother and his half-brother, were the nearest kinsmen of the deceased's husband, the answer is clear: the whole brothers admittedly were nearer to him than his half-brothers.

But Mr. Setalvad argues that the Mayukha treats the point in a manner which forbids our taking this view.

But we think we should be guided by Mr. Justice Telang on this point. He says "It is possible to harmonize them, if both the Mitākshara and Mayukha are understood to refer to the same heirs, only by different descriptions—the Mitākshara describing them as *Sapindas* of the husband, the Mayukha as *Sapindas* of the wife in the family of the husband." *Gojabai v. Shrimant Shahajirao Maloji Raje Bhosle*⁽²⁾.

It is therefore (in our opinion) clear that the full brother is to be preferred to the half-brother; and we hold that the lower Court came to the correct conclusion.

The only other question is as to whether Nilawa acted in such a way as that it can be said that she recognized a transfer by which Mallawa purported to pass the property to the defendants along with the plaintiffs. That is a question of fact; it has been determined adversely to the defendants; we cannot in second appeal interfere with the conclusion of the lower appellate Court.

The result therefore is that we confirm the decree with costs.

Decree confirmed.

R. R.

(1) (1892) 17 Bom. 114 at p. 117.

(2) (1892) *Ibid* p. 118.