

or appearing in the place of Mr. Strangman during his absence. All fees and refreshers payable to Mr. Mirza may be taxed as between attorney and client.

I refer back the bill to the Taxing Officer to enable him to tax the same in the way I have indicated.

No order as to costs.

Counsel certified for purposes of taxation between attorney and client the plaintiff.

Attorneys for the plaintiff: *Messrs. Mirza, Mirza & Mangaldas.*

Attorneys for the defendants: *Messrs. Ardeshir, Hormasji Dinshaw & Co. and Messrs. Mirza, Mirza & Mangaldas.*

R. R.

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BEGUM
v.
MIR AUN
ALI.

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Knight.

GANGU KOM DAGDU RAKHMAJI GODSE (ORIGINAL DEFENDANT).
APPELLANT, v. CHANDRABHAGABAI KOM GOVIND PURSHOT-
TAM BHAGAWAT (ORIGINAL PLAINTIFF), RESPONDENT.*

1907
December 11.

Hindu law—Disqualified heir—Widow of the disqualified heir—Exclusion from inheritance—Rule as to construction of Hindu law texts.

The wife or widow of a disqualified Hindu does not become incapable of inheriting property merely by reason of her husband's disqualification, whether she claims as heir to a deceased person through her husband or otherwise, if she is herself free from any of the defects which exclude a person from inheritance under Hindu law.

It is a canon of interpretation in Hindu law that a special text forming an exception to a general text should be construed strictly and applied only to the cases falling clearly within it.

PER CURIAM :—According to a well-known rule of interpretation in Hindu Law, when there is a collocation of two texts dealing with the same subject, and in the first of them two words or expressions occur, of which only one is repeated in the second text, the other word or expression must be excluded as not applying to cases falling within that second text.

SECOND appeal from the decision of V. V. Wagh, Joint First Class Subordinate Judge with A. P., reversing the decree passed

* Second appeal No. 55 of 1907.

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by Jhaverilal L. Thakur, First Class Subordinate Judge at Poona.

One Ramshet had two wives: Chinkabai and Radhabai. By the former he had one son Purushottam and by the latter he had two sons Vishnu and Dashrath. Ramshet died in 1884. Vishnu died in 1885, leaving him surviving a daughter, Gangu (defendant).

In 1897, Purshottam died leaving him surviving a son Govind, the husband of Chandrabhagabai (plaintiff).

Dashrath died in 1900. His widow Kashi applied for a certificate of heirship to her husband. Govind murdered Kashi, for which offence he was executed.

The plaintiff Chandrabhagabai filed this suit for a declaration that she was the heiress of Dashrath. The defendant contended *inter alia* that the plaintiff's husband murdered Dashrath's widow, and consequently did not get inheritance, that the plaintiff's husband having got no inheritance plaintiff did not get it and that there was no probability of her getting it.

The Subordinate Judge held that Govind was not the heir of Dashrath's property and that he had no inheritable interest in it which could descend on his death to the plaintiff. His reasons were as follows:—

From these admitted facts it appears, that Vishnu and Dashrath owned the properties in suit as of their two-third share in their father Ram Seth's properties; that Vishnu died during minority and in union with his uterine brother Dashrath and that consequently Dashrath became the sole owner of the said properties as a survivor, though Vishnu had left him surviving a widow Lakshmi, who has since remarried, and a daughter Gangu the defendant, that on Dashrath's death his widow succeeded to them. On her death, according to Hindu Law, plaintiff's husband Govind, who was a son of her husband Dashrath's step-brother Purshottam, was entitled to succeed to Dashrath's properties in preference to his deceased brother Vishnu's daughter Gangu—the defendant who fell under the class Bandhu, and on Govind's death his widow the plaintiff was entitled to them. Under ordinary circumstances therefore, plaintiff as a widow of Dashrath's step-brother's son, is the preferential heir of his properties and not the defendant. It is however contended that plaintiff's husband having murdered Dashrath's widow, became disqualified under Hindu Law to inherit Dashrath's properties and that the plaintiff who can only claim that right through him, as a widow of a disqualified heir, cannot claim it. The

case of *Vedanayaga Mudliar v. Vedammal*, I. L. R. 27 Mad. p. 591, has been cited as authority in support of the said contention. It has been held in that case that "The question whether a Hindu who has been a party to a murder is prevented from succeeding to the estate of the person murdered is not answered by the Hindu Law. But the principle that no one shall be allowed to benefit by his own wrongful act, is of universal application. If the defendant was a party to the murder her wrongful act while not preventing the vesting in her of the inheritance, disentitled her to any beneficial interest in it. Such beneficial interest would vest in those who would be entitled to it, were the guilty heir out of the way."

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The case is similar to the present one. The only difference is that there the defendant who would be in ordinary course the heir of her deceased minor son, was alleged to be concerned in the murder of the deceased and the plaintiff was the person who would be entitled to succeed to the property of the deceased if she were out of the way. While here the plaintiff is the widow of the person who in ordinary course would have been entitled to inherit the properties of Dashrath on the death of his widow Kashi whom he murdered and the defendant is the person who would be entitled to inherit them if she were out of the way. The principle enunciated in the above quoted cases is commendable to equity, justice and good conscience and applies equally to the present case. Plaintiff's husband, Govind, having murdered Dashrath's widow Kashi, was therefore disqualified to inherit Dashrath's properties. On behalf of the plaintiff it is then contended that if the plaintiff's husband were held to be disqualified to inherit Dashrath's properties on the death of his widow he is to be considered as then dead, and his widow the plaintiff who would be the heir if her husband were dead, becomes entitled to inherit them in preference to the defendant, who is a daughter of a deceased brother of Dashrath, and therefore a Bandhu. The contention is untenable. It is laid down at page 787, Mayne's Hindu Law, 5th Edition, that "the widow of a disqualified heir cannot claim, as widow, to succeed to any property which her husband could not have inherited." At page 788 it has been said "The effect of a disability on the part of a person who would otherwise have been heir is at once to let in the next heir." But such heir is to succeed by his own merits and cannot be allowed to step into the place of the disqualified heir. The place of the widows of descendants and collaterals in the order of heirs is immediately after their husbands. (West and Buhler, Hindu Law, Part I, 3rd Edition, page 132.) Independently of their husbands, they are not heirs in their own right. They take the place of their husbands. The plaintiff being the widow of the disqualified heir cannot step into his place and independently of him is not the heir in her own right. In the case quoted above it has been held that the wrongful act (murder) would not prevent the vesting of the inheritance, but would disentitle her to any beneficial interest in it. And it may be contended that the inheritance having vested in plaintiff's husband, his widow can take it. A disqualified heir, however, under Hindu Law has not any heritable interest which he can transmit to his heirs. The

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principle that property which has once vested in a person either by inheritance or partition, is not divested by a subsequently arising disability (Mayne's Hindu Law, 5th Edition, page 789) does not apply to this case.

On appeal this decree was reversed; the learned Judge in the course of his judgment remarked as follows:—

The Madras case (27 Mad. 591) relied upon in the lower Court would have governed the present case if Govind the murderer was himself the plaintiff. For the offence of her husband his innocent widow would not lose her character as Sagotra Sapinda of Dashrath. The Hindu Law ordains exclusion from inheritance in certain defined cases. The present case does not fall under that class. Exclusion was introduced with good motives. The law givers did not wish for obvious reasons that deceased and some other persons affected with permanent disabilities should marry. In the present case Govind laboured under no disqualification when plaintiff became his wife by a legal mode of marriage. It may be said that Govind was civilly dead as regards inheritance when he committed the murder and if vested at once in plaintiff. The rule that the "widows take the place of their husbands" simply enables the Court to find out the widow who can come in as heir, when inheritance opens out by death or otherwise and then only females, only such of them whose husband, if alive, would have taken the inheritance, would succeed. The rule is intended to fix the heir in such cases.

I doubt if the offence of murder is a disqualification under Hindu Law in all cases. Even if so I am of opinion that it does not extend to widows or children of the offender.

The defendant appealed to the High Court.

J. R. Gharpure, for the appellant (defendant):—We contend first that murder is an incapacitating circumstance under Hindu Law. (See Narada, XIII, 21.)

We submit next that Govind being incapacitated to inherit, his widow Chandrabhagabai (plaintiff) is also debarred from inheriting the property.

Yajnyavalkya says:—"Their (of the incapacitated) *Aurasa* and *Kshetraja* sons would be entitled if faultless as also their daughters should be maintained till they are joined with (their) husband; moreover their sonless wives should be maintained if of virtuous conduct and if they are incontinent or immoral they should be banished." (II, 141, 142.) These texts follow after the text relating to partition and inheritance: hence if the

author had intended the wives or widows of incapacitated persons any higher rights it would have been specially mentioned.

Further, under Hindu Law, the wives come in as *gotraja-sapindas* of their husbands and take their positions as heirs: see *Bapuji v. Pandurang*⁽¹⁾, *Bai Narmada v. Bhagwantrao*⁽²⁾, and *Rachava v. Kalingapa*⁽³⁾.

On the ground of public policy also, the plaintiff should not be allowed to inherit the property of one who was murdered by her husband: see *Muhammad Khan v. Sis Bano*⁽⁴⁾, *Mussamat Shah Khanam v. Kalandhar Khan*⁽⁵⁾ and *Roda v. Harnam*⁽⁶⁾.

D. W. Pilgamkar, for the respondent (plaintiff):—Murder is not a ground of exclusion from inheritance under Hindu Law. Narada alone says that one hostile to the father should be excluded from inheritance (13, 21, 22). In no text it is laid down that a murderer is to lose his right to perform the religious ceremonies: see Gautama, 211, 1, 281, 43, 44; Vashishta, 171, 52, 54; Baudhayana, p. 2, a. 2, k. 3, ss. 37, 40; Apasthambha, p. 2, a. 6, k. 14, s. 14, 15; Vishnu, 15, 32-39; Yajnyavalkya, II. 140-142.

According to Manu (XI, 47-54; 183-188, 240, 248) every sin however great is expiable. It does not create forfeiture of rights.

Assuming the murderer is excluded still his widow who is a *sagotra-sapinda* is preferred to a *bandhu*.

CHANDAVARKAR, J.:—The property in dispute belonged to one Dashrath Ramshet, on whose death in 1900, his widow Kashi succeeded as heir. In 1902, she was murdered by Govind Purshottam, son of her husband's half-brother Purshottam Ramshet. For that offence Govind was tried, convicted, and hanged in the same year.

The respondent in this second appeal, Chandrabhagabai, who is the widow of Govind, thereupon sued to recover the property of Dashrath Ramshet upon the ground that, on Kashi's death,

(1) (1882) 6 Bom. 616.

(2) (1888) 12 Bom. 505.

(3) (1882) 16 Bom. 716.

(4) (1906) P. R. No. 41 of 1906.

(5) (1900) P. R. No. 74 of 1900.

(6) (1895) P. R. No. 18 of 1895.

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the property descended to Govind as the next reversionary heir of Dashrath, and that, on Govind's death, it descended to her (the respondent) as his widow and heir. She also maintained in her claim that, in the event of its being held by the Court that in consequence of the murder of Kashi by him Govind had lost his right of inheritance to Dashrath, the property must be regarded as having devolved upon her in her own right as reversionary heir of Dashrath, by reason of her being his *gotraji-sapinda*.

The Subordinate Judge of Poona, who tried the suit, rejected the claim upon the ground that the offence of murder committed by Govind excluded him from the right of inheritance to Dashrath and that the respondent, claiming through Govind as his widow, was affected by the same disability.

On appeal by the respondent, the Appeal Court has held that, as she claimed the property in her own right as *gotraji-sapinda* of Dashrath, the disability of her husband cannot affect her and that she is entitled to succeed as Dashrath's heir.

Three points of law have been made before us on this second appeal—(1) that, in consequence of the murder by him of Kashi, Govind was absolutely disqualified from inheritance under the Hindu Law; (2) that the same disqualification extended to his widow, either absolutely so as to deprive her of all rights of inheritance, or, at least, to the limited extent of rendering her incompetent to inherit as the *gotraji-sapinda* of Dashrath, since she claims that capacity through her husband; (3) that, in any case, on grounds of public policy the respondent's claim must be disallowed. Reliance is placed in support of the first point on the authority of the ruling of the Madras High Court in *Vedanayaga Mudaliar v. Vedammal*⁽¹⁾.

It will be convenient to deal with the second point first, because, if it fails, the determination of the first becomes unnecessary.

The argument on the second point amounts to this that whatever ground of exclusion from inheritance applies to a Hindu male applies to his wife also; and that if the former becomes incompetent to inherit, the same incompetency extends to the latter also, either absolutely or at least when she claims a right of inheritance through him as her husband.

(1) (1904) 27 Mad. 591.

On the subject of exclusion from inheritance and from the right to share at a partition, there are four texts in the *Smṛiti* of Yajnyavalkya. These four texts occur one after the other and are explained by Vijnaneshwara in the *Mitakshara*. Before quoting the first text and adding his gloss to it, he states by way of introduction that it is an exception to the general rules laid down in the preceding texts as to unobstructed and obstructed succession, and succession in a reunited family. The first text specifies the kind or class of persons who are debarred from the right to inherit property or to share at a partition. The second text declares that the *aurasa* or *kshetraja* son of any of the persons mentioned as disqualified in the first text is not excluded from that right merely by reason of his father's disability, if the son is himself free from it or similar defects. The third text states that the unmarried daughters of the disqualified persons specified in the first text shall be maintained until marriage. Then comes the fourth and last text on which the argument in this second appeal turns. It directs that the sonless wives of the persons specified in the first text as being excluded from inheritance shall be maintained, if those wives are of good behaviour; but that, if they are adulterous or perverse, they should be cast out.

The first argument of the learned pleader for the appellant is that because in this last text it is laid down in express terms that the wife of a disqualified person mentioned in the first text shall be maintained, if she be virtuous, it must be inferred that she is placed in the same category as her husband and declared incompetent to inherit.

But in the first text it is expressly stated that the persons specified therein ("the impotent, the outcaste, the lame, &c.") are *niramshakas*, that is, incompetent to inherit or to take a share at a partition, but that they must be maintained in consequence of the incompetency. In the fourth text, which relates to the wives of such persons, the word *niramshaka* does not occur at all. Had it been intended to extend the personal disqualification of the husband to the wife, though she might be personally free from all disqualifying defects, she would have been declared in the fourth text incompetent to inherit in terms as express as those used in the case of the husband in the first text. According to a

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well-known rule of interpretation in Hindu Law (1), when there is a collocation of two texts, dealing with the same subject, and in the first of them two words or expressions occur, of which only one is repeated in the second text, the other word or expression must be excluded as not applying to cases falling within that second text. So here in the first text, which specifies the persons excluded from inheritance, it is said that those persons *shall be maintained* (*bhartavyāh*) but that they are *incompetent to inherit* (*niramshakāh*). In the text relating to their wives, only the word *bhartavyāh* ("shall be maintained") is repeated. Hence, according to the rule, disinheritance was intended to apply to them. Further, had it been a rule of Hindu Law that the disqualification of a husband *per se* attaches to his wife, that also would have been specified in the first text among the grounds mentioned in it as excluding a person from inheritance.

So far from specifying it, the text by necessary implication from its language suggests that a woman does not lose *her* right to inherit merely because of her husband's disqualification. The text runs as follows:—

"An impotent person, an outcaste, and his issue, one lame, a madman, an idiot, a blindman, and a person afflicted with an incurable disease, as well as others (similarly disqualified), must be maintained; excluding them, however, from participation" (Stokes's Hindu Law Books, page 455).

It will be observed that each disability except one is here declared to be personal. Each of those specified is mentioned as being personally incompetent to inherit except the outcaste, in whose case alone it is stated that his incompetency extends to "his issue." The sole exception so made in the case of the outcaste is founded on the Hindu *Shastra* and must be familiar to those acquainted with its root ideas and principles. When a Hindu is outcasted, it does not necessarily follow that his wife and his children born before his excommunication become outcastes with him, unless by living with him they contract the

(1) For an illustration of this rule, see Bhattoji Dikshit's *Siddhanta Kaumudi*, page 55 [The Shri Venkateshawara Press Edition]. For another application of the rule, which answers to the legal maxim *expressio unius est exclusio alterius*, see Westropp, C. J.'s Judgment in I. L. R., 3 Bom., 280. (Chandavarkar, J.)

taint of excommunication themselves. It is otherwise with children born after the Hindu has been outcasted. In that case, such children are regarded by the *Shastras* as being born with the taint of excommunication. Hence their exclusion together with their father from the right of inheritance.

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If the outcaste is singled out in the text as the only person whose disqualification extends beyond himself, the disqualification in the case of others who are specified in the text must be held to attach to them only, and not to their issue or their wives.

That is the natural construction of the first and leading text on the subject of exclusion from inheritance, and that construction is warranted not only by its language but also by the fact that it is introduced by Vijñaneshwara with the prefatory remark that the text forms a special exception to the general rules laid down in the preceding texts of Yajnyavalkya regulating unobstructed (*apratibandha*) and obstructed (*sapratibandha*) succession, and succession in a reunited (*samskriti*) family. And it is a canon of interpretation in Hindu Law that a special text forming an exception to a general text should be construed strictly and applied only to the cases falling clearly within it.⁽¹⁾

We pass on now to the second text. It relates to the sons of those who are specified in the first text as persons debarred from all rights of inheritance and partition.

Vijñaneshwara introduces this second text with a prefatory remark, which, we think, is very material. The remark is translated by Colebrooke as follows:—

“The disinherison of the persons above described seeming to imply disinherison of their sons, the author adds.” (Stokes’s Hindu Law Books, page 457.)

Implied by what? Not by the first text, because, as we have pointed out, there is no such implication in it. On the other hand, its implication is clearly the other way.

(1) For this canon see the Chapter on “impurity,” in the section on *Prayaschitta*, Mitakshara (Moghe’s third edition), page 292. It is:—
यावद्यबाधितसुपत्तिप्रश्नो न भवति तावत्वाधनीयम् (“The general rule ceases to apply only so far as is necessary for the purposes of the exception.”) The canon is also given by West and Buhler in their Digest, third edition, page 880, footnote (c). [Chandavarkar, J.]

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The prefatory remark means this:—When a person is incompetent to inherit property or to obtain a share at a partition on account of any of the defects mentioned in the first text, the incompetency of his son also is apt to be inferred. Whence is the inference likely to arise? Vijnaneshwara does not stop to give the answer, because it is plain from the texts of Hindu Law and of the *Shastras* dealt with in the preceding portion of the *Mitakshara*, which, treating the son and the father as identical, make the son's rights of succession and partition in the case of his grandfather's property dependent on the father's. From them, remarks Vijnaneshwara, it is possible to argue that given a *disqualified* father, a *disqualified* son must follow.

When a son is born, his father has to address the child on the occasion of his birthday ceremony (*yāta karma*) in words which constitute a sacred formula. The father says to the child:—“Though thou art called my son yet verily thou art my own self.” This forms the basic principle of the mutual relation between a Hindu father and his son or sons. Hence a wife is called *Jāyā*—“she who has reproduced the husband in her son.” And this theory of identity between a Hindu father and his son has found its practical application in Hindu Law. That is the origin of the doctrine that a son takes a vested interest by birth with his father in ancestral property.

But, above all, there is the text of Yajnyavalkya regulating partition “among grandsons by different fathers.” That text says:—

“Among grandsons by different fathers the allotment of shares is according to the fathers.” (The *Mitakshara*, Chapter I, Section V, plac. I, Stokes's Hindu Law Books, page 391.)

Vijnaneshwara's exposition of this text is that “although grandsons have by birth a right in the grandfather's estate, equally with sons, still the distribution of the grandfather's property must be adjusted through their fathers, and not with reference to themselves.” That is, the sons share only what the father has to share—they have no independent right. If that is so, what is there for the son to share, when the father himself has no share to take, being excluded from all rights of inheritance and partition

on account of some personal disability of the kind specified in Yajnyavalkya's first text on the subject of exclusion from inheritance? The son must in that case fall with the father. This is in a joint family.

The same is the case in a reunited family. The rules regulating partition and succession as to it similarly provide that a son takes only what his father could have taken.

Hence Vijnaneshwara by way of introduction states that it is to remove the doubt arising from these texts relating to partition and succession, and to preserve the right of inheritance and partition to the son, in spite of his father's disability, that the second text of Yajnyavalkya is intended. That text declares that, provided the son is legitimate (*aurasa*) or "the offspring of the wife by a kinsman (*kshetraja*)," and is himself free from the defects or disabilities mentioned in the first text, he does not share his father's disqualification but remains entitled to the share which his father would have obtained had he been not disqualified. That this is the scope and effect of this second text, with which we are now dealing, is explained in *the Dáyabhāga* as follows:—

"Therefore the sons of such persons, being either their natural offspring or issue raised up by the wife, as the case may be, are entitled, provided they be free from similar defects, to take their allotments according to the pretensions of their fathers." (*Dayabhaga*, Ch. V, plac 19, Stokes's Hindu Law Books, page 265.) And in a footnote Colebrook gives Achyuta's explanation of "allotments according to the pretensions of their father." The explanation is: "Such allotment as their fathers would have had, if capable of inheriting."

But the difficulty, which arose in consequence of the texts identifying a Hindu son with his father and rendering his right to inherit his grandfather's property or obtain a share at a partition dependent upon the existence of the same right in the father, and which had to be removed by the second text, could not possibly arise in the case of a daughter or a wife. No identity similar to that of a father and his son is declared by any text as between a husband and his wife, or a father and his

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daughter. No doubt "a wife is half of her husband"—but she is only a half, not the whole, and that also for certain defined purposes into which considerations as to rights of inheritance and partition do not necessarily enter in the same way that they do in the case of a father and his son. A son is by legal fiction the whole of his father. There is no text or rule of succession or partition, according to which, a husband dying, his widow can claim to take his place as his *alter ego* in the same way that his son can and to inherit or share what he would have been entitled to inherit or share had he been alive. This same consideration applies to a daughter.

Hence it is that while Vijnaneshwara expressly introduces the second text, which relates to sons, with the remark that its purpose is to meet the difficulty arising from the father's disability being possibly supposed to descend upon the sons also, he makes no such remark while introducing the third or the fourth text, relating respectively to the daughters and the wives of disqualified persons.

If he interpreted the third and the fourth text in the sense of disinheriting the daughter and the wife also and substituting for their right of inheritance, a right to maintenance, it is singular and quite unusual in a commentator of Vijnaneshwara's clearness and consistency that he did not say so explicitly either by way of preface to the texts or by way of exposition, when he had taken special care to say it in dealing with the second text, relating to sons. He would have at least added the word "others" after "sons" in his introductory remark to the second text, which is a hemistich, the other hemistich being the third text providing maintenance for the daughter.

What, then, it may be asked, was the necessity of providing by means of the third and the fourth text for the maintenance of the unmarried daughters and the wives of disqualified persons, if the intention was not to declare them as sharing the incapacity of those persons in virtue of their relation to the latter?

The necessity is plain. If the second text—that which relates to the sons of a disqualified person—is an enabling clause,

inasmuch as it preserves to the particular kind of sons therein mentioned the right which they would have had if the father had not been disqualified, the third and the fourth text coming immediately afterwards and in the same connection must also be construed in the same light. They too *preserve* to the unmarried daughter and the wife of a disqualified person respectively the right which they would have had if that person had not been disqualified. What, under the general rule of Hindu Law, is an unmarried daughter's right as against her father or the undivided family of which he is a member? It is the right of maintenance until marriage and the right to be given away in marriage. Similarly, a wife has a right of maintenance against her husband and the undivided family of which he is a co-parcener. If the father of a girl or the husband of a woman, being a co-parcener in a joint or reunited family, becomes disqualified for the purposes of inheritance and partition, the daughter and the wife whose right of maintenance in either case is founded on their relation to that co-parcener, must, logically speaking, lose that right in consequence of that disqualification. It is against that loss that the third and the fourth text provide.

If that is the conclusion on a legitimate construction of the language of the texts and their examination by the light of other texts bearing on the subject, what warrant is there for construing the fourth text—that relating to the wives of disqualified persons—as not an enabling but a disqualifying clause, giving the right of maintenance as a *solatium* for the deprivation of a totally different, higher, and independent right—the right of inheritance—upon which the text itself is silent and with which it does not profess to deal even by implication? So far from there being any warrant for it, the construction lends itself to the very vice, which Vijnaneshwara declares in one of the earliest portions of the Mitakshara ought to be avoided in the interpretation of texts. For, according to that construction, the text in question, must in effect be read as being in the nature of an implied prohibition (*a parisankhyá* in the technical language of Hindu Jurists), because (it is said) by directing maintenance to be given to the sonless but chaste wife of a disqualified person, it impliedly prohibits her from inheriting

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property. But, according to Vijnaneshwara and other commentators such as Medhatithi, no text ought to be construed as being in the nature of an implied prohibition, if that construction involves, firstly, departure from the plain and natural meaning of its language; secondly, it requires the reading into it of words with another meaning; and, thirdly, the result of that departure and that importation is to exclude or prohibit something which the *shastras* or the law have or has expressly sanctioned. The text we are discussing simply directs the doing of an act, *i.e.*, the giving of maintenance to the sonless but chaste wife of a disqualified Hindu. That is the natural meaning of its language. There is nothing prohibitive of any right in it. How then can the implied prohibition of the right of inheritance come in unless we read into the text words which are not there? But if we import such words into it, the wife becomes excluded from the right which both the *shastras* and the law have allowed to her as a *sapinda* by marriage in her husband's family. Such a mode of construction is condemned as vicious in emphatic terms by Vijnaneshwara and other commentators.

The conclusion that the text is merely enabling, not disqualifying, in its operation, is further supported by certain portions of Vijnaneshwara's discussion in the *Mitakshara* on a widow's right of heirship to her husband.

In that discussion he quotes the following text of Narada:—

“Among brothers, if any one die without issue, or enter a religious order, let the rest of the brethren divide his wealth, except the wife's separate property. Let them allow a maintenance to his women for life, provided these preserve unsullied the bed of their lord.” [*Mitakshara*, Ch. II, section I, plac. 7, Stokes's Hindu Law Books, page 429]

Having quoted this text of Narada and other texts usually cited by the opponents of a widow's right of inheritance in support of their opinion, Vijnaneshwara proceeds to give Dhateshwara's view on the question, which is that a widow is entitled to inherit her husband's property only when she obtains authority to have male issue raised up to her husband by means

of *Niyoga* (levirate); that, if she obtains no such authority, she cannot inherit, but is merely entitled to maintenance. And Dhareshwara in support of that view relies on the above quoted text of Narada and also on the very text of Yajnyavalkya, now under discussion, which says that the sonless wives of disqualified persons shall be maintained, if they be chaste. [See Stokes's *Hindu Law Books*, plac. 12, page 430, and plac. 13, page 431.] Vijnaneshwara combats that view by pointing out that Dhareshwara has misapplied each of the two texts and extended its real scope and effect by wresting it from the context in which it occurs and interpreting it so as to effect a wife's or widow's right of inheritance, whereas it deals merely with another right—that of maintenance—arising under circumstances unconnected with inheritance. Narada's text, says Vijnaneshwara, as it is quoted by Dhareshwara in support of his view, is the latter half of a text, the first half of which shows expressly that the whole relates to coparceners in a re-united family; that the first half declares the right of the coparceners to a partition of their re-united property; and that the latter half merely directs that if in such a family one of the coparceners has died or entered a religious order and the surviving coparceners choose to effect a partition subsequently, they shall not include in such partition the *stridhan* (separate property), if any, of the wife of the coparcener who has died or entered a religious order, and that they shall give her maintenance. The text in fact, says Vijnaneshwara, merely provides for the maintenance of such a wife by the coparceners of her husband but does not pretend to deal with or touch her right of inheritance. And as to Yajnyavalkya's text which is relied upon by Dhareshwara, 'as being of the same purport and having the same effect as Narada's text, Vijnaneshwara points out that it relates to the maintenance of the wives of impotent and other disqualified males, implying thereby that it does not touch the rights of inheritance or other rights of those wives.

What, again, is the result of Narada's text itself as explained by Vijnaneshwara? According to that explanation, if after a coparcener in a re-united family has died or entered a religious order, the other coparceners choose to effect a partition, they are

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1907. prohibited from touching at such partition the *stridhan* (separate) property if any, of that coparcener's wife. Now, such property may have been acquired by her as much by inheritance as in any other way sanctioned by Hindu Law. The text of Narada does not say that it must be *stridhan* property inherited by her before her husband's death or before he entered the religious order. It may be inherited before then or *afterwards*. All that is required is that it must be *stridhan* existing at the date of the partition which the husband's coparceners propose to effect after his death or his entrance into a religious order, as the case may be. After that event and before the partition, the wife may have inherited *stridhan* property. If she has, such *stridhan* must fall within the rule of Narada enjoining the husband's coparceners to leave it to her undisturbed. And if Narada's text thus contemplates inheritance by her of property as *stridhan* after her husband has entered a religious order, the conclusion follows that the wife of a disqualified man is entitled to inherit property notwithstanding his disqualification. It follows, we say, because a man who enters a religious order is, according to Hindu law, as much a disqualified person for the purposes of inheritance as an impotent person, an idiot, a blind man, a leper, and so on; and if the wife of such a man can inherit, the wife of any other man, suffering from any of the other disabilities or defects causing disinherison, must be likewise held competent to inherit. No distinction is made between one kind of disqualification and another—all are alike in their legal effect on the person disqualified.

Having dealt with the question from the point of view of the Mitakshara, we turn now to Nilakantha's treatment of it in the Vyavahara Mayukka, which, shortly stated, is as follows. He first quotes the texts prescribing the different grounds of exclusion from inheritance; he then quotes the texts which preserve the right of inheritance to the *aurasa* or the *kshetrāja* son of a disqualified Hindu; and lastly, he quotes the texts of Yajnyavalkya which provide that the unmarried daughter and the virtuous but sonless wife of a disqualified person are each entitled to maintenance. This last quotation is prefaced by Nilakantha as follows:—

“Yajnyavalkya delivers a special rule concerning the daughters and wives of these.” [Vyavahara Mayukha; Chapter IV, section XI, para. 12 : Stokes's Hindu Law Books, page 110.]

The rule embodied in the two texts in question is described by Nilakantha as a *special* rule. The original word for “special rule” is *eishesham*, which means something in addition to the general rule. Now, the general rule with reference to disqualified persons is that they cannot inherit but can only get maintenance; and the special rule is that whoever inherits the property which the disqualified person would have inherited, had he been qualified, should maintain not only him but also his unmarried daughters and wife. The *special* rule, therefore, is an additional provision for the benefit of the daughters and the wife of a disqualified person, conferring a special right of maintenance upon them, because had the disqualified person been entitled to inherit, the property would have been a source of their maintenance. Had Nilakantha construed the general rule as implying that the wife also of a disqualified Hindu becomes disqualified by reason of his disqualification and the text providing maintenance for her as providing it in lieu of her right to inherit, he would have prefaced that text with the remark that it is a corollary to the general rule, involving the same consequence, instead of describing it as a special rule, not at all implied by or flowing out of the general.

The idea conveyed by the text being a special rule is this. When a man is held incompetent to inherit property on account of a certain defect, it is natural that the law should compensate him for the loss of the right of inheritance by giving him the right of maintenance out of that property. But that compensation does not adequately meet the hardship entailed upon him by the loss of the right of inheritance. His unmarried daughters and his wife are dependent upon him for their maintenance; and, therefore, to do him complete justice, a special or additional provision, says Nilakantha in effect, is made for their maintenance. From Nilakantha's treatment of the question, therefore, we arrive at the same conclusion as that yielded by Vijnaneshwara's treatment of it. Both deal with the text in the light of an enabling, not a disqualifying, clause.

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If the disqualification of a husband disqualifies his wife, though she is herself free from the disqualifying defects, every wife, whether she has sons or not, ought to be subject to the disqualification on that account. But if the argument of the learned pleader for the appellant in this case, based on the fourth text of Yajnyavalkya, is sound, it is only the wives having no sons who must be held to share the disqualification of their husbands, because the text refers in terms to them only and not to wives who have sons. Why should a distinction have been made between the two descriptions of wives? If it be objected that no distinction is intended by the text in point of disinheritance but that it is made only in point of provision by way of maintenance, because a wife, having a son, being entitled under the general Hindu law to maintenance from the son, does not stand in need of it, the objection is not a sufficient answer to certain crucial questions. If the text must be construed like the first text as substituting the right of maintenance for the higher rights of inheritance impliedly taken away from the sonless wife on account of her husband's disqualification, why is not the same substituted right accorded to his wife having a son, when the husband is given that right, whether he has sons or not? It is no answer to that to say that it is because she can get maintenance from her son. Equally is the son bound, under the general Hindu law, to maintain his father—it is one and the same text of Manu which says that a son is bound to maintain his father as much as his mother.

On the other hand, on our construction of the text that it is merely enabling, not disqualifying in its operation, the distinction made between a sonless wife and a wife having a son in point of maintenance on account of the husband's disqualification is satisfactorily explained.

The right of maintenance accorded to the husband by the first text is, as it is plainly expressed to be, a substituted right for the right of inheritance of which he is deprived. Being in fact carved out of the latter right, it arises independently of the question whether he has a son or not to maintain him. But the right of maintenance dealt with in the fourth text is made dependent on the question of son or no son, because, it has nothing

to do with the wife's disinherison or disqualification but is intended as a special provision by way of bounty to save her from destitution consequent upon the husband's disinherison on the one hand and the absence of a son to maintain her on the other.

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Again, if the fourth text is a disqualifying clause, it affects only a wife having no son. What becomes then of a wife having a son? Is she also similarly disqualified or not? If she is, where is the text which says so? Not this further text, because it speaks only of "sonless wives"; nor is there any other. A wife having a son must then be pronounced exempt from disqualification. That reduces the text to an absurd anomaly, for which there is no conceivable reason or justification in Hindu law.

So far we have dealt with the first branch of the second point made by the learned pleader of the appellant in support of this second appeal. The second branch of the same point is that the wife of a disqualified Hindu is affected by his disability, at all events to the limited extent of becoming incompetent to inherit the property of a deceased person, if she claims the inheritance as his heir through her husband.

For instance, in the present case the respondent claims to inherit the property of Dashrath as his *gotraja sapinda* through her deceased husband, Govind, who was Dashrath's half brother's son. And it is maintained for the appellant that, the capacity of *gotraja sapinda* having devolved on the respondent through her husband, his disqualification attaches to her and deprives her of the right to inherit.

That is, she can inherit to her father as his daughter, to her brother as sister; but she cannot claim to inherit to any one through her husband. The texts on the subject of exclusion from inheritance contain nothing, express or implied, to warrant the inference of such a partial disqualification. The disqualification mentioned in the first and leading text is general and absolute. If the husband is disqualified on account of any of the defects specified in it, he becomes incompetent to inherit in every capacity, whether as son, father, brother, and so on. And if his disqualification extends to his wife, it must have the same effect

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in her case too, in the absence of anything in the text relating to her to render that effect narrower. No doubt in some particular cases partial disqualification is enjoined by Hindu law. For instance, an unchaste widow cannot inherit to her husband, though she can inherit to her father as daughter, or to her brother as sister. In the case of an unchaste widow, the law is declared in express texts and not left to implication; and as to her capacity to inherit as a daughter, etc., in spite of her unchastity, the law is of modern growth, because, according to the strict Hindu Law, *unchastity*, being either a vice or resulting in excommunication, rendered a woman incompetent to inherit in any and every capacity. But there is no text which declares that a woman becomes incompetent to inherit on account of the disqualification of her husband in cases where the inheritance is claimed by her through her husband.

There is a fallacy, besides, in the argument based on the fact of a woman claiming inheritance through her husband as a *gotraja sapinda* of a deceased person. It is no doubt because she is the husband's wife that she becomes a *gotraja sapinda* of the deceased. In other words, her *status* as wife is the cause of her *status* as *gotraja sapinda*. The former is the cause; the latter is the effect. They are what a Hindu lawyer, borrowing the language of the *Naiyayikas* (Hindu logicians), would call *karana* and *karya* respectively. But a cause and its effects are not necessarily the same in Hindu law. To take the familiar case of an earthen jar, so often given in the books to illustrate the principle, the earth of which the jar is made is the cause, the jar is the effect; but the jar is regarded nevertheless as being substantially different from the earth. Similarly, the fact of a woman being the wife of a certain man is the cause of her being a *gotraja sapinda* of her husband's brother or the like; but nevertheless the *sapindaship* is an entity by itself, distinct from, though arising out of, the cause. And it is the *sapindaship* which is the immediate cause of her heirship. And the Hindu law, like the English, does not, generally speaking, "consider the causes of causes and their impulses of one another."

Lastly, the learned pleader for the appellant appealed to "public policy" in support of his case. He urges that it is

contrary to justice, equity, and good conscience that the widow of a murderer should be allowed to inherit property which the murderer himself was disqualified from inheriting. But Bombay Regulation III of 1827, by which we are bound to apply Hindu law to Hindus, says that English law directed by the principles of "justice, equity and good conscience" should be resorted to only when the Hindu law is silent. And even if it were silent on the question under discussion, "public policy is always an unsafe and treacherous ground for legal decision" (*Janson v. Driefscntien Consolidated Mines, Limited*)⁽¹⁾, and we do not see why we should hold that the wife of a murderer is incompetent to inherit property under the circumstances proved in the present case.

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The conclusion of law at which we have arrived is indeed contrary to the interpretation placed by Shri Krishna Tarkalancara in his *Daya Krama Samgraha* on Yajnyavalkya's text relating to the wives of disqualified persons. (See plac. 17, Stokes's Hindu Law Books, page 501). But there is no discussion of the question and no reason is given for the interpretation by the learned author. The *Daya Krama Samgraha*, being a commentary on the *Dayabhaga*, cannot be regarded as an authority in the interpretation of the *Mitakshara*; and from what we have said in the foregoing part of this judgment in support of our conclusion it will have been observed that we proceed upon not only the language of each of Yajnyavalkya's texts on the subject of exclusion from inheritance but also on the language employed by Vijnaneshwara in the *Mitakshara* and by Nilakantha in the *Vyavahara Mayukha* either in introducing some of those texts or explaining their proper scope and effect.

We hold, then, that the wife or widow of a disqualified Hindu does not become incapable of inheriting property merely by reason of her husband's disqualification, whether she claims as heir to a deceased person through her husband or otherwise, if she is herself free from any of the defects which exclude a person from inheritance under the Hindu law.

(1) [1902] A. C. 484 at p. 500.

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That being our conclusion on the second point argued before us, it is unnecessary to decide the first point.

The decree must, therefore, be confirmed with cost.

Decree confirmed.

R. R.

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Knight.

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January 20.

SHRINIWAS KRISHNA SHRIRALKAR (ORIGINAL DECREE-HOLDER),
APPELLANT, v. NARHAR KHANDO KHANVILKAR (ORIGINAL
JUDGMENT-DEBTOR), RESPONDENT.*

Limitation Act (XV of 1877), section 19—Acknowledgment—Essentials of a valid acknowledgment—Acknowledgment contained in a written statement—It need not be addressed to any one.

On the 11th July 1900, a decree was passed against the defendant directing him to pay a certain amount in fixed instalments: the whole amount became payable on default of paying three instalments. The plaintiff presented an application on the 14th July 1903 for execution of the decree for the whole amount alleging that the default contemplated had occurred. To this, the defendant submitted a written statement signed by himself, bearing date the 28th September 1903, wherein he contended that the decree for the whole amount could not be executed, inasmuch as with reference to the second instalment he had deposited its amount with a third person and had given a notice to the plaintiff asking him to take the amount from the third person. As to the third instalment, his submission was that he had no means to pay its amount then and time should therefore be granted to him. The Court held that three defaults had not occurred and dismissed the darkhast.

On the 24th September 1906, the plaintiff gave another darkhast to recover the amount of the aforesaid two instalments, which remained unpaid. The Subordinate Judge dismissed the darkhast as time-barred.

Held, that the statement by the defendant as to the second instalment was an acknowledgment of liability within the meaning of section 19 of the Limitation Act (XV of 1877).

Held, further, that the statement by the defendant as to the third instalment that he was unable to pay and that he would pay if time were given to him, was a distinct acknowledgment of his liability.

Held, therefore, that the second darkhast was within time.

*First Appeal No. 22 of 1907.