

APPELLATE CIVIL.

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

1910.
April 10.

VITHAPPA BIN KASHA HEGDE AND OTHERS (ORIGINAL PLAINTIFFS),
APPELLANTS, v. SAVITRI KOM GANAPBHATTA AND ANOTHER
(ORIGINAL DEFENDANTS), RESPONDENTS.*

*Hindu Law—Mitakshara—Daughters inheriting property from their
father—Shares separate and absolute—Tenants-in-common.*

In the Bombay Presidency a daughter taking property from her father inherits it as *stridhan* and daughters take their shares separately and absolutely.

When the property so inherited is not physically divided, it is held by the daughters as tenants-in-common and not as joint tenants and there is no survivorship between them.

In cases affecting inheritance the rule is to adhere to the decisions of the Court to which the district from which the case arose is subject.

SECOND appeal from the decision of T. Walker, District Judge of Kanara, reversing the decree of K. G. Kittur, Subordinate Judge of Honavar.

Suit to recover Rs. 65 as balance of rent.

One Vishnu who owned the land in suit died leaving him surviving two daughters, Kuppi and Savitri. Kuppi was married to Rama Hedge and she died in or about the year 1899 leaving her surviving her husband Rama. In the year 1907 Rama Hegde brought the present suit against Kappabhatta Vishnubhatta, the tenant of the land, as defendant 1 and against Savitri, as defendant 2 to recover a share in the rent which devolved on him as heir of his wife Kuppi, deceased.

Defendant 1 denied the plaintiff's right to recover the rent.

Defendant 2 contended *inter alia* that plaintiff's wife Kuppi was not entitled to a share in the estate of her father, she having been well off and possessed of moveable and immoveable property; while the defendant belonged to a poor family and she was entitled to inherit in preference to the plaintiff's wife.

* Second Appeal No. 803 of 1909.

While the suit was pending the plaintiff Rama Hegde died and his nephews were brought on the record as his legal representatives.

The Subordinate Judge found that both Kuppi and Savitri were the heirs to their father. He, therefore, allowed the claim.

On appeal by defendant 2 the District Judge reversed the decree and dismissed the suit on the ground that Kuppi's right of heirship passed to her sister Savitri by survivorship.

The plaintiffs preferred a second appeal.

S. S. Patkar for the appellants (plaintiffs):—The lower Court was wrong in holding that Savitri took by survivorship the interest of Kuppi. Under Hindu Law in the Bombay Presidency the daughter succeeds to an absolute and several estate in her father's immovable property; *Haribhat v. Damodar-bhat*⁽¹⁾. It is laid down in *Bulakidas v. Keshavlal*⁽²⁾ that in the Bombay Presidency the daughters take not only absolute but several estates. The rule, however, is different in Bengal and Madras. The remarks of Mr. Melvill, J., are very apposite: "This is the view which appears to have generally been taken by the Shastris and to have commended itself to the learned authors of West and Buhler's Digest and it is certainly a far more convenient rule than that of regarding as joint tenants two or more daughters who have married into different families." The ruling in *Rindabai v. Anacharya*⁽³⁾ relates to sisters and approves of the decision in *Haribhat v. Damodar-bhat*⁽⁴⁾. West and Buhler in their Digest of Hindu Law at page 106 lay down that daughters take in the Bombay Presidency separate interests excluding the right of survivorship contrary to the rule applied in Bengal and Madras. There is, however, a Privy Council ruling in *Raja Ohelikani Venkayamma Garu v. Raja Ohelikani Venkataramanayamma*⁽⁵⁾ which might be relied on by the other side. The remarks at page 165 favour the opposite contention, but that was a case from Madras where daughters take only a life estate and the law there is quite different as laid down in *Bulakidas v. Keshavlal*⁽⁶⁾. But the said Privy Council case is

(1) (1878) 3 Bom. 171.

(2) (1881) 6 Bom. 85.

(3) (1890) 15 Bom. 206.

(4) (1878) 3 Bom. 171.

(5) (1902) 29 I. A. 153.

(6) (1881) 6 Bom. 85.

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explained in *Bai Rukhmini v. Keshavlal Ranchod*⁽¹⁾. In *Jogewar Narain Deo v. Ram Chandra Dutt*⁽²⁾ the Privy Council have laid down that the principle of joint tenancy is unknown to Hindu Law except in the case of a coparcenary between members of an undivided family. See also *Karuppai Nachiar v. Sankaranarayana Chetty*⁽³⁾. In the *Vyavahar Mayukha*, Chapter IV, Section 8, para 10 (Stokes' Hindu Law Books, page 86) it is laid down following the text of Manu that "If there be more daughters than one then they are to divide (the estate) and take (each a share)." This shows that the daughters take an absolute and several estate. Though this case is governed by the *Mitakshara*, it is laid down in *Bhagwan Vithoba v. Warubai*⁽⁴⁾ that it is a well established rule of the Bombay High Court that where the *Mitakshara* is silent and obscure, the Court must, generally speaking, invoke the aid of the *Vyavahar Mayukha* to interpret it and harmonize both the works so far as that is reasonably possible.

N. A. Shiveshavarkar for respondent 1 (defendant 2):—The cases cited were governed by the *Mayukha* and not by the *Mitakshara*. The present case is governed by the *Mitakshara* and it must be decided according to the interpretation of the *Mitakshara* as laid down by the Privy Council in *Raja Chelikani Venkayamma Garu v. Raja Chelikani Venkataramanayamma*⁽⁵⁾. At page 165 their Lordships say that widows succeed jointly, so also daughters. We rely also on *Aumirtolall Bose v. Rajoneekant Mitter*⁽⁶⁾. The present case is governed by the *Mitakshara* and it must be decided according to the interpretation put upon the *Mitakshara* by the Privy Council. Further this case comes from Kanara which, at the beginning of the last century formed part of the Madras Presidency. Therefore cases under the *Mayukha* would not apply.

Patkar in reply:—The law in Madras is quite different. There the daughters take only a life-interest like the widows and are therefore placed by the Privy Council on the same

(1) (1907) 9 Bom. L. R. 1293.

(2) (1896) 23 Cal. 670.

(3) (1903) 27 Mad. 300.

(4) (1908) 32 Bom. 300.

(5) (1902) 29 I. A. 156.

(6) (1874) 2 I. A. 113.

footing. But as laid down in *Bulakkidas v. Keshavlal*⁽¹⁾ the law in the Bombay Presidency is quite different. It is laid down in a case from Dharwar governed by the Mitakshara that a daughter takes an absolute estate in the property inherited from her father *Gulappa Doningappa v. Tayawa Kempanna*⁽²⁾. The Mayukha is quite clear and according to *Bhagwan Vithoba v. Warubai*⁽³⁾ where the Mitakshara is silent or obscure, the Court should invoke the aid of the Mayukha.

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SCOTT, C. J. :—The question in this appeal is whether the plaintiff or the second defendant was the person entitled as landlord to receive rent from the first defendant for property of which the latter was a *mulgeni* tenant.

The last male owner of the property had two daughters, Kuppi and Savitri. Kuppi was married to Ram Hegde. The heirs of Kuppi's husband, Ram Hegde, are plaintiffs in this case. Savitri is the second defendant.

It is contended that on Kuppi's death Savitri acquired her interest in the property by survivorship. This contention is based upon certain Madras decisions of which the latest is to be found in *Raja Chelikani Venkayamma Garu v. Raja Chelikani Venkataramanayamma*⁽⁴⁾, from which it appears that according to the Mitakshara, as interpreted by the Madras High Court, daughters inheriting from their father take jointly and do not take absolute interests in separate shares.

In the Bombay Presidency, however, it has long been held that a daughter taking property from her father inherits it as *stridhan* and it follows that two daughters taking from their father take their shares separately and absolutely.

The result is that where property so inherited has not been physically divided it is held by them as tenants-in-common and not as joint tenants and between them there can be no survivorship.

(1) (1881) 6 Bom. 85.

(2) (1907) 9 Bom. L. R. 834.

(3) (1908) 32 Bom. 300.

(4) (1902) 29 I. A. 156.

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It has been urged on behalf of the respondent that we ought to follow the rulings applicable to the Madras Presidency, because this case comes from Kanara which, at the beginning of the last century, formed part of the Madras Presidency.

The rule, however, which has been always followed in cases affecting the inheritance of property under Hindu Law is to adhere to the decisions of the Court to which the district from which the case arose is subject; and it has not been contended that in the district of North Kanara any different rule has been laid down by the Bombay High Court from that which applies to the rest of the Presidency in the case of property inherited by daughters from their father.

We, therefore, think that the District Judge has come to an erroneous conclusion in holding that the second defendant succeeded by survivorship to the interest of her sister in the property in suit.

We reverse the decree of the District Court and restore that of the Subordinate Judge.

The defendant No. 2 must pay the costs of this appeal and of the lower appellate Court.

Decree reversed.

G. B. R.
