

he was working in his own interests and against the interests of the minors. His withdrawal from the miscellaneous proceedings was part of his general scheme, and I am of opinion that that withdrawal cannot be held to have bound the plaintiffs under Article 11. of the Limitation Act. Even if the miscellaneous proceedings had been contested to the end by Virupakshapa, that fact by itself would not necessarily prove that the minors were adequately represented; and here the abandonment of the proceedings and the proved circumstances in which that abandonment occurred show that the minors were not represented when the order under section 335 of the Civil Procedure Code was made.

As this is the only point on which the decree of the Court below is based, I must reverse that decree and remand the suit for trial on the other issues. Costs to abide the result.

Decree reversed and suit remanded.

G. B. R.

APPELLATE CIVIL.

Before Mr. Justice Chandavirkar and Mr. Justice Heaton.

JANGLUBAI KOM SHIVAPPA TELANGI (ORIGINAL PLAINTIFF),
APPELLANT, v. JETHA APPAJI MARWADI AND OTHERS (ORIGINAL
DEFENDANTS), RESPONDENTS.*

1908
April 15.

*Hindu Law—Mitákshara—Succession—Stridhan—Maiden's stridhan—
Priority between maternal grandmother and father's mother's sister.*

Under the Mitákshara, the father's mother's sister is entitled to succeed to the stridhan of a maiden in preference to her maternal grandmother.

SECOND appeal from the decision of C. A. Kincaid, District Judge of Poona, reversing the decree passed by Gulabdas Laldas, First Class Subordinate Judge at Poona.

Suit for declaration of heirship.

* Second Appeal No. 33 of 1907.

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be preferred to a *pitrubandhu*; for according to Vijnáneshwara, propinquity or blood relationship is the determining factor in cases of succession.

V. G. Ajinkya for the respondent :—Taking the second contention first, it is clear that the preference assigned by Vijnáneshwara to the mother over the father, is limited strictly to the two relations named, and in the absence of the mother and the father the property goes to the nearest relatives, that is, the nearest *sapindas* of the father.

According to this test, Sayamma (junior), who is related to Bai Laxmi through her father, is entitled to succeed.

CHANDAVARKAR, J. :—The question of Hindu law on this second appeal relates to the succession to the *stridhan* of an unmarried female, the competing claimants in the case being her maternal grand-mother and her father's mother's sister.

The Subordinate Judge, in whose Court the suit was filed by the maternal grand-mother, decided it in her favour and awarded the claim.

The District Judge, on appeal, has reversed the Subordinate Judge's decree, holding that the father's mother's sister, as a *pitrubandhu* of the *propositus*, is entitled to succeed in preference to the maternal grand-mother because the latter, being a *matribandhu*, can come in only in default of *pitrubandhus*.

Both the Courts below have dealt with the question of succession on the principle that he who is the nearest *sapinda* of the *propositus*, who in this case is an unmarried female, is entitled to inherit her *stridhan*. But the succession to such *stridhan* is regulated by a special rule which is contained in a text of Baudhyayana. The Subordinate Judge nowhere notices it. The District Judge cites it and his judgment proceeds upon it.

The text in question is given by Vijnáneshwara in the *Mitákshara* as follows :—

“ For Baudhyayana says :—‘The wealth of a deceased damsel, let the uterine brothers themselves take. On failure of them, it shall belong to the mother; or, if she be dead, to the father.’ ”

The text is silent on the question what is to happen and who are the heirs of an unmarried female, if she dies leaving neither

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a uterine brother, nor mother nor father. The Vira Mitrodaya supplies the omission and answers the question. After pointing out that in the case of a female, married according to one of the blamed rites, her stridhan goes, in default of daughters and sons and those included in those terms, to her parents, and that among parents the mother precedes the father, Mitra Misra, author of the Vira Mitrodaya, observes that the succession to an unmarried female is regulated by Baudhyayana's text, which he quotes as above. And then he continues:—

“In default of the mother and the father, it goes to their nearest relations.” [The Vira Mitrodaya translated by Golap Chandra Sarkar, Shastri, page 241, section 9.]

According to this rule, in default of the heirs specified by Baudhyayana the *sapindas* of the parents of a maiden inherit her property in the due order given in the text of Yājnyavalkya regulating obstructed succession. The same rule holds good in the case of succession to a woman married according to one of the blamed rites and dying without any of the specified heirs in her case surviving. In her case, the order of heirs specifically enumerated is as follows:—(1) daughters; (2) daughter's daughters; (3) sons of daughters; (4) sons and (5) grand-sons. In the case of a maiden, the order of heirs specifically enumerated is: (1) brothers; (2) mother; and (3) father. In either case, in default of these enumerated heirs, the same rule of succession applies—that is, the estate goes to “the nearest relations” of the parents of the deceased, whether she be a maiden or a woman married according to one of the blamed rites.

The reason of this is that the latter, having been married according to the blamed rites, continues to belong to her father's *gotra* (family), according to the Hindu Shāstras, because in such marriages there is no giving away (*kanyādāna*) of the bride by the father to the bridegroom. [See this explained in the judgment of this Court in *Bhāgwan v. Warubai*.⁽¹⁾] Therefore her position, so far as her *gotra* is concerned, being similar to that of her unmarried sister, she is treated for the purposes of

(1) *ante* p. 300: 10 Bom. L. R. 389.

succession to her *stridhan* like an unmarried female, where she dies leaving none of the specifically enumerated heirs.

Then comes the question—what is meant by “the nearest relations” (*sapindas*) of the parents? Does it mean the *sapindas* who are common to both, or the *sapindas* of the mother first, and the *sapindas* of the father afterwards?

There can be no doubt that the *sapindas* of the father are the *sapindas* of the mother also, because the mother, as his wife, has her individuality merged in him, according to one the leading doctrines of the *Mitákshara*. When, therefore, we speak of the *sapindas*, *i. e.*, the nearest relations of the parents, it means the *sapindas* of the father, who are also *sapindas* of the mother in virtue of her identity with her husband as half of his body. It may indeed be objected to this that this common *sapindaship* with reference to the father’s *sapindas* must be held to be absent where the mother was married according to one of the blamed rites, because, as we have said above, in such marriages, the mother continuing in her father’s family notwithstanding her marriage, her husband’s *sapindas* cannot be her *sapindas*, who must be looked for in her father’s family. The answer to the objection is that *sapindaship*, according to *Vijnáneshwara* is constituted as between husband and wife by their jointure; whatever the form of marriage, they are one, so to say, in body; and by relation to his body she becomes a *sapinda* of his. The converse of that, however, does not follow and is not propounded by *Vijnáneshwara*—that is, the wife’s *sapindas* in her father’s family do not become the husband’s. The reason is the wife’s subordinate position and dependence.

In default of *parents*, therefore, the succession to the *stridhan*, of an unmarried female goes to the *sapindas* of her father, and if these fail, the kinsmen of the deceased woman herself (her own *sapindas*) become entitled to inherit in the order of propinquity. This is obvious from the fact that, after quoting and explaining the texts of *Yájnyavalkya*, enumerating the different kinds of *stridhan*, *Vijnáneshwara* quotes the text which lays down the general rule regulating succession to it as follows:—

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“Her kinsmen take it, if she die without issue.” [The Mitak. Ch. II, section XI, plac. 8, Stokes’s Hindu Law Books, page 460.]

Vijnáneshwara, in explaining this and the following text, says:—

“The kinsmen have been declared generally to be competent to succeed to a woman’s property.”

Then he proceeds to enumerate the specified kinsmen—who these are in the case of a woman married according to the approved rites, or of one married according to the blamed rites or of a maiden. The specific enumeration, in which must be included the *sapindas* of the parents for the reasons above given, stopping there, the general rule above quoted must take effect. According to it, the kinsmen of the deceased woman herself become heirs in default of those specified. And this is in conformity with one of the leading rules of inheritance in Hindu Law: “Whoever is the nearest *sapinda* of a deceased person, to him the inheritance goes”—a rule of general application operating where all special rules of inheritance cease to apply.

It has been strenuously urged, however, before us by the learned pleader for the appellant that in the case of succession to the *stridhan* of a maiden, in default of parents it must go to the *sapindas* of her mother first and that it is only on failure of them that the *sapindas* of the father are entitled to come in. For the purposes of this argument the learned pleader interprets the expression “their nearest relation” in the rule mentioned by the *Vira Mitrodaya* above quoted—namely, “in default of the mother and the father, it goes to their nearest relations”—in a distributive, not in a conjunctive, sense, as meaning the nearest relations of the mother and, in default of them, the nearest relations of the father.

It is impossible to adopt this construction. Assuming that the words must be construed distributively, the mother’s *sapindas* would be entitled to precedence over the father’s on no other ground than that the mother inherits before the father. But this right of precedence given to the mother by Vijnáneshwara is obviously personal and there is not a single instance where he

has extended that right to her relations. On the other hand, the fact that he mentions the *pitru-bandhus* (father's cognate kindred) as coming in as heirs before the *matri-bandhus* (mother's cognate kindred) in cases of obstructed succession shows that wherever the right of precedence is given to the mother it is purely personal. The observations and authorities cited in the judgment in *Saguna v. Sadashiv*(1) support our view.

The conclusion we have arrived at has this further merit that it brings the *Mitákshara* in conformity with the *Mayukha*. For these reasons we confirm the decree with costs.

Decree confirmed.

R. R.

(1) (1902) 26 Bom. 716 at p. 715.

LIVIC LANIGIRO

Before Mr. Justice Davar.

SHAH *In re* INDIAN COMPANIES ACT (VI OF 1882), AND *In re*
STEAM NAVIGATION COMPANY OF INDIA, LIMITED,
HAJI AHMED HASSAM, PETITIONER.

1908
January 13.

Indian Companies Act (VI of 1882), section 128, clause (e)—Petition to wind up—"Other reason of a like nature".

When the law requires the fulfilment of one or more of several conditions before an order could be made, the part fulfilment of two or more of such conditions should not be taken as having cumulative effect justifying the order.

If the Court comes to the conclusion that the main original object for which the Company was formed has substantially failed or that the substratum of the Company is gone it will consider that it would be just and equitable to wind up the Company and will make an order for its compulsory winding up. The Court would not be justified in making a winding up order merely on the ground that the Company has made losses and is likely to make further losses.

THIS was a petition by Haji Ahmed Hassam, a shareholder in the Shah Steam Navigation Company of India, Limited, for the compulsory winding up of that Company by the Court under section 128 of the Indian Companies Act.