

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Hayward.

1911.

August 10.

TRIKAM PURSHOTTAM (ORIGINAL PLAINTIFF), APPELLANT, v. NATHA DAJI,
SON OF BAI ADI (ORIGINAL DEFENDANT), RESPONDENT.*

*Hindu Law—Vyavahara Mayukha—Succession—Step-sister—
Paternal uncle—Priority.*

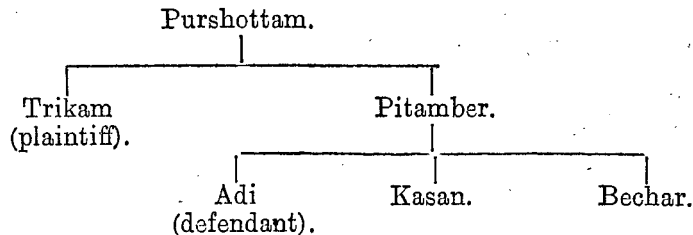
According to Hindu Law, as administered under the Vyavahara Mayukha, the half-sister of the propositus is entitled to succeed in preference to his paternal uncle.

SECOND appeal from the decision of Dayaram Gidumal, District Judge of Ahmedabad, confirming the decree passed by K. V. Desai, Subordinate Judge of Nadiad.

Suit to recover possession of property.

The property in dispute belonged originally to one Pitamber. He had a brother Trikam (the plaintiff) who was separated from him. Pitamber first married Jatan, and had by her a daughter Adi (the defendant). Jatan died. He then married Divali, and had by her a son Bechar and a daughter named Kasan. On Pitamber's death Bechar inherited his property. Divali and Kasan died during Bechar's life-time. Bechar died in 1904.

The parties lived at Nadiad, a town in the Kaira District, and belonged to the *kachhia* caste (vegetable sellers). Their relationship is shown in the following genealogical tree:—



On Bechar's death, the plaintiff, who was a paternal uncle of his, filed a suit against Adi (the step-sister of Bechar) to recover possession of property, claiming that he was under Hindu Law a preferential heir.

The lower Court disallowed his claim holding that Adi, as step-sister of Bēchar, was to be preferred to the plaintiff who was his paternal uncle.

The plaintiff appealed to the High Court. Adi having died was represented by her son Natha Daji.

T. R. Desai, for the appellant:—The author of the *Vyavahara Mayukha* makes a distinction between full-brother and half-brother. He first brings in full-brother, then full-sister; nephews, grandmother and then half-brother would come in (see Chapter IV, section 8), *Mandlik*, p. 81. But there is no mention of half-sister. She can therefore only come in as a distant relation. If now, she is included in the term full sister then there would be an anomaly, *viz.*, 'a half-sister would take before a half-brother. Nilkantha has undoubtedly given a special position to the sister in the line of heirs, a position which is denied to her in the other presidencies. A half-sister should not be allowed to partake this special position. Refers to *Sakharam Sadashiv Adhikari v. Sitabai*⁽¹⁾; *Dhondu Gurav v. Gangabai*⁽²⁾; *Lakshmi v. Dada Nanaji*⁽³⁾; *Biru v. Khandu*⁽⁴⁾; *Kumaravelu v. Virana Goundan*⁽⁵⁾.

L. A. Shah, for the respondent:—The case of *Kesserbai v. Valab Raoji*⁽⁶⁾ governs this case. In that case, the half-sister was preferred to the uncle's widow. She would be preferred to an uncle. The distinction of whole and half-blood is confined to brothers alone. See *Vithalrao v. Ramrao*⁽⁷⁾. Refers to *Russoobai v. Zoolekhabai*⁽⁸⁾.

CHANDAVARKAR, J.:—The question of Hindu Law arising in this second appeal, is, whether under the *Vyavahara Mayukha* the half-sister or paternal uncle of the propositus is to be preferred as heir. Both the Courts below have preferred the half-sister; and, in our opinion, they are right. It is admitted for the appellant that a full-sister is entitled to come in as heir before the paternal uncle; but it is argued that it is so

(1) (1879) 3 Bom. 353.

(2) (1879) 3 Bom. 369.

(3) (1879) 4 Bom. 210.

(4) (1879) 4 Bom. 214.

(5) (1879) 5 Mad. 29.

(6) (1879) 4 Bom. 188.

(7) (1899) 24 Bom. 317.

(8) (1895) 19 Bom. 707.

1911.

TRIKAM
PURSHOTTAM
v.
NATHA
DAJI.

1911.

TRIKAM
PURSHOTTAM
v.
NATHA
DAJI.

because she is one of the specifically named heirs and that the word "sister" (*bhagini*) does not include a half-sister. It is too late in the day to urge this argument in the face of the decisions of this Court in *Sakharam Sadashiv Adhikari v. Sitabai*⁽¹⁾ and *Kesserbai v. Valab Raoji*⁽²⁾. In the latter especially, the position of the half-sister in the line of heirs was carefully considered and determined. In the first, the opinion of a Shastri was referred to as giving preference to a half-sister to a step-mother (see p. 364 of the report). That opinion was cited from West and Buhler's Digest (pp. 469 and 470 of the 3rd Edition). The authors of the Digest approve of that opinion. Now, this Court has held in *Russoobai v. Zoolekhabai*⁽³⁾ that a step-mother succeeds to the property of her step-son in preference to the step-son's paternal uncle's son, because the latter represents a remoter line of succession. If the step-mother is nearer in the line than those in the line of the paternal uncle, the half-sister who is nearer than the step-mother must exclude those in the latter line.

In *Kesserbai v. Valab Raoji*⁽²⁾, it was held that a full-sister and a half-sister must be preferred to a step-mother and to a paternal uncle's widow. The position of the half-sister was considered there and the grounds on which the Court determined her place in the line of heirship were shortly these:— (1) The reason assigned for bringing the *full-sister* in immediately after the grandmother, *viz.*, her *gotrajatva*, i. e., the being born in the same *gotra* as the propositus, applies to the half-sister as well; (2) as "the daughter of the father" of the propositus, she is nearer in line than the step-mother and the paternal uncle's widow; and (3) "Messrs. West and Buhler place both the full-sister and the half-sister before the paternal uncle in the order of heirs."

These grounds are unanswerable. If once it is conceded that a half-sister is a *gotraja sapinda*, she stands nearer to the propositus in the line of heirs than a paternal uncle. This

(1) (1879) 3 Bom. 353.

(2) (1879) 4 Bom. 188.

(3) (1895) 19 Bom. 707.

conclusion is in accordance with the list given by the late Rao Saheb Mandlik in his Hindu Law, p. 372.

The decree is, therefore, confirmed with costs.

Decree confirmed.

R. R.

1911.

TRIKAM
PURSHOTAM
v.
NATHA
DAJI.

APPELLATE CIVIL.

Before Mr. Justice Beaman and Mr. Justice Hayward.

KESHAV BIN DHONDI SINDE AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS,
v. JAIRAM BIN GANGARAM PAWAR AND ANOTHER (ORIGINAL DEFENDANTS),
RESPONDENTS.*

1911.

August 24.

Bombay Mamlatdars' Courts Act (Bombay Act II of 1906), section 23 †—Possessory suit—Collector's powers to revise—The powers can be exercised by Assistant Collector in charge of the district—Land Revenue Code (Bombay Act V of 1879), section 10. ‡

* Civil Extraordinary Application No. 99 of 1911.

† The Bombay Mamlatdars' Courts Act (II of 1906), section 23, runs as follows :—

“ 23. (1) There shall be no appeal from any order passed by a Mamlatdar under this Act.

(2) But the Collector may call for and examine the record of any suit under this Act, and if he considers that any proceeding, finding or order in such suit is illegal or improper, may, after due notice to the parties, pass such order thereon, not inconsistent with this Act, as he thinks fit.

(3) Where the Collector takes any proceedings under this Act he shall be deemed to be a Court under this Act.”

‡ The Bombay Land Revenue Code (Bombay Act V of 1879), section 10, runs as follows :—

10. Subject to the general orders of Government, a Collector may place any of his assistants or deputies in charge of the revenue-administration of one or more of the talukas in his district, or may himself retain charge thereof.

Any Assistant or Deputy Collector thus placed in charge shall, subject to the provisions of chapter XIII, perform all the duties and exercise all the powers conferred upon a Collector by this Act or any other law at the time being in force, so far as regards the taluka or talukas in his charge.

Provided that the Collector may, whenever he may deem fit, direct any such assistant or deputy not to perform certain duties or exercise certain powers, and may reserve the same to himself or assign them to any other assistant or deputy subordinate to him.

To such Assistant or Deputy Collector as it may not be possible or expedient to place in charge of talukas the Collector shall, under the general orders of Government, assign such particular duties and powers as he may from time to time see fit.