

APPELLATE CIVIL.

Before Mr. Justice Chantavarkar and Mr. Justice Heaton.

1907
September 2.

VRIJBHUKAN DAS DWARKADAS (ORIGINAL PLAINTIFF), APPELLANT,
v. BAI PARVATI (ORIGINAL DEFENDANT), RESPONDENT *

Hindu law—Inheritance—Mother inheriting to her son takes a limited estate—Funeral ceremonies of mother—Son's religious duty to perform them—Their expenses are charge upon the son's estate—Mitākshara—Interpretation.

Under the Hindu law applicable in Bombay a mother succeeding as heir to her son takes a limited estate.

The duty of performing the funeral ceremonies of a mother, that is, *pindādāna* or offering the funeral oblations, is laid down as a religious injunction binding on her son in absolute terms by the Hindu law. The duty is independent of any assets left by her. The expenses of performing the funeral ceremonies are, therefore, a charge on the son's estate.

According to Vijnaneshwara, where an act is directed to be done and the omission to do it is stated to be sinful, the direction imposes upon the person directed an imperative and absolute obligation to do the act.

V., a Hindu, died leaving him surviving his mother B., who succeeded to his property. B. made a will in favour of her daughter's daughter P, who succeeded to the property on her death and performed her funeral ceremonies. The plaintiff, a reversionary heir of V., alleging that B. took only a life-interest in the property, sued to recover its possession :—

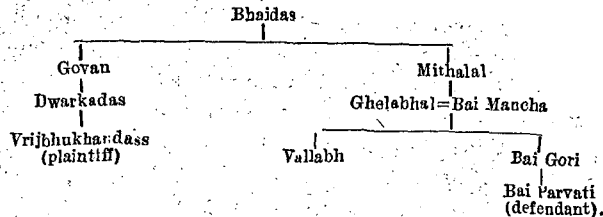
Held, that the plaintiff was entitled to recover the possession of V.'s property as V.'s heir, only on condition of fulfilling the obligation binding the estate, *viz.*, of compensating P. for the expenses she had incurred in performing the funeral ceremonies of B.

SECOND Appeal from the decision of G. D. Madgavkar, District Judge of Broach, varying the decree passed by B. B. Kunte, Subordinate Judge at Broach.

Suit to recover possession of property.

* Second Appeal No. 716 of 1906.

The parties to the suit were related to each other as shown in the following genealogical tree :—



The property in dispute (viz., a shop) belonged to Ghelabhai, who died leaving him surviving a widow Mancha, a son Vallabh and a daughter Bai Gori. Gori died before Mancha, leaving a daughter Parvati (defendant). Vallabh died when he was six years old, since when the shop remained in possession of Bai Mancha till her death in 1900.

By her will made in 1889, Bai Mancha left the shop to defendant Parvati, who performed her funeral ceremonies and remained in possession of the shop. In 1904, Vrijbhukandas sued for possession with mesne profits as the nearest male agnate of Vallabh, claiming that Mancha had a life-interest only in the shop and could not bequeath it by will.

The defendant contended that the shop had been burnt down in 1862 in the life-time of Mancha, who re-built it at her own expense and had power to bequeath it by will for the performance of her funeral ceremonies, and that she performed Mancha's funeral ceremonies at a cost of Rs. 1,250 which the plaintiff must repay with interest before he could get possession.

The Subordinate Judge held that plaintiff was entitled to the shop on the death of Mancha (who had no power to bequeath it by will) upon payment of Rs. 175, the amount of Mancha's funeral expenses borne by the defendant.

On appeal, the District Judge held that according to Hindu Law the plaintiff is the reversioner of the property, that the funeral expenses of Mancha, defrayed by the defendant, amounted to Rs. 800, and that the plaintiff was liable to repay the same

1907
VRIBHU-
KANDAS
 v.
BAI PARVATI

before obtaining possession of the property, his reasons were as follows:—

“No special custom in the caste has been made out, whereby a Vitrai is excluded by a sister's or a daughter's daughter. The ordinary rule of Hindu law applies that the mother only takes a life-interest in the immovable property of her son predeceased without wife or children, affirmed in *Narsappa v. Sakharam* (6 Bom. H. C. 915, A. C. J.), and approved of in *Madhavram v. Dave Trimbuklal* (I. L. R. 21 Bom. 745) and in *Gandhi Maganlal v Bai Jadav* (24 Bom. 214) * * *

“The lower Court has rightly held that for this amount the property in suit of the Gotra and not the defendant's Stridhan is liable. It is hardly necessary to refer to the intimate correspondence in Hindu law and usage between the spiritual duty of the heir especially in the matter of the funeral “Pinda” and his right of inheritance. Strictly speaking, the plaintiff should have performed Bai Mancha's funeral ceremonies rather than the defendant, just as he claims a superior right of inheritance to hers”

The plaintiff appealed to the High Court, mainly on the ground that the lower appellate Court erred in allowing the funeral expenses to the defendant, and the defendant filed cross-objections to the effect that Bai Mancha took an absolute interest in the property which she inherited from her son Vallabh.

L. A. Shah for the appellant (plaintiff):—The funeral expenses of Bai Mancha should in the first instance come out of her Stridhan. It has no doubt been held in *Ratanchand v. Javherchand*⁽¹⁾ that the funeral expenses of a widow are a charge upon her husband's estate and not upon her Stridhan. But the analogy should not be extended to the case of a mother. The ordinary rule of law that the funeral expenses should come out of the estate of the deceased should be followed.

G. K. Parekh, for the respondent—The case of a mother is certainly stronger than the case of a widow. Her funeral expenses should obviously come out of the son's estate. If the mother dies in the life-time of her son then clearly it is the son's duty to perform her funeral expenses. And when he dies his estate ought to remain liable for the fulfilment of that obligation.

I further submit, that the appellant is not entitled to succeed at all as the mother succeeding as heir to her son's property takes

(1) (1897) 23 Bom. 818.

an absolute estate. The estate was held to be limited in *Narsappa v. Sakharam*⁽¹⁾, but this understanding was altered by the remarks in the full bench case of *Gandhi Maganlal v. Bai Jadab*⁽²⁾. There is nothing in Hindu law to justify the view taken in *Narsappa's* case. The point requires to be reconsidered and if necessary to be referred to a full bench.

CHANDAVARKAR, J.—Mr. Gokuldas has endeavoured to argue that, under the Hindu law, a mother succeeding as heir to her son takes an absolute, not a limited, estate. That point is, however, concluded by authority: see *Narsappa v. Sakharam*⁽¹⁾, which has been since followed in this Presidency. As was said by the learned Chief Justice in *Bhau v. Raghunath*⁽³⁾, “it has now come to be recognized as the rule in Bombay that female heirs, except those who come into the family of the *propositus* by marriage, take absolute interests”. On the ground of *stare decisis* we must adhere to that rule.

The duty of performing the funeral ceremonies of a mother, that is, *pinda dana* or offering the funeral oblations, is laid down as a religious injunction binding on her son in absolute terms by the Hindu law—(See Vijnaneshwara's *Mitakshara*, *Prayaschittathyaya*, Moghe's Edition, page 289)—, so much so that even though the son is a minor, and as such is not entitled to read the *Vedas*, he is held competent to recite the *Mantras* prescribed in the *Shastras* for the purposes of the *shraddha* of either of his parents. (See a *Smriti* of Gautama cited by Vijnaneshwara in his comment on Yajnyavalkya's *Smriti* No. 50 in the Chapter on Debts in the *Mitakshara*, page 140, Moghe's Edition.) Omission on the part of the son to perform the funeral ceremonies on his father's or mother's death is denounced as a sin. (See the text to that effect of Sumantu and a passage from the *Aditya Purana* cited in Kamalakar Bhat's *Nirnaya Sindhu* page 299; *Jnana Sagara* Edition.) And, according to Vijnaneshwara, where an act is directed to be done and the omission to do it is stated to be sinful, the direction imposes upon the person directed an

(1) (1869) 6 Bom. H. C. R. (A. C. J.) 215. (2) (1899) 24 Bom. 192 at p. 213.

(3) (1906) 30 Bom. 229, at p. 237; 7 Bom. L. R. 937.

1907
 VEIJBHU-
 KANDAS
 v.
 BAI PARVATI. imperative and absolute obligation to do the act (the *Mitakshara* Moghe's Edition, page 192). Nilakantha, the author of the *Vyavahara Mayukha*, deals with the subject likewise in his *Shraddha Mayukha*.

If, then, Vallabh would have been bound by that religious duty had he survived his mother, Bai Mancha, he would not have been entitled to recover the charges incurred in respect of those ceremonies from her *Stridhan* property. No doubt a *Smriti* of Yajnyavalkya, after enumerating the twelve kinds of sons known in the ancient times to Hindu law, goes on to point out that a son becomes on his father's death entitled to the father's property and to offer his funeral oblations (*i. e.*, a *pinda-dana*). And there is a text of Manu, cited both by Vijnaneshwara in the *Mitakshara* and by Nilakantha in the *Mayukha*, that the *pinda* (a funeral oblation) follows the *gotra* and the inheritance. The former *smriti*, as the context shows, relates to the *pinda* and inheritance of a father: and the latter is part of a special text relating to an adopted son. Both lay down the rule generally, but neither can be regarded as having any application to a case like the present. If a Hindu woman dies, leaving a son and a daughter, and also *stridhan* property of the kind which the daughter is entitled to inherit in preference to the son, the fact that the daughter takes the *stridhan* does not impose on her the obligation of performing the mother's funeral obsequies. The obligation lies on the son all the same and he must discharge it without any right to charge the *stridhan* with the expenses except under special circumstances.

The duty being laid upon him as her son independent of any assets left by her, he is bound to discharge it as a sacred obligation attaching to sonship. Now, here, though Vallabh, in the events that have occurred, predeceased his mother, the estate in dispute has to be treated, and is in fact regarded in the eye of law, as *his*. The appellant takes it as *his* reversionary heir; and the religious obligation to which Vallabh would have been subject, had he survived his mother, devolved upon and bound his estate on his death in the hands of any person taking it as his heir.

This is on the principle of equity known to Hindu law as *nyāyasāmyatwa*, (parity of reasoning), and illustrated by the commentators, especially by Vijuaneshwara, by "the argument exemplified in the loaf and staff" [see Stokes' *Hindoo Law Books*, Colebrooke's translation of the *Mitakshara*: page 404]. According to it, though the son died before his mother, the son's estate remained and took his place for the purpose of the religious duty.

Therefore, the appellant can recover Vallabh's property as his heir, only on condition of fulfilling the obligation binding the estate, or, if it has been fulfilled by another person, on condition of compensating that person for it out of the estate. When Bai Mancha died, the respondent fulfilled the obligation under the belief that she, not the appellant, was the reversionary heir to the estate. The payments which the respondent made for the funeral ceremonies cannot, however, on that account be regarded as voluntary payments, because, having regard to their nature according to Hindu law, they are a charge upon the property of Vallabh and it is immaterial who performed the ceremonies, so long as the appellant, being bound to perform them himself as the person entitled to Vallabh's estate, failed to perform them within the period within which their performance was indispensable, according to the *Hindoo Shastras*. We must, therefore, confirm the decree with costs and disallow the cross-objections.

Decree confirmed.

R. R.

1907
 VEIJBHU.
 KANDAS.
 v.
 BAI PAR-
 VATI.