the maintenance of the minors. The Accountant-General will hold the said funds so invested till the further order of this Court.

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Under all the circumstances of the case and having regard to my findings I must order Dhaklibai, the petitioner, to pay the costs of Shantibai, and Vinayak. I certify for counsel.

Attorneys for the petitioner : Messrs. *Chitnis and Motilal.*

Attorneys for the opponent : Messrs. *Khanderao, Laud and Mehta* and Messrs. *Chitnis and Motilal.*

B. N. L.

APPELLATE CIVIL.

Before Mr. Justice Russell, Chief Justice (acting), and Mr. Justice Heaton.

PANDHARINATH VISHVANATH (ORIGINAL DEFENDANT 4), APPELLANT, *v.* GOVIND SHIVRAM (ORIGINAL PLAINTIFF), RESPONDENT. *

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August 27.

Hindu Law—Mitakshara—Widow—Moveables inherited from husband—Gift invalid.

A Hindu widow is not competent under the Mitakshara to make a gift of moveables inherited by her from her husband who died childless and intestate.

SECOND appeal from the decision of F. X. DeSouza, District Judge of Sholápur, confirming the decree of G. R. Gokhale, Joint Subordinate Judge of Sholápur.

One Shivram left him surviving three sons, namely, Govind, Manohar and Gopal, who were undivided in interest. They got their shares divided by an award of arbitrators, and on the 25th September 1897 a decree was passed in the terms of the award. Gopal, being of unsound mind, was represented by his eldest brother Govind in the arbitration proceedings. Under the decree, Gopal was given a specific share of the family property, some ornaments for his wife Gitabai and Rs. 4,350 in cash. Gopal's share was made over to his wife on the 1st December 1898. Gopal died in September 1902 and on the 22nd December

* Second Appeal No. 297 of 1906.

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following his widow Gitabai made a deed of gift in favour of one Pandharinath Vishvanath Kumthekar (defendant 4), Gopal's sister's son. The deed of gift recited the near relationship of the donee, that he was the family priest and that he had incurred expenses for the maintenance of the donor and her deceased husband and for the performance of religious rites, and declared certain depts due by him to the deceased amounting to Rs. 1,000 were remitted according to the dying wishes of the deceased. On the same day Gitabai made a will in favour of the said Pandharinath (defendant 4) and one Pandurang Narayan (defendant 3), a minor grandson of Manohar Shivram. Under the will she devised the immoveable property inherited by her from her husband in favour of the minor Pandurang absolutely, and baquathed the moveables in equal half shares to the said minor Pandurang and the said Pandharinath.

Gitabai died in February 1904. Govind Shivram thereupon brought the present suit as reversionary heir to recover possession of Gopal's estate. Govind's brother, Manohar Shivram, being unwilling to join in the suit as a plantiff, was made defendant 1, and as he died after the institution of the suit, his son Narayan was joined as defendant 2. *Narayan also having died* pending suit, his son, the said minor Pandurang, was brought on the record as defendant 3. Pandharinath Vishvanath, the donee under Gitabai's deed of gift and one of the devisees under her will, was joined as defendant 4. Defendants 5 and 6 were added because they were in possession of some of the properties in suit.

Defendant 3 set up his title a devisee under Gitabai's will.

Defendant 4 answered that he was entitled to the property given in gift an devised by Gitabai under her did of gift and will.

The Subordinate Judge found that Gitabai had no right to execute the deed of gift and the will, and he allowed the plantiff's claim.

On appeal by defendant 4 the District Judge confirmed the decree. His reasons were as follows :—

Exhibit 65 then is a deed of gift pure and simple and the crucial point in this case as to the validity of that gift raises the still unsettled question of Hindu Law as to the competency of a widow in Western India governed by the

law of the Mitakshara to dispose by way of gift of moveables inherited from her husband. As remarked by Mr. Mayne at page 845 of his Treatise on Hindu Law, 6th edition, the point is one on which there is a conflict of judicial opinion. The authorities have been reviewed at length by Jardine, J., in the case of *Gadadhar Bhat* v. *Chandrabhagabai*, I. L. R. 17 Bom. 690, in his order referring to the Full Bench the question whether under the law of the Mitakshara a widow has power to bequeath by her will moveable property inherited by her from her husband. The Full Bench accepting as applicable throughout the whole Presidency the ruling of the Privy Council in the case of *Bhugwandeen* v *Myna Baee*, 11 Moo. I. A. 510–514, that the property inherited by a widow from her husband devolves on his heirs at her death, decided that a widow had no such power, and to that extent overruled the decision in *Damodar* v. *Purmanandas*, I. L. R. 7 Bom. 155.

It must be noted that Jardine, J., in his referring judgment had felt himself so far bound by the current of the earlier Bombay decisions notwithstanding their conflict with the above Privy Council rulling as to concede that with reference to cases arising from Bombay and those districts where the Mayukha was supreme a widow may have the power to bequeath by will moveables inherited from her husband though he declined to follow those decisions as regards districts where the Mitakshara is the primary authority. But in the later case of *Shah Chamanlal Maganlal* v. *Doshi Ganesh Motichand*, I. L. R. 28 Bom. 433, a Divisional Bench held that the earlier Bombay rulings in face of the above Privy Council decision could not have the authority claimed for them even with regard to the former class of cases.

The Full Bench ruling in I. L. R. 17 Bom. 690 left untouched the question of the window's power of alienation during her life. The Privy Council while deciding that under the law of the Mitakshara as administered in Benares the widow had no larger power of disposition over moveables than over immoveable property, intimated that in this respect there might be a difference between the Benares School and the law administered in Western and Southern India (11 Moo. I. A. 510—514). This possible exception was suggested in view of the current of contrary decisions of the Bombay and Madras High Courts. The Madras High Court has subsequently assimilated the law of Southern India with the law of the Benares School in this respect, apparently overruling the previous decisions to the contrary (I. L. R. 8 Mad. 290 and 305). The Bombay decisions (1 Bom. H. C. R. 56, 8 Bom. H. C. R. 244, 7 Bom. 155, 11 Bom. 299, 16 Bom. 929, 233 have all been elaborately reviewed by Jardine, J., in *Gadadhar's* case. I have shown now the authority of those decisions has been gradually undermined. Those decisions perhaps establish that with regard to cases arising under the Mayukha or in Bombay a widow has an absolute power of disposition *inter vivos* over inherited moveables. They furnish no authority with regard to cases governed like the present by the Mitakshara law, and with reference to these the conclusion suggested by Jardine, J., is that the widow must preserve the capital unless

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the expenditure of it is necessitated by the insufficiency of the income to provide for her maintenance, subject, nevertheless, to a power to dispose of a moderate portion for works of piety, her power of disposition over moveables being thus placed on a per with her power over immoveables.

Is this view of the law is correct, it is clear that the deed of gift (Exhibit 65) could pass no interest to defendant 4.

Desendant 4 preferred a second appeal.

J. R. Gharpure appeared for the appellant (defendant 4):—The question is whether Gitabai, who was a Hindu widow in possession of her husband's property, was entitled to make a gift of his moveables. We contend that she had full power to do so and our contention is fortified by a uniform series of decisions which are all one way: *Goolab* v. *Phool*(1), *Bechur* v. *Baee Lukmee*(2), *Vinayek Anundrao* v. *Luxumeebaee*(3), *Narsappa* v. *Sakharam*(4), *Tulyaram Morarji* v. *Mathuradas*(5), *Balvantrav* v. *Purshotam*(6), *Narayan Babaji* v. *Nana Manohar*(7), *Harilal Harjivandas* v. *Pranvalavdas*(8), *Gandhi Maganlal* v. *Bai Jadal*(9), *Gadadhar Bhat* v. *Chandrabhagabai*(10). See also Strange's Hindu Law, Vol. I, p. 246.

[HEATON, J.:—Is not the proposition laid down in these cases shaken by *Chamanlal* v. *Ganesh Motichand*(11) ?]

We submit not. That ruling and *Gadadhar Bhat* v. *Chandrabhagabai*(12) leave the question of giving away unaffected.

The decision in *Bhugwandeen Doobey* v. *Myna Baee*(13) relied on by the lower Courts makes an express reservation so far as this Presidency is concerned. See also *Mussumat Thakoor Deyhee* v. *Rai Baluk Ram*(14).

The position of females in Western India is far different from that in other parts and a long course of decisions has deliberately given them a latitude in pursuance of the past traditions which it is no longer open to the Court to set aside.

(1) (1816) 1 Bom. 173.
(2) (1863) 1 Bom. H. C. R. 56.
(3) (1861) 1 Bom H. C. R. 117.
(4) (1869) 6 Bom. H.C. R. A. C. J. 215
(5) (1881) 5 Bom. 662.
(6) (1872) 9 Bom. H. C. R. 99.
(7) (1870) 7 Bom. H. C. R. A. C. J. 153.
(8) (1888) 16 Bom. 229.
(9) (1899) 24 Bom. 192.
(10) (1892) 17 Bom. 690.
(11) (1904) 28 Bom. 453.
(12) (1892) 17 Bom. 690.
(13) (1867) 11 M. I. A. 487 at p. 504.
(14) (1866) 11 M. I. A. 139.

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[RUSSELL, Ag. C. J.:—Are there any texts in support of this proposition?]

There are texts. The Mitakshara, II, verse 143, Sanskrit; Stoke's Hindu Law Books, p. 348; Mandlik's Hindu Law, p. 77, lines 11—20; the Virmitrodaya, Sanskrit, Chap. III, p. 56, paras. 1 and 2; Katyayana cited and discussed in Vivadachintamani in Tagore's translation, p. 261, Sanskrit passages at p. 218 of the Bombay edition.

G. S. Rao appeared for the respondent (plaintiff):—The texts which relate to the widow's estate in property inherited from her husband, are chiefly those of Katyayana and Narada. The text from Mahábharat is also to the same effect: Colebrooke's Digest, verses 477, 402; Mayne's Hindu Law, section 607. These texts clearly show that a childless widow is to *enjoy* the estate frugally for her life but not to *waste* it or dispose of it in any way she pleases. Katyayana's text makes a distinction between property *given* to a wife by her husband and property *inherited* by a widow from her husband. In the former case she may dispose of it at pleasure after her husband's death if it be moveable, but in the latter case no distinction is made between moveables and immoveables. She takes a qualified and restricted estate in both kinds of property. There is nothing in the texts or the commentaries which confers on the widow larger powers of disposal over moveables than immoveables. Under the Mitakshara property inherited from her husband would, no doubt, be treated as her *Stridhan*. But it does not follow from this that she acquires an absolute power of disposal over such property. An absolute power of disposal is not under the Mitakshara an essential incident of ownership. According to Chapter I, section 1, pl. 2 of the Mitakshara even the father, who is the head of the family, is subject to the control of his sons with respect to immoveable property whether ancestral or self-acquired, and though he has larger powers of disposal over the moveables, he cannot make an unequal division of the moveables between his sons: *Lakshaman Dada Naik* v. *Ramchandra Dada Naik*(1). So too under pl. 29 no other coparcener can alienate family property

(1) (1880) L. R. 7 I. A. 181.

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except for a legal necessity. As Mayne remarks: "restriction is the rule, absolute power the exception." There is, therefore, no ground for contending that the Mitakshara allows to the widow an uncontrolled power of disposal over moveables inherited from her husband merely because such property is *stridhan*: *Vijiarangam* v. *Lakshuman*[1], *Bhagirthibai* v. *Kahnujirav*[2].

Turning to the Mayukha, Chapter IV, section 8, pl. 4, it will be seen that in discussing the widow's right of inheritance Nilakanth refers to Katyayana's text and lays down that a widow may give money or other moveable property for religious and other meritorious objects but not *Bandis*, *Charans* or swindlers. This shows that she is not to waste or fritter away her husband's wealth in any way she likes Moreover Nilakanth applies Katyayana's text both to moveable and immoveable property, so that the restrictions apply to both kinds of property. One fails to find a single passage in the Mayukha which confers on the widow an absolute power of disposal over moveables inherited from her husband.

The present case is governed by the Mitakshara. Out of the numerous cases cited, only one was decided under the Mitakshara, namely, *Narsappa* v. *Sakharam*[3]. But that case relates to the mother's estate and her alienation of immoveable property inherited from her son. It does not touch the present question. As to the other cases cited they are decided under the Mayukha, and only one of them has a direct bearing on this case: *Bechur* v. *Baee Lukmee*[4], whilst in *Pranjeevandas* v. *Dewcooverbaee*[5], *Navalram* v. *Nandkishor*[6], *Vinayek Anundrao* v. *Luxumeebaee*[7] and *Tuljaram Morarji* v. *Mathuradas*[8], the observations of the Court are *obiter dicta*. The authority of these cases appears to be shaken by the later decisions of this Court in *Gadadhar Bhat* v. *Chandrabhagabai*[9] and *Chamanlal* v. *Ganesh Motichand*[10]. On the other hand so far as the Mitakshara is concerned, the

(1) (1871) 8 Bom. H. C. R O. C. J. 244 at p. 265
(2) (1886) 11 Bom. 309.
(3) (1859) 6 Bom. H. C. R. A. C. J. 215.
(4) (1863) 1 Bom. H. C. R. 56.
(5) (1859) 1 Bom. H. C. R. 130.
(6) (1865) 1 Bom. H. C. R. 209.
(7) (1861) 1 Bom. H. C. R. 117.
(8) (1881) 5 Bom. 662.
(9) (1893) 17 Bom. 690.
(10) (1904) 28 Bom. 453.

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question is authoritatively decided by the Privy Council in *Bhugavandeen* v. *Myna Baee's* case[1]. The restrictions on widow's power of alienation are inseparable from her estate; *The Collector of Masulipatam* v. *Cavaly Venkata Narrainapah*[2], and the reasons are obvious. Her position is one of dependence. She is enjoined to lead an ascetic life for the benefit of her husband's soul and the property which she inherits—at best the corpus—is to be preserved for the benefit of her husband's heirs.

If the moveables were her absolute property, they would pass on her death to her heirs, but they do not: *Mussumat Thakoor Deyhee* v. *Rai Baluk Ram* [3], *Harilal Harjivandas* v. *Pranvalavdas*[4]. Secondly, if they were her absolute property, they would be liable to satisfy her debts in the hands of the reversionary heirs,—but that is not the case: *Bai Jamna* v. *Baishankar*[5]. Thirdly, if they were at her absolute dispcsal, she would be competent to will them away. But it is now settled law that she has no such power under the Mitakshara or under the Mayukha: *Gadadhar Bhat* v. *Chandrabhagabai*[6] and *Chamanlal* v. *Ganesh Motichand*[7].

If she cannot make a will, she cannot also make a gift *inter vivos* of such property. Requests stand substantially on the same footing as gifts. Wills may generally be regarded as gifts *in futuro* to take effect upon death. The law of wills is a development of the law of gifts: *Jatindra Mohan Tagore* v. *Ganendra Mohan Tagore*[8], *Bai Motivahoo* v. *Mamoobai*[9]. The testamentary power of a Hindu being co-extensive with his power of making gifts, it follows that a widow is as incompetent to make a gift as she is to make a will of moveable property inherited from her husband.

Gharpure in reply:—Under the Mitakshara there is no analogy between a father as manager and a widow. The former is a trustee for the other members: *Annamalai Chetty* v. *Murugasa Chetty*[10], Mayne's Hindu Law, pp. 372, 435, 438. A widow is

(1) (1867) 11 M. I. A. 487.
(2) (1861) 8 M. I. A. 529 at p. 551.
(3) (1866) 11 M. I. A. 139.
(4) (1888) 16 Bom. 229.
(5) (1891) 16 Bom. 233.
(6) (1892) 17 Bom. 690.
(7) (1904) 28 Bom. 453.
(8) (1872) 9 Ben. L. R. 377.
(9) (1897) L. R. 24 I. A. 93.
(10) (1903) 26 Mad. 544.

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under no such obligation, Mayne's Hindu Law, pp. 818, 840, 841. Her power is absolute within the limits prescribed by law. As regards the theory that she should lead the life of an ascetic, it is a general rule and does not affect questions arising in a Court of law: *Sreemutty Puddo Monee Dossee* v. *Dwarka Nath Biswas*(1). *Baisni* v. *Rup Singh*(2).

The Hindu theory is that the wife is the half of her husband's person and represents him fully after his death, Virmitrodaya, p. 141, sec. 4; West and Bühler, pp. 90, 91 (note), pp. 95, 312, 313, 314, 777, and 1158. It was urged that the cases we relied on were cases under the Mayukha excepting one and the present case being under the Mitakshara, they have no binding force. But a reference to any of those cases will show that all the texts have been referred to and considered and the law laid down therein is applicable to this Presidency. With respect to the relative position of the Mayukha and the Mitakshara see *Krishnaji* v. *Pandurang*(3), *Bhagirathibai* v. *Kahnujirav*(4). Both under the Mitakshara and the Mayukha a widow cannot will away, still under the Mayukha she can give. It would be strange to contend that under the Mitakshara, which gives a very wide range to the word *stridhan*, a widow has no power to give away moveables.

With respect to the argument that the power of giving away *inter vivos* and that of willing away are co-extensive, see *Tara Chand* v. *Reeb Ram*(5), *Nagalutchmee Ummal* v. *Gopoo Nadaraja Chetty*(6).

RUSSELL, Acting C. J.—The question in this case is whether a deceased Hindu widow, governed by the Mitakshara, is competent to make a gift of moveables inherited by her from her husband, who died childless and intestate.

The appeal comes up from Sholapur.

The facts are simple. There were three brothers, the plaintiff Govind Shivram, defendant 1 Manohar, and one Gopal, husband of Gitabai On the 25th September 1897 a decree for partition

(1) (1876) 25 W. R. 335 (Civ. Rul.)
(2) (1890) 12 All. 558.
(3) (1875) 12 Bom. H. C. R. 65.
(4) (1886) 11 Bom. 285.
(5) (1866) 3 Mad. H. C. R. 50.
(6) (1856) 6 M. I. A. 309 at p. 345 (para. 3).

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between them was passed on an award (Exhibit 70); Gopal being of unsound mind was represented by the plaintiff in the arbitration proceedings. Under that decree Gopal was given a specific share in the family property consisting of a house, some ornaments for his wife and about Rs. 4,000 in cash; and on the 1st of December 1898 his share was handed over to his wife Gitabai, see Exhibit 71. Gopal died in September 1902 and on the 22nd of December 1902 Gitabai, his widow, executed a document, Exhibit 35, in favour of the defendant 4, a nephew of Gopal's. That document recites that in consideration of his near relationship, his being the family priest and the fact that he had incurred expenses for the maintenance of herself and her husband for the last five years and for the performance of religious rites, certain debts due by him to her deceased husband amounting to Rs. 1,000 were thereby remitted according to the dying wishes of her husband. The document concludes as follows:—"Therefore, as my deceased husband has directed me to make a gift of this our debt to you, and as you are a relation and Upadya—(family preceptor) of my deceased husband—thus for several reasons having looked at it from the point of view of my interests, worldly as well as religious, and after consideration of the whole, I have given the above property in Dana and gift." On the same day she made a will, Exhibit 66, in favour of defendant 4 and a grandson of defendant 1, a minor Pandurang defendant 3, whereby she devised the immoveable property she inherited from her husband to the minor Pandurang absolutely and bequeathed the moveables in equal half shares between Pandurang and defendant 4. The second defendant in the case was the son of defendant 1, who died after the institution of the suit, and the third defendant was his grandson. Defendants 5 and 6 were added as defendants as they were said to be in possession of some of the property specified in the list annexed to the plaint.

Gita died in February 1904, and the plaintiff prayed that the property specified in his plaint, together with Gopal Shivram's ornaments and other articles in defendant 4's possession and the debts due to him by the latter be divided and an equal half share awarded to the plaintiff, but as above pointed out, the only defence in this appeal that we are concerned with is that of

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defendant 4, who resists the claim on the strength of the deed, Exhibit 65, executed in his favour by Gita. That deed, no doubt, was drawn up by a person having a little knowledge, but it is proverbial that that is a dangerous thing, for although it recites that the remission of defendant 4's debts to Gita's husband was given in pursuance of his directions, it has been found as a fact in both Courts that that statement was untrue, and the draftsman of the deed evidently accidentally omitted to bear in mind the fact that Gita's husband had been a lunatic for many years.

In the first place it is to be observed that moveable property inherited by the widow from her husband cannot now—after a great deal of discussion—be considered as her Stridhan strictly so called. This point must now be considered as settled—see *Sheo Shankar Lal* v. *Debi Sahai*[1], where the Privy Council say: "The decision of the High Court was based upon the text of the Mitakshara, which seems to make all property taken by a woman by inheritance her Stridhan with all the incidents which belong to that kind of absolute property, and to make it descend as such primarily to females, and in the special line prescribed for Stridhan strictly so-called. It cannot now be contended that the rule thus derived from the Mitakshara is law as to inherited property generally. The cases of *Mussumat Thakoor Deyhee* v. *Rai Baluk Ram*[2], *Bhugwandeen Doobey* v. *Myna Baee*[3], *and Chotay Lall* v. *Chunno Lall*[4], all of them Benares cases, as well as *Mutta Vaduganadha Tever* v. *Dorasinga Tever*[5], and *Raja Chelikani Venkayyamma Garu* v. *Raja Chelikani Venkataramanayyamma*[6], place it beyond doubt that property inherited by a woman from a male is not her absolute property, and passes on her death, not to her Stridhan heirs, but to the heirs of the male person from whom she inherited it."

Again, in *Lal Sheo Pertab Bahdur Singh* v. *Allahabad Bank*[7], their Lordships say: "In the present case their Lordships have had the advantage of hearing a full argument upon both sides.

(1) (1903) L. R. 30 I. A. 202 at p. 206.
(2) (1866) 11 M. I. A. 139.
(3) (1867) 11 M. I. A. 487.
(4) (1878) L. R. 6 I. A. 15.
(5) (1881) L. R. 8 I. A. 99.
(6) (1902) L. R. 29 I. A. 156.
(7) (1903) L. R. 30 I. A. 202 at p. 218.

The argument for the appellant was to the effect that the alleged power of the lady to alienate in the present case could be based only upon the literal interpretation of the Mitakshara, which seems to make all property inherited by a woman her Stridhan in the strict sense of the term with all the incidents of such property, including the free power of alienation; that that view of the Benares law had already been negatived by this Commitee in the case of property inherited from a male; that inheritance from males and that from females could not be differently treated; and that the authorities in most parts of India were to the effect that what a woman has inherited from a woman she does not hold as her absolute and alienable estate, but for a qualified estate, with reverter after her death to the heirs of her predecessor in title. The argument on the other side was based strictly upon the text of the Mitakshara, but it was contended that a distinction should properly be drawn between property inherited from males and that inherited from females; and an endeavour was made to show that the decisions in various provinces in India applying the doctrine of reverter to such cases were wrong. On the present point, as on that arising in the previous case, it is too late to contend for the literal meaning of the Mitakshara to the full extent. The previous decisions of this Committee have established that, under the Benares law, what a woman takes by inheritance from a male she takes not absolutely, but for a qualified estate alienable only under the conditions applicable to such an estate."

How far these two opinions of the Privy Council may affect the recognized rule in Bombay that female heirs, except those who come into the family of the propositus by marriage, take absolute interests—a question, which was expressly left open by Sir L. Jenkins, C. J., in *Bhau* v. *Raghunath*[1], does not arise in the present case. But these opinions of the Privy Council in our judgment have an important bearing on the question before us.

The texts on the question are to be found at page 595 of Colebrooke's Hindu Law, Vol. II:—"Narada:—Property given to her by her husband through pure affection, she may enjoy at her

(1) (1905) 30 Bom. 237, see also *Gulappa* v. *Tayawa*, 31 Bom. 453: 9 Bom. L. R. 834. Chandavarkar, J.

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pleasure after his death, or may give it away, except land or houses." "Catyayana—What a woman has received as a gift from her husband, she may dispose of at pleasure after his death, *if it be moveable*; but, as long a he lives, let her preserve it with frugality; or she may commit it to his family. 2. The childless widow, preserving inviolate the bed of her lord, and strictly obedient to her spiritual parents, may frugally enjoy *the estate* until she die; after her, the legal heirs shall take it."

It will be observed that these two texts refer to what has been given to a woman as a gift by her husband, not inherited by her on her death, and in the second paragraph of Catyayana the childless widow may frugally enjoy the estate until she die.

Again in the Vyavahara Mayukha, Chapter IV, section 8, clause 4:—"As to the text of Catyayana—'After the death of the husband, the widow, preserving the honour of the family, shall obtain the shares of her husband, so long as she lives; but she has not property therein, to the extent of gift, mortgage, or sale'; it is a prohibition of gift of money, or the like, to the Bandi, Charana, and the like swindlers."

The judgment of the first Court herein which deals with the relations between Gita and defendant 4 contains some grounds, at all events, for the conclusion that this text might possibly be held applicable.

The next question to consider is: What is the principle applicable to the restriction sought to be imposed on the power of the widow over inherited moveable property?

The Privy Council in *Bhugwandeen Doobey* v. *Myna Baee*[1], thus give the principle:—"The reasons for the restrictions which the Hindu Law imposes on the widow's dominion over her inheritance from her husband, whether founded on her natural dependence on others, her duty to lead an ascetic life, or on the impolicy of allowing the wealth of one family to pass to another, are as applicable to personal property invested so as to yield an income as they are to land. The more ancient texts importing

(1) (1867) 11 M. I. A. 487 at p. 513.

the restriction are general. It lies on those who assert that moveable property is not subject to the restriction to establish that exception to the generality of the rule."

Again in *The Collector of Masulipatam* v. *Cavaly Vencata Narrainapah* (1), their Lordship say: "It is not merely for the protection of the material interests of her husband's relations that the fetter on the widow's power is imposed. Numberless authorities, from Manu downwards, may be cited to show that, according to the principles of Hindu Law, the proper state of every woman is one of tutelage; that they always require protection and are never fit for independence. Sir Thomas Strange (see Strange on Hindu Law, Vol. I, p. 242) cites the authority of Manu for the proposition that, if a woman have no other controller or protector, the King should control or protect her. Again, all the authorities concur in showing that, according to the principles of Hindu Law, the life of a widow is to be one of ascetic privation (2 Colebrook's Digest, 459) Hence, probably, it gave her a power of disposition for religious, which it denied to her for other purposes. These principles do not seem to be consistent with the doctrine that, on the failure of heirs, a widow becomes completely emancipated; perfectly uncontrolled in the disposal of her property; and free to squander her inherited wealth for the purposes of selfish enjoyment. . . . . Their Lordships are of opinion that the restrictions on a Hindu widow's power of alienation are inseparable from her estate, and that their existence does not depend on that of heirs capable of taking on her death."

Further in *Vijiarangam* v. *Lakshuman* (2), there is a passage in West, J.'s judgment (which is too long to quote in full here) showing how the Hindu Law—like other systems of jurisprudence—never treated women as independent.

This being so, it must be borne in mind that the right of absolute disposition did not enter into Vijnaneshwara's conception of the essentials of ownership—*Vijiarangam* v. *Lakshuman* (2).

(1) (1861) 8 M. I. A. 529 at p. 551.

(2) (1871) 8 Bom. H. C. R. O. C. J. 244 at p. 265.

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The Full Bench in *Bhagirthibai* v. *Kahnujirav*[1] say as follows:—"The completeness of a woman's estate in property taken by inheritance does not necessarily involve complete independence in dealing with it. The Mitakshara is careful to demonstrate that dependence is as consistent with full ownership in the case of a woman as of a child; and it seems likely that Vijnaneshwara looked to this dependence as a safeguard for the enlarged estate which he assigned to women."—See also West and Bühler, 3rd Edn., pp. 318—320; Mandlik, pp. 365—367; Jolly's H. L., pp. 251, 252; Sarvadhikari H. L., 271—279; Manu, Chap. V, vv. 147—149; Chap. IX, vv. 1 and 2; Narada—Sacred Books of the East, p. 49. And as said by Peel, C. J., in *Hurrydoss Dutt* v. *Rungunmoney Dossee*[2], "The incapacity to alienate is not in any way inconsistent with an inheritance." And in the latest case on the subject—*Bhau* v. *Raghunath*[3]—it was held that except in the kind of stridhan known as Saudayika, a woman's power of disposal over her stridhan is during coverture subject to her husband's consent and without such consent she cannot bequeath it by will when she is survived by her husband, who is not shown ever to have consented to the will.

Then as regards the distinction which has been made in Western India between the woman's power over moveables as distinguished from immoveables, it seems to us that we must take these words in the ancient texts with their meaning, so far as we can arrive at it, in the days of those texts and the commentaries on them. If we take the expressions as identical with the elaborate and technical meanings given to immoveables and moveables by modern English and Anglo-Indian Law we are apt to fail to realize and apply the underlying spirit of the Hindu Law. On this point West, J., in *Vijiarangam* v. *Lakshuman*[4] says: "It seems a reasonable inference from these and other authorities that, as to immoveable property at any rate—and with immoveable property, according to the Hindu Law, is classed every kind of property producing a periodical income—the

(1) (1886) 11 Bom. 285 at p. 319.
(2) (1851) 2 Tay. & B. 279 at pp. 281, 282.
(3) (1905) 30 Bom. 219.
(4) (1871) 8 Bom. H. C. R. O. C. J. 244 at p. 265.

woman's ownership is subject to the control of her husband, and of the other persons interested in the preservation of the estate, and that it cannot be needlessly dissipated at her mere caprice."

Before we refer to the cases which are cited to us by Mr. Gharpure for defendant 4, we must mention a very strong point made by Mr. Rao in his admirable argument for the plaintiff, and that is that even in the Mayukha there is not a text which distinctly and definitely supports the widow's absolute dominion and power over moveables inherited from her husband. Mr. Gharpure in his reply was forced to admit this, but he tried to get over the point by referring to Mandlik's Mayukha, p. 77, line 20. There it is said, "As for this text of Brahaspati:—'Whatever property, whether pledged or of any other kind, [the husband] possessed after division, that the wife shall enjoy after the death of her husband with the exception of immoveable property . . . . . .' This refers to a wife having no daughter . . . . . ."

It is, we think, very significant that the word there used is *enjoy*—not "give away or dispose of."

Mr. Gharpure referred us to a number of cases: *Bechur* v. *Baee Lukmee*[1] *Navalram* v. *Nundkishor*[2], *Pranjeevandas* v. *Dewcoover-baee*[3], *Narsappa* v. *Sakharam*[4], but as pointed out by Mr. Rao all except *Narsappa* v. *Sakharam*[4] are under the Mayukha, and this latter case by its reference to the cases in 1 Bom. H. C. R., appears to have been decided more with regard to that than to the Mitakshara.

We do not, however, think it necessary to go back further than the Full Bench decision in *Gadadhar Bhat* v. *Chandrabhagabai*[5], where it was held that under the law of Mitakshara a widow has no power to bequeath moveable property inherited by her from her husband. Jardine, J., in referring the case discussed elaborately all the authorities then bearing upon it, and the result of the decision is thus given by Sargent, C. J., at

(1) (1863) 1 Bom. H. C. R. 56.
(2) (1865) 1 Bom. H. C. R. 209.
(3) (1859) 1 Bom. H. C. R. 138.
(4) (1859) 6 Bom. H. C. R. A. C. J. 215.
(5) (1892) 17 Bom. 690.

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page 711:—"In this state of the authorities, we think that the ruling of the Privy Council, that the property inherited by a widow from her husband devolves on his heirs at her death, must have effect given to it throughout the Presidency with regard to the devolution of the moveables so inherited, and to that extent, if the decision in *Damodar* v. *Purmánandas*[1], is to be regarded as necessarily giving the moveables that remain to the widow's heirs, it must be treated as of no authority. Assuming then, as we think we must, that the moveables existing at the time of the widow's death devolve, by inheritance, on her husband's heirs, we think the widow's power of alienation over the moveables cannot be regarded as including the power of willing them away at her death so as to displace the right of inheritance by her husband's heirs. We must, therefore, answer the question referred to us in the negative."

That case was followed in *Chamanlal* v. *Ganesh Motichand*[2], where it was held that even under the Mayukha a widow has no testamentary power of disposition over moveables which have been inherited by her from her husband.

Now, although no doubt, as the Privy Council say in *Rai Bishen* v. *Mussumat Asmaida Koer*[3], there may be a distinction between a gift *inter vivos* by deed, which operates at once, and a testamentary gift, which takes effect from the death of the testator, it must be remarked that in that case the document was in the nature of a family settlement. Still it must now be taken as well settled that by Hindu Law the analogy between gifts *inter vivos* and gifts by will is complete—see the cases referred to in Trevelyan on Hindu Wills, page 33; and Mayne, 7th Edition, page 553; and *Bai Motivahoo* v. *Bai Mamoobai* [4]; and *Seth Mulchand* v. *Bai Mancha*[5].

Further, it is to be observed that in *Harilal Harjivandas* v. *Pranvalavdas Parbhudas*[6], and *Bai Jamna* v. *Bhaishankar*[7], which were, however, decided before *Gadadharbhat* v. *Chandrabhagabai*[5]

(1) (1883) 7 Bom. 155.
(2) (1904) 28 Bom. 453.
(3) (1884) L. R. 11 I. A. 164 at p. 177.
(4) (1897) L. R. 24 I. A. 105.
(5) (1883) 7 Bom. 491 at p. 493.
(6) (1888) 16 Bom. 229.
(7) (1891) 16 Bom. 233.

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it was held that moveable property inherited from her husband by a Hindu widow, if not disposed of by her, passes to the next heirs of her husband on her death, and that such property was not her personal property liable in their hands for her debts. These decisions certainly are not consistent with an absolute power over inherited moveables on the part of a widow.

The Madras High Court has lately held, though (as Mr. Mayne says, 7th Edition, page 569) without noticing the decisions of the Sudder Court to the contrary, that the restrictions upon a widow's estate apply to moveable as well as to immoveable property—*Narasimha* v. *Venkatadri*[1] ; *Buchi Ramayya* v. *Jagapathi*[2].

Lastly, it is clear from the argument of Mr. Mayne's Hindu Law, 7th Edition, pages 869, 870, 871, that he supports the view of this question of law which we have above put forward.

Seeing the enormous wealth which Hindus in India hold in a form of moveable property, *e.g.*, Government Paper, stocks and shares, which was unknown to the ancient text writers and commentators, it is perhaps as well that the law should be as we hold it is, and that their widows should not have an uncontrolled power of disposition in respect thereof after the death of their husbands. Possibly with the spread of education amongst, and the general emancipation of, their women, they may be led to call in aid the relief of Legislature.

We confirm the decree with costs.

HEATON, J.:—I will state as briefly as I can my reasons for holding that this appeal should be dismissed. Many decided cases have been referred to and considered. Most of them are mentioned in the judgments of the lower Courts and that of the learned Chief Justice and need not be further discussed in detail.

In this Court the validity of the gift which defendant 4 (the appellant) seeks to uphold, was based on the alleged absolute power of a widow to dispose by gift of moveables inherited from

(1) (1885) 8 Mad. 290. (2) (1884) 8 Mad. 304.

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her husband. It was not contended, and after the findings of fact arrived at by both the lower Courts it could not be contended, that there was anything in the circumstances of the particular gift, which would render it valid, if the widow has not this absolute power. In this case, therefore, we are not called on to say how far the widow's power of disposal is fettered; but merely to decide whether or not it is absolute. On that point I have no doubt as to the answer; her power to dispose of moveables inherited from her deceased husband is not absolute.

The argument to the contrary is not based on unambiguous texts in the Smritis or the books of the commentators. Such texts as can be found are admittedly matters of controversy. But we do know that according both to the letter and spirit of the Hindu Law the widow is a dependent. In the other parts of India than Bombay approval has been refused to the doctrine that she has absolute power in disposing of moveables inherited from her husband. That doctrine is not approved by the Privy Council as appears from the quotations read by the learned Chief Justice. It is not, I believe, approved by the sentiment of modern Hindu even in Western India. It is certainly an undesirable doctrine even at the present time. For, to give a widow absolute control over valuable property is to expose her to the schemes of plausible but unscrupulous persons. If a concrete illustration be desired, it is furnished by this very case; for we may fairly assume that the truth is represented by the facts found by the first Court after a most careful and intelligent analysis of the evidence and not seriously attacked in appeal. The only matter, so far as I can understand, in support of that doctrine is a series of reported cases beginning with *Pranjeevandas* v. *Dewcooverbaee*[1] and ending with *Damodar Madhowji* v. *Purmanandas*[2]. In the earliest of these cases the widow is held to have "uncontrolled power over the moveable estate." In *Bechur Bhugwan's case*[3] the phrase used was "absolute power over moveable property." Since then the phrase has usually been "absolute"; but the meaning is substantially the same

(1) (1859) 1 Bom. H. C. R. 130. (2) (1883) 7 Bom. 155.
(3) (1863) 1 Bom. H. C. R. 66.

whether that word or "uncontrolled" be used. There can, I think, be no doubt what was meant by "absolutely"; the meaning is illustrated by *Bhagirthibai's case*(1) and *Gandhi Maganlal's case*(2). It means not only that the owner has full power of disposal, but on her death the property descends to her heirs and not to the heirs of the last male holder.

We now know that moveables inherited from her husband by a widow descend on her death to his heirs, not to hers, and that she is without power to dispose of such property by will—see *Gadadhar's case*(3) and *Sha Chamanlal's case*(4). In other words, her power is not absolute and in holding otherwise the earlier decisions went beyond what is now the settled law Those early decisions certainly did not mean that the widow took an absolute estate during her life only, and in my opinion, cannot be so interpreted. To attach such a meaning to them would indeed be to arrive at a compromise between what they asserted and what has since been asserted; but it would be a compromise which would ignore the true meaning of both sets of decisions and which, so far as I can see, could not be successfully based either on the words or the spirit of either the Hindu Law or the decided cases.

Being, as I hold we now are, unfettered by the early decisions I am unable to find either reason or authority for the proposition that a widow takes absolutely moveables inherited from her husband. Therefore, I think, this appeal must be dismissed.

Decree confirmed.

G. B. R.

(1) (1866) 11 Bom. 285.
(2) (1899) 24 Bom. 192.
(3) (1892) 17 Bom. 690.
(4) (1904) 28 Bom. 453.