then he also comes within this section. I can find no good reason for supposing that the Magistrate has not correctly decided that the accused had read the article; that he was in a position to appreciate its meaning and that he did consciously take part in disseminating that wicked and seditious publication. Therefore I concur that the conviction and sentence should be confirmed.

Application rejected.

R. R.

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, Mr. Justice Chandavarkar and Mr. Justice Batchelor.

DAYALDAS LALDAS WANI (ORIGINAL DEFENDANT No. 2), APPELLANT, *v.* SAVITRIBAI AND OTHERS (ORIGINAL PLAINTIFFS), RESPONDENTS.*

1909. *October* 14.

Hindu Law—Succession—Stridhan—Anvadheya—Sons and daughters succeed equally—Among daughters unmarried have preference—Mayukha.

A Hindu female, governed by the Mayukha, died leaving property which she inherited from her father, under a deed of gift, subsequent to her marriage. She left her surviving three daughters and one son. A dispute as to succession having arisen:—

Held, that the property being *anvadheya* stridhan, should be divided equally among the son and daughters: with this difference, however, as to the latter, that the unmarried should have preference over the married.

Ashabai v. *Haji Tyeb Haji Rahimtulla*(1) and *Sitabai* v. *Wasantrao*(2), followed.

SECOND appeal from the decision of C. C. Dutt, Joint Judge of Thána, confirming the decree passed by S. A. Gupte, Subordinate Judge at Dáhánu.

Suit to recover possession of property.

The property in question belonged to a Hindu female, Varubai, who received it from her father by way of gift subsequent to her marriage. She had three daughters and one son.

* Second Appeal No. 665 of 1907.

(1) (1882) 9 Bom. 115 at p. 126. (2) (1901) 3 Bom. L. R. 201.

1909.

DAYALDAS LALDAS v. SAVITRIBAI.

The parties were governed by the Mayukha law.

Varubai died in 1894. Her son Dinkar died in 1903. After Dinkar's death, his widow leased the property to defendant No. 1 for a term of 51 years, in satisfaction of a debt due by Dinkar. A little later, one Chhotalal, another creditor of Dinkar, obtained a money-decree against Dinkar and in execution of that decree had the property sold to defendant No. 2.

Varubai's daughters then filed a suit to recover possession of the property, alleging that they were the preferential heirs to the same. Their claim was decreed by the Subordinate Judge, who remarked as follows:—

"Varubai received the property in gift from her father. It is, therefore, Saudayik, and the daughters of Varubai, that is the present plaintiffs, are the preferential heirs (*Manilal* v. *Bai Rewa*, I. L. R. 17 Bom. 758)."

This decree was confirmed by the lower appellate Court, on the following grounds:—

"In 17 Bom. 758, Telang, J., after examining all the older cases has laid down that in the case of stridhan proper the daughter has a preferential right over a son, though it is not so in the case of improper son. . . . . The gift here is stridhan proper; and according to 17 Bom. 758, there is no doubt that the daughters are the preferential heirs and the Subordinate Judge's order is correct. The appellant says that this view is not in accordance with the ruling in *Sitabai* v. *Wasantrao* (3 Bom. L. R. 201). But this latter case deals with the difference between the stridhan inherited from the father's family and stridhan inherited from the husband's family and lays down that there is no difference between these as far as the question of inheritance is concerned. But there is no such clear mention of property received by gift of the sort we have to deal with here. The opinion of Telang, J., in 17 Bombay is on the other hand clear on this point. As to the applicability of Mayukha there is no doubt for the plaintiffs have not shown that they have migrated from some other tract where the Mitakshara applies. However, as I have held that the daughters are preferential heirs according to the Mayukha in this case, it does not much matter whether Mayukha or Mitakshara applies. According to the latter, the appellant admits that the daughters would be the heirs of Varubai."

The defendant No. 2 appealed to the High Court.

G. S. Rao, for the appellant.—The property in question is the *Anvadheya* stridhan of Varubai. The succession to such species of stridhan is laid down in the Vyavahara Mayukha (Chap. IV, sec. X, pl. 13, Mandlik, p. 95).

If Manu's text be interpreted literally, then the *Anvadheya* stridhan descends to sons and daughters equally. Mitakshara's gloss upon it, however, is that sons inherit only in default of daughters. Nilkantha does not accept the Mitakshara view, for he says that in the opinion of others (परेतु) (*paretu*) both sons and daughters inherit this species of stridhan equally. The use of the word "*paretu*" indicates that Nilkantha differed from the Mitakshara view. The word is used generally when the writer desires to indicate his dissent from writers of established repute. See Nagoji Bhatt's Paribhashendu Shekhara, Dr. Kielhorn's Translation, p. 299.

The very next placitum shows how stridhan is to be divided among the daughters. If there be both an unmarried and married daughters, the former takes a share equal to that of a son, while the latter are to receive a trifling portion of the inheritance as a mere token of respect. This placitum would be meaningless if the Mayukha were taken as adopting the view of the Mitakshara.

The Mitakshara makes no distinction between the technical and non-technical stridhan for purposes of inheritance. It lays down one simple rule of devolution for all kinds of stridhan except Shulka. The Mayukha does not adopt the rule. It distinguishes between the technical and non-technical stridhan and provides for separate rules of succession for each. It adopts the Mitakshara rule so far as the technical stridhan is concerned, with this exception that the Anvadheya and Prittidatta descend to sons and daughters alike. But the non-technical stridhan goes to the male issue in preference to the female issue: *Manilal Rewadat* v. *Bai Rewa*[1].

The text-writers on Hindu law have accepted the same interpretation of the Mayukha view. See West and Bühler, p. 145 (3rd Edn.); Bannerjee on Stridhan, p. 370 (2nd Edn.); Bhattacharya's Hindu Law, p. 583 (2nd Edn.); Ghose's Hindu Law, p. 281 (2nd Edn.); Mayne's Hindu Law, p. 898, section 671 (7th Edn.).

(1) (1892) 17 Bom. 753.

1909.

DAYALDAS LALDAS v. SAVITRIBAI.

The Mayukha agrees in this respect with other texts: see Smriti Chandrika, pp. 125, 126; Vira Mitrodaya, pp. 228, 229; and Vivada Chintamani, pp. 266, 267.

The decided cases also support my contention, see *Ashabai* v. *Haji Tyeb Haji Rahimtulla*(1); and *Sitabai* v. *Wasantrao*(2).

K. N. Koyajee, for the respondent.—The two Bombay decisions cited by the other side were by single Judge and full arguments on the present point do not seem to have been advanced.

I submit that Nilkantha means to lay down in the Mayukha that succession to Anvadheya stridhan goes to the daughters alone whether there be sons or not, and if Nilkantha has not himself expressed any definite opinion on the point, the opinion of the Mitakshara which he quotes in full and from which he does not show an express dissent, must prevail. See *Vasudev Bhat* v. *Venkatesh Sanbhav*(3) and *Krishnaji Vyanktesh* v. *Pandurang*(4).

The expression "*paretu*" cannot import dissent. Dr. Kielhorn's remark in parenthesis relied on by the other side cannot be accepted as a general rule. I submit that the very fact that the Mitakshara view is cited and the contrary view is briefly alluded to without naming the authors or without any concurrence, shows that Nilkantha meant to adopt the Mitakshara view.

[CHANDAVARKAR, J.:—The text as to the further distinction between married and unmarried daughters which is ascribed to Manu in Mandlik at p. 95, is not to be found in Manu.]

The author of the text seems to be Brihaspati and not Manu. Thus, Nilkantha quotes Brihaspati's text and explains it as meaning that the daughter gets the share of a son. I submit that the expression "*tadamshini putrasamamshini*" does not mean that the daughter takes an equal share *along with* the son, but it only means that she takes a share which a son would have taken. The preference between married and unmarried daughters would only be intelligible if sons are excluded.

The remarks of Telang, J., at the end of his judgment in *Manilal Rewadat* v. *Bai Rewa*(5) also support my contention.

(1) (1882) 9 Bom. 115 at p. 126.
(2) (1901) 3 Bom. L. R. 201.
(3) (1873) 10 Bom. H. C. R. 139.
(4) (1875) 12 Bom. H. C. R. 65.
(5) (1892) 17 Bom. 758.

1909.

DAYALDAS LALDAS v. SAVITRIBAI.

CHANDAVARKAR, J.:—The facts, material for the purposes of the question of Hindu law argued before us, are shortly these.

One Varubai died possessed of property and left her surviving a son, by name Dinkar, and three daughters. The property in dispute formed the *anvadheya stridhan* of Varubai, she having received it in gift from her father after her marriage.

The daughters of Varubai, who are respondents before us, were plaintiffs in the suit, which has led to this second appeal. They claimed the property as sole heirs of their mother. The appellant before us asserted his right to it under a title derived at a Court sale from Varubai's son Dinkar. His case was that Dinkar was the sole heir of Varubai.

Both the Courts below have awarded the respondents' claim, holding that they were the heirs of Varubai.

The question argued before us is, whether the son and the daughters of Varubai take the property as joint heirs of their deceased mother, or whether the daughters alone take it as heirs in preference to the son.

It was held by Green, J., in *Hurry Shankar* v. *Krishnarao*[1] that the term *anvadheya* applied only to a gift to a woman from her husband or his family subsequent to her marriage. In *Ashabai* v. *Haji Tyeb Haji Rahimtulla*[2] Sargent, C. J., sitting as a single Judge, held that sons and daughters were all entitled as heirs to share equally in the *anvadheya stridhan* of their deceased mother. This latter decision was followed by the late Chief Justice of this Court, Jenkins, C. J., also sitting as a single Judge, in *Sitabai* v. *Wasantrao*[3], where he pointed out that, in limiting the meaning of *anvadheya stridhan* to a gift made to a woman by her husband or his family after her marriage, Green, J., had been misled by the wrong rendering by Borradaile of the passage in the Mayukha dealing with the question of succession to that *stridhan*. The view taken of the Mayukha law in these two decisions is the same as that taken by West and Bühler in their Digest (page 145, 3rd Edition), by

(1) Suit No. 84 of 1876, Unrep. Note: The Editor has not been able to verify this reference as the proceedings in this suit could not be found.

(2) (1882) 9 Bom. 115 at p. 126.

(3) (1901) 3 Bom. L. R. 201.

1909.

DAYALDAS LALDAS v. SAVITRIBAI.

Sir Gurudas Banerjee in his Tagore Law Lectures on the Hindu Law of Marriage and Stridhan (page 371, 2nd Edition), and by Mr. Bhattacharya in his "Commentaries on Hindu Law" (page 583, Second Edition).

It is contended for the respondents that the decisions of Sargent, C. J., and Jenkins, C. J., rest upon a misapprehension of the passage in the Mayukha, which deals with the question of succession to *anvadheya stridhan*; that Nilakantha does not state his own opinion on the question whether sons and daughters share equally or whether the daughters take the property to the exclusion of the sons; but that he merely states the opinion of the Mitakshara and that of others who differ from it. Under these circumstances, it is urged, we must apply to the case the law of the Mitakshara, on the established principle of this Court, enunciated in *Vasudev Bhat* v. *Venkatesh Sanbhav*(1) and *Krishnaji Vyankatesh* v. *Pandurang*(2), that, wherever Nilakantha expresses no opinion of his own, conformity with the Mitakshara should be aimed at, as far as consistency will allow, in cases governed by the law of the Mayukha.

This contention is founded upon a misconception of the import of the language used by Nilakantha in dealing with the question of succession to *anvadheya stridhan* (a gift subsequent to marriage). He first mentions the opinion of the Mitakshara; then he states the contrary opinion in the following terms:—

"Others (however) say that, in the case of *anvadheya* and a gift through affection, the association of daughters and sons is independently laid down (by this text)." (Mandlik's Hindu Law, page 95).

In urging before us that in this passage Nilakantha does no more than express the opinion of those who differ from the Mitakshara without stating his own view, the respondent's pleader loses sight of the fact that the form of expression used in the passage is not uncommonly employed by an author in Sanskrit when he means to state his own view on a point under discussion. He would first state the opinion of the author from whom he means to differ, and then express his own opinion by

(1) (1873) 10 Bom. H. C. R. 139. (2) (1875) 12 Bom. H. C. R. 65.

using such language as "others, however, say"—(*pare tu** or *anye tu*, both of which have the same meaning in Sanskrit). Another mode of expressing dissent from the opinion of an author is to state that opinion and say: "Some, however, say," (*kechit tu*). Of this form of expression, however, it must be observed that, more than the other form, it depends on the context whether it should be interpreted in the same sense as the expression:—"Others, however, say," because the word "others" is *primâ facie* more comprehensive than the word "some." There is yet a third mode. Where an author differs from older authors on a point, he states the opinion of the latter as that of "ancient authors" and expresses his dissent in these words:—"Modern authors" (*arvanchaha* or *navyaha*) "however, say". By "modern" the writer is presumed to refer to himself as one falling in the category of authors later than the ancient.

The reason why this indirect form of language is not uncommonly used to express dissent is that it is considered unbecoming and presumptuous on the part of a writer to adopt such expressions as "I think so," or "I say so," or "I am of opinion," especially when he is differing from another author of repute and recognised authority. It is regarded as a mark of culture and scholarship for an author to express his own opinion modestly and humbly, in differing from another author. When he states the latter's opinion and then says "others, however, take a different view," by "others" he implies his "own humble self."

This mode of expressing dissent is employed, for instance, by Nagoji Bhatta in his *Paribhashendushekhara* (page 106, last line: Kielhorn's Edition), and his *Shabdendushekhara*. It is adopted also by Jagannatha in his *Rasagangadhara* (Nirnaya Sagara Edition, page 276 and page 501). Among Sanskrit scholiasts it is a rule of construction that, when these forms of expression occur in a work, they should be interpreted, generally speaking, as meaning that the author who uses them intends thereby to

*The following note is by the distinguished Orientalist, Dr. R. G. Bhandarkar:—"When the opinion of an author is quoted by his name and afterwards another opinion is given and introduced by the words *pare tu*, the usual way of understanding is that this last is the opinion of the author himself."

Chandavarkar, J.

1909.

DAYALDAS LALDAS v. SAVITRIBAI.

represent that the dissenting opinion is either his own or is shared by him.

Nilakantha, therefore, in the passage above quoted from the Mayukha, may be fairly presumed to have dissented from the opinion of the Mitakshara and to have stated it as his own opinion that both sons and daughters are joint heirs to the *anvadheya stridhan* of a woman.

This interpretation of Nilakantha's meaning is confirmed by what follows immediately after the passage quoted above from the Mayukha. He proceeds to point out a distinction with reference to the daughters. As to them he says, the unmarried come in as heirs before the married. In support of that distinction he quotes a text of Manu which provides :—

"*Stridhan* (woman's property) goes to her children, (for) the daughter is a sharer thereof, provided she be not given away (in marriage)." (Mandlik's Hindu Law, page 95, lines 33 to 36).

Having quoted this text, Nilakantha explains what Manu means by the expression: "the daughter is a sharer thereof," (*tadamshini*). It means, says Nilakantha, that the daughter becomes "the receiver of a share equal to (that of the) son." This explanation would be out of place, if Nilakantha meant to accept the opinion of the Mitakshara that the sons and daughters do not inherit jointly but that the daughters come in in the line of heirs first and that the sons take only in default of them. It is because the son is, in Nilakantha's view, a sharer with the daughter that he says that the daughter's share is equal to the son's. That is why he concludes his treatment of the subject by citing Katyayana's text, which provides that "sisters having husbands should share with brothers," (Mandlik, page 96, line 2).

These considerations, coupled with the fact that, in dealing with the question of succession to *stridhan* property, Nilakantha treats the two forms of technical *stridhan*, known respectively as *anvadheya* (a gift subsequent) and *priti datta* (gift through affection) separately from the other technical forms, make it clear, beyond doubt, that, in his opinion, daughters and sons are joint heirs to the former and share equally.

It is, however, argued for the respondents that it cannot be so because, later on, after pointing out on the strength of a text of Katyayana that, in default of daughters and their issue, "the sons, grandsons and the rest" (of the deceased) should succeed, Nilakantha remarks: "This right (of inheritance) of daughters and the rest in the mother's property exists only in (respect of) the *adhyagni, adhyavahanika,* and other aforesaid (kinds of the) technical *stridhan.*" (Mandlik, page, 97, lines 7 to 11). This remark is made merely for the purpose of emphasising the distinction which, in Nilakantha's opinion, exists between *stridhan* technically so called and other kinds of *stridhan.* He says that the right of daughters to succeed to their mother's property exists only as to technical *stridhan.* That does not mean that the right is exclusive of the right of sons in the case of every kind of technical *stridhan* without exception. The daughter succeeds to her mother's *stridhan,* whether she inherits it jointly with a son or to his exclusion. In short, the purpose of Nilakantha's observation is no more than to show that a son excludes the daughter in all cases except technical *stridhan.* It does not follow from that that the son does not share equally with the daughter in certain kinds of technical *stridhan,* such as a gift subsequent (*anvadheya*) and a gift through affection (*priti datta*).

The result is that, as held in *Ashabai* v. *Haji Tyeb Haji Rahimtulla*[1] by Sargent, C. J., and in *Sitabai* v. *Wasantrao Nana Moroba*[2] by Jenkins, C. J., under the law of the Mayukha, when a Hindu woman dies possessed of *stridhan* property called *anvadheya* (a gift subsequent to marriage), and the claimants to that property are her son and daughters, these all become entitled to share the property equally as heirs, with this difference, however, as to daughters, that the unmarried have preference over the married.

In the present case, Varubai on her death left her surviving one son and three daughters. The question, whether any of the daughters was unmarried at the time of Varubai's death when the succession opened, was not raised in either of the Courts below, because the daughters claimed the right of heirship jointly.

(1) (1882) 9 Bom. 115. (2) (1901) 3 Bom. L. R. 201.

1909.

DAYALDAS LALDAS v. SAVITRIBAI.

to the exclusion of the son. From the conclusion of law we have arrived at, it follows that the son and the daughters of Varubai became co-owners having equal shares in the property. They have no right to eject the appellant, who stands in the shoes of the son. But, though the exclusive title set up by them is negatived by our conclusion of law, yet relief can be given to them in this suit for ejectment by way of joint possession with the appellant: *Naranbhai* v. *Ranchod*[1]. But before a decree for joint possession is passed, it is necessary to determine whether all or any of the respondents (plaintiffs) were unmarried when their mother Varubai died, because it is only the unmarried who would be entitled to share in the property with the son in preference to the married. Unless the parties are agreed on this question of fact, we must ask the lower Court to find on the following issue after taking such evidence as either party may adduce :—

(1) Was any, and if so, which of the plaintiffs, unmarried when their mother Varubai died and the succession to the property in dispute opened?

The onus will lie in the first instance on the plaintiffs.

Finding to be returned within three months.

On its return there will be a decree for joint possession in favour of those entitled.

Issue sent down.

R. R.

(1) (1901) 26 Bom. 141.

CRIMINAL APPELLATE.

Before Mr. Justice Chandavarkar and Mr. Justice Heaton.

1909. *November* 8.

EMPEROR *v.* GANESH DAMODAR SAVARKAR*.

Indian Penal Code (Act XLV of 1860), sections 107, 108, 121, 124*A*—*Abetment*—*Sedition*—*Waging of war.*

The accused published a book containing eighteen poems, of which four were the subject-matter of the charge. The general trend of the poems charged, as well as the remaining ones in the book evinced a spirit of bloodthirstiness and

* Criminal Appeal No. 290 of 1909.