

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Pratt.

GULAPPA DOMINGAPPA KUSUGAL (ORIGINAL DEFENDANT No. 5),
APPELLANT, v. TAYAWA KOM KEMPANNA AND OTHERS (ORIGINAL
PLAINTIFF AND DEFENDANTS NOS. 1-4), RESPONDENTS.*

1907.
April 10.

*Hindu Law—Stridhan—Succession—Property inherited by daughter
from her father—Devolution.*

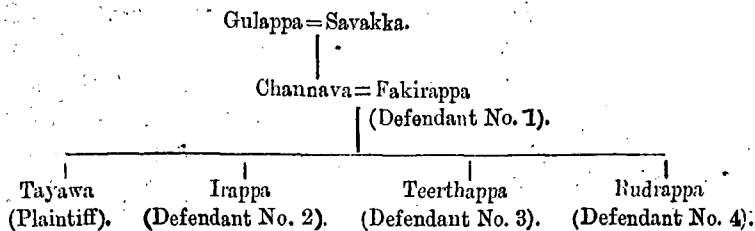
Under the Mitakshara law, as interpreted in this presidency, the daughter takes an absolute interest in property inherited from her father and on her death, it devolves on her daughter in preference to her son.

SECOND appeal from the decision of L. Crump, District Judge of Dhárwár, confirming the decree passed by R. R. Gangolli, First Class Subordinate Judge at Dhárwár.

Suit to recover possession of property.

The property in dispute belonged originally to one Gulappa. He had one daughter Channava by his wife Savakka. Channava was married to Fakirappa (defendant No. 1), by whom she had one daughter, Tayawa (plaintiff), and three sons, defendants Nos. 2-4.

The relationship between the parties is shown by the following geneological tree :—



On Gulappa's death, the property was inherited by his widow Savakka; and on her death, it passed to Channava. She enjoyed it till her death in 1901.

After her death, her husband and three sons mortgaged the property to defendant No. 5, on the 26th May 1902.

* Second Appeal No. 734 of 1905.

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Tayawa, the daughter of Channava, brought this suit on the 21st July 1903, to recover the possession of the property, alleging that it being the *stridhan* property of her mother, devolved on her in preference to her brothers, defendants Nos. 2-4.

Both the lower Courts decreed the plaintiff's claim.

The defendant No. 5 appealed to the High Court.

S. S. Patkar, for the appellant:—It has no doubt been held by the Bombay High Court in *Bhagirthibai v. Kahnujirav*⁽¹⁾ and *Jankibai v. Sundra*⁽²⁾ that the property inherited by a daughter from her father becomes her absolute property and on her death it passes to her heirs. But the Judicial Committee of Privy Council have held in *Sheo Shankar Lal v. Debi Sakai*⁽³⁾ and *Lal Sheo Pertab Bahadur Singh v. Allahabad Bank*⁽⁴⁾ that property which a woman has taken by inheritance from a female is not her *stridhan* in such sense that on her death it passes to her *stridhan* heirs in the female line to the exclusion of males. They exclude from the operation of their judgment only those parts of the Bombay Presidency which are governed by the Mayukha. See also *Chotay Lall v. Chunno Lall*⁽⁵⁾; *Bhugwanideen Doobey v. Myna Baee*⁽⁶⁾; *Mutta Vaduganadha Tevar v. Dorasinga Tevar*⁽⁷⁾; *Raja Ohelikani Venkayamma v. Raja Chelikani Venkataramanyamma*⁽⁸⁾. There is nothing in the Mitakshara which gives the daughter absolute power over property inherited by her. The distinction drawn in *Tuljaram Morarji v. Mathuradas*⁽⁹⁾, that those who by marriage have entered into the *gotra* of the male whom they succeed take an interest similar to that of a widow and that those who are of a different *gotra* or who upon marriage become of a different *gotra* from the last owner take absolutely, has no foundation in the original texts. A daughter inheriting from the father does not take unobstructed heritage, and therefore the property inherited by the daughter cannot become *stridhan* even according to the Mitakshara. Even if the property be treated as *stridhan*, the special kind of devolution to the female line

(1) (1886) 11 Bom. 285.

(2) (1890) 14 Bom. 612.

(3) (1903) L. R. 30 I. A. 202.

(4) (1903) L. R. 30 I. A. 209.

(5) (1878) L. R. 6 I. A. 15.

(6) (1867) 11 Moo. I. A. 487.

(7) (1881) L. R. 8 I. A. 99.

(8) (1902) L. R. 29 I. A. 156.

(9) (1881) 5 Bom. 662.

should be confined to the technical *stridhan* on the analogy of the Mayukha.

G. S. Mulgaonkar, for the respondent:—The question in dispute is settled in this presidency by a long series of decisions, to which the Court must have regard on the principle of *stare decisis*. See *Navalram Atmaram v. Nandkishor Shivnarayan*⁽¹⁾; *Vijiarangam v. Lakshuman*⁽²⁾; *Bhagirthibai v. Kahnujirav*⁽³⁾; *Jankibai v. Sundra*⁽⁴⁾; *Manilal Rewadat v. Bai Rewa*⁽⁵⁾; *Bhau v. Raghunath*⁽⁶⁾.

The Privy Council cases lay down only the Benares law.

CHANDAVARKAR, J.:—On the authority of the decisions of the Judicial Committee of the Privy Council in *Sheo Shankar Lal v. Debi Sahai*⁽⁷⁾ and *Lal Sheo Pertab Bahadur Singh v. Allahabad Bank*⁽⁸⁾, it is contended that property inherited by a daughter from her father under the Mitakshara law is not such *stridhan* as on her death devolves on her daughter, but that it must go to her sons as if she were a male. Those decisions, however, turn upon the law of the Benares school and the Judicial Committee expressly confine their ruling to it. On this side of India a different law has prevailed, as may be seen from a series of decisions of this Court. See *Navalram Atmaram v. Nandkishor Shivnarayan*⁽¹⁾; *Tuljaram Morarji v. Mathuradas*⁽⁹⁾; *Bhagirthibai v. Kahnujirav*⁽³⁾; *Jankibai v. Sundra*⁽⁴⁾; *Gandhi Maganlal v. Bai Jadab*⁽¹⁰⁾; *Vijiarangam v. Lakshuman*⁽²⁾; and *Manilal Rewadat v. Bai Rewa*⁽⁵⁾. On the principle of *stare decisis* we must adhere to the law as it has been expounded by this Court. See *Bhau v. Raghunath*. We confirm the decree with costs.

Decree confirmed.

R. R.

(1) (1865) 1 Bom. H. C. R. 209.

(2) (1871) 8 Bom. H. C. R. (O. C. J.) 244.

(3) (1886) 11 Bom. 285.

(4) (1890) 14 Bom. 612.

(5) (1892) 17 Bom. 758.

(6) (1905) 30 Bom. 229; 7 Bom. L. R. 936.

(7) (1903) L. R. 30 I. A. 202.

(8) (1903) L. R. 30 I. A. 209.

(9) (1881) 5 Bom. 662.

(10) (1899) 24 Bom. 192; 1 Bom. L. R. 574.