them after the action was commenced and the motion made to obtain the direction of the Court as to the rights of the parties."

These observations *mutatis mutandis* are directly applicable to the case now before us. The result is that the plaintiff is entitled to the shares. We reverse the decree of the lower Court and pass a decree for the plaintiff in terms of paragraphs 1 and 2 of the prayer of the plaint.

Attorneys for the plaintiff: *Messrs. Tyabji, Dayabhai & Co.*

Attorneys for the defendants: *Messrs. Little & Co.*

Decree reversed.

B. N. L.

APPELLATE CIVIL.

FULL BENCH.

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

1911. *November* 15.

TUKARAM BIN YEDU SAVANT AND ANOTHER (ORIGINAL DEFENDANTS 1 AND 4), APPELLANTS, *v.* NARAYAN RAMCHANDRA BHAGVAT (ORIGINAL PLAINTIFF), RESPONDENT.*

Hindu Law—Deceased Hindu maiden—Stridhan—*Competing heirs—Father's sister—Father's male* gotraja sapindas *five or six degrees removed—Preference to father's sister.*

In the case of a deceased Hindu maiden leaving surviving her her father's sister and her father's male *gotraja sapindas* five or six degrees removed, her *stridhan* goes to her father's sister in preference to his said male *gotraja sapindas.*

SECOND appeal from the decision of V. M. Ferrers, Assistant Judge of Satara, confirming the decree of R. B. Gogte, Subordinate Judge of Karad.

The plaintiff sued to recover from the defendants Rs. 150 on account of three years' rent of certain land, alleging that the land originally belonged to one Nana Joti and that after Nana's death it descended to his only daughter and heir

* Second Appeal No. 594 of 1910.

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Chandra, a minor, that Chandra having died unmarried, Nana's sister Santai became heir and owner, that the plaintiff purchased the land and the right to recover rent from Santai under a registered sale-deed, dated 23rd July 1906, that the land was let to defendant 1 by the guardian of the minor Chandra under a registered rent-note, dated the 16th August 1905, and that defendants 2 to 8 were in possession along with defendant 1.

The defendants contended *inter alia* that the plaintiff's sale-deed was hollow and not executed by Santai and that after Chandra's death the defendants became her heirs.

The Subordinate Judge found that the plaintiff's sale-deed was proved to have been executed by Santai for Rs. 800, that Santai was Chandra's heir, that defendants 2 to 8 were not bound by the rent-note executed by defendant 1 to Chandra's guardian, that the plaintiff was entitled to recover Rs. 150 from the defendants and that Santai had authority to pass the sale-deed to the plaintiff. The Subordinate Judge, therefore, passed a decree for plaintiff awarding him Rs. 150 for damages and costs from the defendants.

On appeal by defendants 1 and 4, the Assistant Judge confirmed the decree.

Defendants 1 and 4 preferred a second appeal.

The second appeal was heard by Scott, C. J., and Batchelor, J., who having referred the question involved in the case for the decision of a Full Bench, the point was argued before a Full Bench composed of Scott, C. J., Chandavarkar, Batchelor and Heaton, JJ.

M. V. Bhat for the appellants (defendants 1 and 4) :—The Subordinate Judge started correctly by holding that the maiden daughter Chandra took an absolute estate from her father by inheritance and thus became a fresh stock of descent and that her heirs were entitled to the inheritance. But he was wrong in holding that Chandra's father's sister Santai was a *gotraja sapinda* and as such entitled to her property. According to the rulings of this Court a paternal aunt is a

bandhu: *Mohandas* v. *Krishnabai*[1], *Saguna* v. *Sadashiv*[2], *Ganesh* v. *Waghu*[3]. The defendants are *gotraja sapindas* and a *bandhu* can never come in so long as a *gotraja sapinda* is in existence. The ruling in *Janglubai* v. *Jetha Appaji*[4] is distinguishable. There the competition was between *pitribandhu* and *matribandhu* of a deceased maiden. One was the maiden's father's mother's sister and the other was the maternal grandmother of the maiden.

The following texts were cited and discussed :—Baudhayana, placitum 30 of section 11, placita 26, 27—30 ; Manu, Chap. IX, placitum 187, *anantarah sapindadyáh* (अनंतराः सपिंडाद्याः) etc., " the nearest *sapinda* male or female takes the inheritance of the deceased owner " ; Mitakshara, Chap. II, section 11, placita 8—31, Stoke's Hindu Law Books, pp. 460—465, the expression *tatpratyasannáh* (तत्प्रत्यासन्नाः) in placitum 11 ; Mayukha, Chap. IV, placitum 23, section 10, Stoke's Hindu Law Books, p. 105 ; Manu, Chap. IV, verse 187, " to the nearest *sapinda* male or female the inheritance next belongs."

Gojabai v. *Shrimant Shahajirao Maloji Raje Bhosle*[5], *Manilal Rewadat* v. *Bai Rewa*[6].

Jayakar, with *J. R. Gharpure*, for the respondent (plaintiff) :—The decision of the lower Court is correct. According to the decisions of the Court a maiden daughter takes an absolute estate and claims to her property have been recently settled by the ruling in *Janglubai* v. *Jetha Appaji*[4]. From the scheme of the Mitakshara and the Mayukha it is quite clear that the authors, after mentioning the kinds of *stridhan*, indicate the general line of heirs to a married woman's estate. It refers to two kinds, namely, (1) when the marriage is of an approved form and (2) when it is not of an approved form and lastly follows the provision of law as regards the estate of a female who dies unmarried. Yajnyavalkya uses the word *kania* (कन्या) which means a maiden, a virgin.

(1) (1881) 5 Bom. 597.
(2) (1902) 26 Bom. 710.
(3) (1903) 27 Bom. 610.
(4) (1908) 32 Bom. 409.
(5) (1892) 17 Bom. 114.
(6) (1892) 17 Bom. 758.

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The following texts were cited and commented upon:—Yajnyavalkya, Chap. II, verses 146, 149; Collection of Hindu Law Texts, Sanskrit Mitakshara, p. 100, lines 10 and 11 and p. 102, lines 16, 17 and 18; Mitakshara, Chap. II, placita 11, 30; Stoke's Hindu Law Books, p. 466; Viramitrodaya, Part II, placitum 9; Sarkar's Translation, p 241; Mitakshara, Chap. II, placitum 11, *tatpratyasannáh* (तत्प्रत्यासन्नाः), *tatdvarena tatpratyasannáh* (तद्द्वारेण तत्प्रत्यासन्नाः).

Gandhi Maganlal v. *Bai Jadab*(1), *Gojabai* v. *Shrimant Shahajirao Maloji Raje Bhosle*(2), *Sakharam Sadashiv Adhikari* v. *Sitabai*(3), *Dhondu Gurav* v. *Gangabai*(4), *Lakshmi* v. *Dada Nanaji and Radhabai*(5), *Rudrapa* v. *Irava*(6), *Lallubhai Bapubhai* v. *Mankuvarbai*(7).

Bhat, in reply.

SCOTT, C. J.:—When this case was first argued it was thought that there might be some difficulty in reconciling the *dicta* of Mr. Justice Telang in *Gojabai* v. *Shrimant Shahajirao Maloji Raje Bhosle*(2) with the judgment of Sir Narayan Chandavarkar and Mr. Justice Heaton in *Janglubai* v. *Jetha Appaji*(8); and for that reason there was a re-argument before those Judges together with the Bench before which the case originally came. The judgment which is about to be delivered by my learned colleague will show that there is no conflict between Mr. Justice Telang's judgment and the judgment in *Janglubai* v. *Jetha Appaji*(8).

CHANDAVARKAR, J.:—The question is, whether in the case of a deceased Hindu maiden leaving surviving her her father's sister and her father's male *gotraja sapindas* five or six degrees removed as competing heirs, her *stridhan* goes to the father's sister or his male *sapindas*?

The question of inheritance to a Hindu maiden was considered by this Court in *Janglubai* v. *Jetha Appaji*(8) and it

(1) (1899) 24 Bom. 192 at p. 213.
(2) (1892) 17 Bom. 114 at p. 117.
(3) (1879) 3 Bom. 353.
(4) (1879) 3 Bom 369.
(5) (1879) 4 Bom. 210.
(6) (1903) 28 Bom. 82.
(7) (1876) 2 Bom. 388 at p. 422.
(8) (1908) 32 Bom. 409.

was held there that, in default of either brother, mother or father, the heir to her *stridhan* was her father's nearest *sapinda*. That rule of law was held in that case to rest on the ground that a Hindu maiden, dying without leaving brother, mother or father, as heir, must be treated, for the purposes of succession to her *stridhan*, as a woman married according to one of the unapproved rites, and dying childless.

In the case of such a woman, the law, according to the Mitakshara, is that her *stridhan* shall go, in default of her father, to *his* nearest *sapinda* (*tatpratyasannáh*). Both according to the law under the Mitakshara and the Mayukha, as established by a series of decisions of this Court, of which the leading authorities are *Sakharam Sadashiv Adhikari* v. *Sitabai*[1], *Dhondu Gurav* v. *Gangabai*[2], *Kesserbai* v. *Valab Raoji*[3] and *Bhagwan* v. *Warubai*[4], the father's sister would become entitled to the *stridhan* of the deceased maiden as his nearer heir. As was pointed out in one of the cases just cited, the law in this Presidency as to the sister of a propositus rests, not solely upon either the Mitakshara or the Mayukha, but conjointly upon both.

But it is contended that the rule of the Mitakshara, which states in terms that the father's nearest *sapinda* shall inherit in such a case, has been interpreted by the Mayukha otherwise, as meaning, that is, not the father's *sapinda*, but the woman's *sapinda* through her father; that, according to that interpretation, the father's sister is not a *sapinda* but is a *bandhu* of the woman herself; and that the appellants, who are his *gotraja sapindas*, become her heirs, because they are also her own *sapindas*.

This interpretation, it is further urged, has the merit of harmonising the Mitakshara and the Mayukha with each other, and in support of it the observations of Telang, J., in *Gojabai's* case[5] and in *Manilal Rewadat* v. *Bai Rewa*[6] are relied upon by the learned pleader for the appellant.

(1) (1879) 3 Bom. 353.
(2) (1879) 3 Bom. 369.
(3) (1879) 4 Bom. 188.
(4) (1908) 32 Bom. 300.
(5) (1892) 17 Bom. 114 at p. 118.
(6) (1892) 17 Bom. 758 at pp. 763 and 764.

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As to *Gojabai's* case, Telang, J., expresses no final opinion on the meaning of the Mayukha's interpretation of the Mitakshara rule. He points out, however, that "it is possible to harmonise them, if both the Mitakshara and the Mayukha are understood to refer to the same heirs, only by different descriptions—the Mitakshara describing them as the *sapindas* of the husband, the Mayukha as *sapindas* of the wife in the family of the husband." Telang, J., has not gone on to consider how both mean the same heirs.

In the other case cited, *Manilal Rewadat* v. *Bai Rewa*[1], Telang, J., was combating the view expressed by Mr. Mayne, in his Hindu Law and Usage, that, according to the Mayukha, where a woman dies, leaving *stridhan* which is not of the technical kind, being her *inherited* property, that property must be treated as reverting, on her death, to the male from whom it was inherited by her, and that it must, therefore, go to his heirs after her. Telang, J., points out that there is no warrant in the Mayukha for this view and that Nilakantha discards it in the passage in Chap. IV, section 10, placitum 28. There, observes that learned Judge, (pp. 763, 764) "in dealing with the devolution of *stridhan* in default of the husband, Nilakantha states the view of the Mitakshara, which might be supposed to be that it goes to the husband's relations as such, and then proceeds to point out that such a supposition would be incorrect, and finally lays it down that the Mitakshara must be construed in a sense identical with his own opinion, which is that the heirs to succeed are the heirs to the woman herself, though her heirs in the husband's family." From this it is clear that, in the opinion of Telang, J., Nilakantha thought that the Mitakshara might be *supposed* to be at variance with his doctrine, and that his explanation was intended to show that the *supposition* was incorrect—that, in other words, he meant the same heirs whom the Mitakshara had in view. Telang, J., did not address himself to the further question which arises on the Mayukha's explanation of the Mitakshara rule, whom does Nilakantha mean as the heirs of the woman

(1) (1892) 17 Bom. 758 at pp. 763 and 764.

through her husband in his family? A consideration of that question was not necessary for the purpose of combating the view of Mr. Mayne. Mr. Mayne said that the *stridhan* reverted to the last male owner as the propositus according to the Mayukha, and that his heirs took the woman's non-technical *stridhan*, not the woman's own heirs. Telang, J., answered that Nilakantha's doctrine was that the woman was the proposita, because her heirs in her husband's family took the *stridhan*. Now, a deceased woman does not cease to be the proposita merely because her *sapindas* are the same without distinction as the *sapindas* of her husband or of her father, according to the Shastras. According to Mr. Mayne's view, the woman disappears altogether. According to Telang, J., she remains as the proposita. The fact that she so remains is not inconsistent with the fact of her *sapinda* being the same as her husband's or her father's. For instance, in the case of a male, his father's *bandhus* come in as his heirs in default of his own *bandhus*. That does not mean that the male in question ceases to be the propositus. All it means is that his father's *bandhus* become his heirs as his own *bandhus*.

A careful and close examination of the language of the Mitakshara and of the Mayukha on the subject now under discussion becomes necessary for the purpose of the question arising in this case.

First, as to the Mitakshara. The passage is in placitum 11 of Chap. II, section 11, Stoke's Hindu Law (p. 460) :—

"Of a woman dying without issue as before stated, and who had become a wife by any of the four modes of marriage denominated Brahma, Daiva, Arsha and Prajapatya, the (whole) property, as before described, belongs in the first place to her husband. On failure of him, it goes to his nearest kinsmen (*sapindas*) allied by funeral oblations. But in the other forms of marriage called Asura, Gandharba, Rakshasa and Paicacha; the property of a childless woman goes to her parents, that is, to her father and mother. The succession devolves first (and the reason has been before explained), on the mother, who is

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virtually exhibited (first) in the elliptical phrase '*pitrigami*,' implying 'goes (*gachhati*) to both parents (*pitarau*); that is, to the mother and to the father.' On failure of them, their next of kin take the succession."

The original for "to his nearest kinsmen" in the above quoted passage is *tatpratyasannanam sapindanam*, which translated literally is: "Of the nearest *sapindas* thereof." The original for the words "their next of kin" in the last sentence of the same passage is: "*tatpratyasannanam*" ("of the nearest thereof").

It is contended by Mr. Bhat, the learned pleader for the appellant, that the words "*tatpratyasannáh*" in either case mean *her* nearest "kinsmen," that is, of the woman, who is the proposita (the *kutastha*, to use the word familiar to the commentators), not, as in the translation, "his," meaning, the husband's or the father's. The nearest antecedent to the pronoun *tat* is the husband or the father; and the rule of grammar in Sanskrit requires that the pronoun should be referred to that antecedent.

That is how the Vira Mitrodaya understands the Mitakshara rule (G. Sarkar's Translation, p. 240). Where the word *tat* is intended by the context to refer not to the nearest but a remoter antecedent, the commentators are as a rule careful to point that out, as, for instance, where the Vira-Mitrodaya says so in another connection at p. 243 of Mr. Sarkar's Translation (paragraph 14). Balambhatta also interprets the Mitakshara rule now under discussion in his commentary on the Mitakshara in the same way as the Vira Mitrodaya. He says:—"In the case of *asura* and the like forms of marriage, it becomes paternal. This expression 'becomes paternal' is used as (being) elliptical for the text: 'In default of her issue, it is desired by her mother and father.' In default thereof, that is, in default of both of them in the order stated, it goes to the nearest kinsmen of both. That is the meaning."

Balambhatta reasons as follows:—Yajnyavalkya's text, on the subject of inheritance to the *stridhan* of a woman dying childless, merely says that it goes to her husband, if she was

married in one of the approved forms, but that it goes to her father, if her marriage was in one of the unapproved forms. The Mitakshara adds to that, that in default of the husband in the one case, and in default of the father in the other, it goes to the husband's "nearest *sapinda*" in the former and the father's "nearest *sapinda*" in the latter. Yajnyavalkya does not mention either the husband's or the father's *sapindas*. How does the Mitakshara get them? What is the Mitakshara's authority for adding to Yajnyavalkya's text what is not specified in it? Balambhatta answers that the Mitakshara's authority is the well-known canon of construction that a text should be interpreted, not literally, but by the light of the implied meaning which it has received from usage or popular understanding. The canon is: *pațha kramat artha kramo baliyan*. This canon is called by Balambhatta the rule of *Ubhaya Shesha*, according to which the use of a word includes and incorporates something besides what it literally imports, that something being understood. So "husband", explains Balambhatta, means "husband and his nearest *sapinda*"; "father" means "father and his nearest *sapinda*".

The Mayukha deals with the same question as follows: Where the woman was married according to the approved form, and she dies childless, her *stridhan* goes to her husband; if she was married according to one of the unapproved forms, it goes to her father. In default of the husband in the former case, it goes to the person who is *her* nearest *sapinda* "through him"; in default of the father, in the latter case, it goes to the person who is her nearest *sapinda* "through" the father. And these two propositions are laid down in the Mayukha on the authority of the well-known rule of Manu, which is invoked wherever no express rule of inheritance is laid down in the Smritis: "The wealth of the deceased shall belong to his nearest *sapinda*."

This statement of the rule by the Mayukha that, in default of the husband, the *stridhan* of the woman shall go to her nearest *sapinda* through him, and that, in the other case, in default of the father, it shall go to her nearest *sapinda* through

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him, creates an apparent discrepancy between the Mayukha and the Mitakshara, because the latter speaks of the husband's nearest *sapinda* and of the father's nearest *sapinda*, whereas the Mayukha speaks of the woman's nearest *sapinda* through her husband and her nearest *sapinda* through her father.

The Mayukha goes on to explain that there is no discrepancy.

To understand clearly the Mayukha's treatment of the subject, it is necessary to answer the question which at the outset arises. Why does the Mayukha give an explanation of the Mitakshara rule, if the former had understood the rule as meaning what the latter in terms says, *viz.*, that the husband's nearest *sapinda*, and the father's nearest *sapinda* are, according as the marriage is of the approved or of the unapproved form, the same as the woman's own nearest *sapinda* in the husband's family or the woman's own nearest *sapinda* in the father's family.

The explanation was called for by the objection or comment to which the Mitakshara had seemingly lent itself. When a Hindu dies and the question arises, who is to inherit his estate, the Hindu Law says that, as a general rule, it shall be inherited by *his sapindas*. It is he who is the propositus and the heirship must be determined with reference to *him*. The heirs specifically enumerated in the texts are *his* heirs first; where the specific list is exhausted, Manu's general rule on the subject of inheritance applies, and that rule says that the inheritance shall go to him who is the nearest *sapinda* of the deceased.

Now, the Mitakshara's rule as to succession to a woman, who has died childless, *seems* as if it disregarded the general rule of law above mentioned, because, in the case of such a woman, the Mitakshara says that, if she was married in one of the approved forms and she dies childless and husbandless, her *stridhan* shall go to the *husband's* nearest *sapinda* surviving her, not to *her* nearest *sapinda* surviving; and that if she was married in one of the unapproved forms, and dies childless and fatherless, her *stridhan* shall go to *her father's* nearest *sapinda* surviving her, not to her nearest *sapinda* surviving.

In other words, the Mitakshara's expression of the rule makes in effect either the husband or the father the propositus, the determining factor of heirship, and thereby seems to depart from the abovementioned principle of Hindu Law. That way of expressing the rule creates an apparent anomaly.

The Mayukha expresses the same rule in another form with a view to remove the seeming anomaly so as to be free from the comment which the Mitakshara's expression might be supposed to invite. What the Mitakshara calls the nearest *sapinda* of the husband of the woman and the nearest *sapinda* of the father of the woman, the Mayukha terms the woman's nearest *sapinda* through her husband in the one case and the woman's nearest *sapinda* through her father, in the other case.

But that gives rise to a question :—Are not the Mitakshara and the Mayukha at variance with each other, then, on this point ?

The Mayukha goes on to explain that there is no variance if care is taken to comprehend the meaning of its expression of the same rule, *viz.*, a woman's nearest *sapinda* through her husband or through her father.

The Mayukha explains that in order to get such a *sapinda*, we must enter the *kula* or family of the husband or the father, with the husband or the father as the *dwara* or door.

Now, these two words, *kula* or family, and *dwara* or door, used by the Mayukha, are intended to explain that the husband's or the father's *sapindas* are primarily the same as the woman's *sapindas*.

First, as to the word *kula*. That word and the word *gotra* are sometimes synonymous. There is a distinction in point of *kula* and *gotra* as between a Hindu male and a Hindu female.

In the case of a male he is regarded as an independent personality, with the ancestors of the father reborn and reproduced in him. So again, the son, according to the Shastras, is his own father reproduced by his mother. Hence

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the mother is called *Jaya*, she who reproduces her own husband in the form of a son[1]. Though by birth he obtains the *kula* or *gotra* of his father, yet the *kula* or *gotra* is *his* without reference to the father's. It is the same with his *kula* or *gotra* as with his interest in ancestral property. That interest he acquires by birth independently of his father. To find out his *kula* or *gotra*, the father is not the guide or door. As Nilakantha says in the Vyavahara Mayukha in the Chapter on Adoption न च पितृत्वं सापिंड्यसमनियतम् : p. 45 :— "Paternity and Sapindaship are not necessarily co-extensive, so that the absence of the one might lead to the absence of the other" (Mandlik's Hindu Law, p. 63, lines 30 and 31). It is otherwise in the case of a female. The general rule as to a woman is that she has no independence, in whatever state she be, whether married or unmarried. She is dependent on her husband, if married; on her father, if unmarried. Her right to acquire property and to succession has been a much debated question in Hindu Law and was established gradually and by stages as an exception to the general rule as to her complete state of dependence. Yajnyavalkya says in verse No. 85 in the section on Rituals that a woman can never be independent— and the Mitakshara accepts that as the rule. She is dependent on the father before marriage, on the husband after it (see p. 23 of the 3rd Edition of Moghe's Publication of the Mitakshara). Answering the question—"What debts of her husband is a woman liable to pay"?—Vijnaneshwara in the Chapter on Debts points out what those debts are and says :—"This does not mean that a woman cannot possess property. All it shows is her dependence." And that, he continues, he will explain more fully in dealing with partition (p. 139). On the subject of partition, he reiterates the view that the fact of a

(1) पूर्वेषां पित्रादीनां पुत्ररूपेण जन्मउत्पत्तिः

(The ancestors of a man are born again in the form of a son to him) : The Mitakshara, 3rd Edition, by Moghe, p. 284.

तज्जाया भवति यदस्यां जायते पुनरिति श्रुतिः

(The Mitakshara, Moghe's 3rd Edition, p. 15) : "She becomes her husband's generator by whom the husband is reborn."

woman owning wealth is not inconsistent with her dependence (pp. 142 and 143 of Moghe's Edition). In establishing the right of a widow to inherit her husband's property he expresses the same view. In commenting on Yajnyavalkya's text that the King shall not entertain any litigation as between a husband and his wife, Vijnaneshwara points out the exceptions to that rule and says:—"As to women, adjudication (by the King) is allowed in the case of the wives of milkmen, liquor-sellers and the like on account of their independence. From that it is to be understood that in the case of other women of families, there can be no entertaining of disputes, while their husbands are alive, owing to their dependence" (p. 132).

If a woman is dependent, then comes the question—What is her *kula* or *gotra, i. e.*, her family? On whom is she dependent for that? This has been a moot question among the *Smriti* writers, and it is discussed by Vijnaneshwara in the section on Rituals (*Achara*) of the Mitakshara. (See p. 76 of the 3rd Edition of the Mitakshara published by Bapu Shastri Moghe.) Vijnaneshwara points out there, that there are two divergent views on the subject—one view is that a married woman's *gotra* is that of her husband; the other that it is the *gotra* of her father. Vijnaneshwara reconciles these two views by explaining that the former view applies to a woman who has been married according to one of the approved forms; and that the latter applies to one married according to one of the inferior rites.

As to an unmarried woman, her *gotra* is that of her father. See a Smriti of Paithinasi cited by Aparârka: पितृगोत्रं कुमारीणाम् (the Anandashrama Series Edition, p. 908).

It follows from this that to ascertain the *kula* or *gotra* of a woman, she must be treated as being dependent upon, subordinate to, and identified with either her husband or father, according as she is married or unmarried. This mode of ascertainment is adopted in her case, not in the case of a male. In his case, he holds his *kula* or *gotra* in his own inherent right. In her case, she has none except with reference to her dependence upon her husband or her father. When a male

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dies, it is nowhere said that to ascertain his heirs we must enter the family of another person with that person as the door. The deceased man is himself the door and the heirs are pointed out by himself. Not so in the case of a woman dying childless.

When, therefore, the Mayukha speaks of a woman's nearest *sapinda* through her husband or through her father as the nearest *sapinda* whom we get as we enter the husband's or the father's *family* (*kula*), with the husband or the father as the door for entrance, the meaning is that for her nearest *sapinda* we must search for the husband's or the father's own *sapinda*. She is not the door for entrance; it is her husband or father. He is the way—not she. If we enter with him as the door, we must look out for *his kula, i. e.*, his family (*tatkule*), and then ask who are in his *kula* or family, *i. e.*, who are his *sapindas*. They are her *sapindas* also.

Then the question is, is the husband's or the father's sister in the *kula* of the husband or the father? The answer must be in the affirmative, because, in bringing in the sister as heir to her deceased brother next after the grandmother and before the other *sapindas*, the Mayukha cites as its authority a text of *Brihaspati*, which says:—

"Where a childless man (leaves) several clansmen, *Sakulyas* (kinsmen) and *Bandhavas* (relations), whoever of them is the nearest takes the wealth (of the deceased)" (Mandlik's Hindu Law, p. 81).

Now, the word *Sakulyas* used in Brihaspati's text is a compound of two words, *samana* (which means "the same") and *kula* (which means "family"). The Mayukha brings the sister in as a *gotraja sapinda*, because she is of the same *kula* or family as her brother. It expressly says that her right is founded on her *gotrajatva, i. e.*, the fact of her birth in the *gotra* or family of her brother.

That, again, is not the only place where Nilakantha in the Mayukha establishes the sister as a member of her brother's *kula* for the purposes of inheritance. In the concluding portion

of his Chapter on Reunion, he cites a text of Madana and a text of Brihaspati which ordain that, under certain specified circumstances, the sister shall take the share of her brother, when he has died as a *reunited* coparcener. (The Mayukha: Rao Saheb Mandlik's Edition, p. 58. See also *Sakharam Sadashiv Adhikari* v. *Sitabai*[1].)

So also the sister is in the *kula* of her brother and is his *gotraja sapinda*, according to the Mitakshara, as interpreted by Nanda Pandita and Balambhatta. These latter say that the word "sister" is included in and implied by the word "brothers" in the rule as to obstructed succession. It was on that account mainly that this Court held in the earlier decisions that the sister comes in as heir (*gotraja sapinda*) to her brother immediately after the grandmother, under the Mitakshara.

So much for the word *kula*. Now, it may be urged that a woman's nearest *sapinda* in her husband's or father's family or *kula* need not necessarily mean the husband's or father's nearest *sapinda*. The woman, being the *proposita*, we must, it may be contended, seek for her nearest *sapinda* in the said family; and if that be the case, the sister must go out of the *kula*.

Therefore, to make his explanation more emphatic and free from all ambiguity, Nilakantha further explains that we must seek the nearest *sapinda* of the woman in her husband's or father's *kula* or family by entering that family with the husband or the father as the *dwara*, which means door or way. This word *dwara* conveys here a sense stronger than the English word "through." This is not the only place where Nilakantha uses this metaphorical expression. For instance, he defines *daya* (joint divisible estate) as that species of property "which has come from the father or mother as the *dwara* or door." *Dwara*, therefore, indicates the stock, the source.

This significance of the word as used by Nilakantha is further illustrated by his use of it in his *Shraddha Mayukha*.

(1) (1879) 3 Bom. 353 at p. 362.

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There, discussing the question of the right of a Hindu woman to perform what is called the *parvana shraddha* of her father's ancestors (" a ceremony in honour of ancestors performed at the conjunction of sun and moon ") where the father has no sons or grandsons, Nilakantha says : " If her father is alive, the *parvana* is absent in her case, because of the absence of the door." That means that the right to perform the ceremony arises on the father's death. The father's death is the door whence the right flows.

Even more clearly illustrative is the use of the word *dwara* or door in the Mitakshara as conveying that meaning. Explaining the Smriti of Yajnyavalkya that " where in a joint family there are several coparceners, each having more than one son, the sons of each get at partition, the share which their father could have got ; " *i. e., per stirpes,* not *per capita,* Vijnaneshwara in the Mitakshara says, as translated by Colebrooke :—" Although grandsons have by birth a right in the grandfather's estate, equally with sons ; still the distribution of the grandfather's property must be adjusted through their fathers, and not with reference to themselves : " Stoke's Hindu Law Books : The Mitakshara, Chap. I, section 5, placitum 2.

This translation does not bring out clearly the force of the original. I would translate it as follows :—

" Though the ownership of grandsons in the grandfather's property jointly with the sons is laid down as the rule, yet their (grandsons') shares in the grandfather's property are to be determined solely with their fathers *as the door,* not in their own right." (पितृद्वारेणैव न स्वरूपापेक्षया.)

This means that for ascertaining the shares of the grandsons we must find out what share *belonged* or would have *belonged* to their father. The father as " the door of the share " means the share as belonging to him. So also a *kula* or family with the husband or the father of a woman as its door means a family derived from and belonging to the husband or the father, a family of which he is the way, for the ascertainment of her *sapindas* in which the woman is dependent upon and merges in him as if he was the *propositus,* standing in her

place and pointing the way. That is so, because a woman's *sapindas* are the same as her husband's or her father's *sapindas*, as the case may be, according to the form of marriage.

The same conclusion is arrived at in another way. Both according to the Mitakshara and the Mayukha, where a married woman dies childless, her *stridhan* goes to her husband, if she was married in one of the approved forms; but it goes to her father, if she was married in one of the unapproved forms.

In the former case, in default of the husband, says the Mitakshara, the property goes to "the nearest *sapinda* of the husband." The Mayukha says, it goes to the woman's nearest *sapinda* through her husband—to use the very words of the Mayukha's gloss, nearest to the woman, with the husband as the door and in his *kula* or family.

In such a case there can be no question but that the woman's nearest relation is the same as her husband's nearest relation. Propinquity is identical for the two and the husband's sister would be nearer to the woman and also to her husband than his other *sapindas* except his grandmother. The wife and the husband stand identified in that respect. That is exactly what Telang, J., said in *Gojabai's* case: "The wife having by her marriage been born again in the husband's family and having become half the body of the husband, the *sapindas* of the husband necessarily become her *sapindas* and their degrees of propinquity to the husband and wife must be held to be identical."

So far the Mitakshara's rule in effect becomes the same as the Mayukha's explanation. Both agree and mean the same heirs.

Then comes the same rule in its application to the woman's nearest relation through her father in his family. It is one and the same rule composed of two parts, the first applying to the woman in relation to her husband, the second applying to her in relation to her father. The relation to the husband arises in the approved, which are the principal, or leading forms of marriage; the relation to the father arises in the

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inferior forms. Now, it is a canon of construction, according to the Mimamsa (law of interpretation), that where two cases are mentioned together, one of which is the leading and the other subordinate, the same *nyaya* or law must apply to the latter, unless the rule directs otherwise. This canon is called the law of "the loaf and the staff" and is referred to and illustrated in the Mitakshara, placita 6 to 11, Chap. I, section 9. Applying this canon to the rule we are discussing, if in the principal case of marriage, the wife's *sapindas* are the same as the husband's *without distinction, the same must have been* intended as between a daughter and her father also. Again, it is another rule of construction in Hindu Law that when the same word is used of two or more objects and in the same connection, it must bear the same meaning as to all of them in the absence of express direction to the contrary[1]. If *dwara* and *kula* mean the identical heirs for husband and wife, they must mean that also for father and daughter.

If it be urged as against this that as between a husband and wife, the texts expressly say that they are one, whereas there is no text which says the same of a daughter with reference to her father, the answer is that in the case of an unmarried woman or of a woman married according to one of the *subordinate forms*, the theory is that she is dependent upon and merged in the father in virtue of her dependent condition. When the rule we are now discussing says that a woman, married in one of the approved forms, shall have for her *sapindas* her husband's *sapindas* in his family, and that these are to be the same for her as for him, and then the rule says that if the woman were married according to one of the inferior forms, her *sapindas through her father in his family shall take* her estate, the father is brought in as taking the place which the husband would have taken, if the marriage had been in one of the approved or principal forms. What applies to the husband must apply, therefore, to the father.

(1) The rule is सकृदुच्चरितः शब्दस्तमेवार्थमनुवदति

The Mitakshara, 3rd Edition, by Moghe, p. 21.

What I have said so far appears to me to bring about in a reasonable manner harmony between the Mitakshara and the Mayukha on a line of reasoning based upon and supported by the recognized rules of construction and principles in Hindu Law.

In order to adopt the other view urged for the appellant, we must put a forced construction on the plain language of the Mitakshara. We must wrest its words from their clear meaning, and that, not because the grammar or any sensible and well-known rule of interpretation requires it, but because Nilakantha arbitrarily pronounces for it. There, again, we must first construe Nilakantha's language itself as necessarily meaning that the Mitakshara's words must be wrested from their plain sense. Before we so construe Nilakantha's language, we must be clearly satisfied that he does mean what is attributed to him by the argument. If any doubt arises, if his explanation is reasonably capable of the construction which I have put, we must yield to that as making sense both of what he says and of what the Mitakshara says and harmonising them without violating grammar and the settled rules of construction and religion in Hindu Law. Further, assuming that the Mayukha's rule is in terms different from that of the Mitakshara, and that Nilakantha understood the latter in a sense not warranted by the grammar of the Mitakshara's words, it is impossible to harmonise the two with each other in a reasonable manner, and where that is not possible, the Mitakshara must prevail: *Krishnaji Vyanktesh* v. *Pandurang*[1].

It may be urged—if Nilakantha meant the *sapindas* of a married woman to be the same as those of the husband or the father according as the marriage was in the approved or unapproved form, why did he not cut short the whole discussion by saying so in a few words instead of conveying his meaning in a somewhat circuitous way likely to be misunderstood and calling for some dissertation to understand him? The answer is very simple. If he had said that, he would

(1) (1875) 12 Bom. H. C. R. 65.

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have left the matter where the Mitakshara had left it and the question—Why should a woman's husband's or father's *sapinda* and not her own inherit her share?—would have remained unanswered. Nilakantha like all other commentators (Nibandhakars) on Hindu Law takes it for granted that the student of it knows certain well-known principles of the Shastras which govern that law, such as those about *kula* and *gotra* and the status of women; they also assume knowledge on the part of the student of the recognized principles of construction and the meaning and significance of such words as *dwara* and *kula*.

Besides, Nilakantha had to explain away the seeming anomaly of the Mitakshara's expression of the rule and bring it by his explanation into formal and substantial conformity with the general rule to which I have referred above. The objection itself in the form of a question I am noticing may be fairly met by a counter-question. If Nilakantha meant by a woman's *sapindas* through her husband or through her father her *sapindas* as distinct from the husband's or the father's own, why did he not say so? A few words would have sufficed for his purpose in that respect, and the explanation he has given by means of such expressions as "the husband or the father as the door" and "the family of the husband or the father" would have been unnecessary.

The conclusion at which I have arrived is confirmed by one single principle which studiously runs through the scheme of succession to a woman's *stridhan*. I have already pointed out that under the Hindu religion and the law flowing from it, a Hindu woman is a dependent being—dependent upon the father before marriage, dependent upon the husband after it. As Hindu society advanced, the rights of a woman also advanced by gradual and successive stages. First, her right to acquire property and hold it as her own wealth was established; her right as heir was also gradually acknowledged. A striking feature of the scheme of succession to her *stridhan* is that her children and grandchildren are recognised as her first heirs. So far she stands on the same level as a male; her newly acquired independence

is preserved. She stands as much as the male as a *proposita* in her own right. She is her own door for her own *kula*. But then comes the parting of ways; when the point as to her issue has been reached, and she dies childless, her dominion and consequently her capacity as a *proposita* become merged. This is expressly stated in a *Smriti* cited by Nilakantha in the Chapter on Partition in the Vyavahara Mayukha: सत्स्वपत्येषु यस्मान्न स्त्रीधनस्य पतिः पतिः p. 33, *i.e.*, "If there be issue, the lord of the wife is not the lord of her wealth" (Mandlik: p. 38, line 23, and p. 39, line 1). The law speaks as if it said to the woman: "Thus far you are acknowledged as an independent entity, but if you die childless, you must go back to what is your original position, the state of dependence on either your husband or your father—on your husband, if you were married in the approved form, because according to that form, you were *given away* into his family; on your father, if you were married in the unapproved form, because under that form marriage did not take you out of his family, there being no *giving away* in it. So, if you die childless, you sink into your original position and merge in as being dependent upon your husband or your father for the purposes of succession to your estate."

If we are to seek for warrant in the nature of texts in Hindu Law for this treatment of woman, according as she dies leaving children or dies childless, we have it in the well-known theory that progeny is the sacred purpose of a woman's life. That doctrine will be found referred to in the Mitakshara and in Nilakantha's Samskara Mayukha in more than one place—in the former especially in the section on Rituals, where Vijnaneshwara takes up and explains the Vedic prayer to Indra which women offer at marriage. The prayer is in the words "Let us obtain issue" (प्रजां विदामहै). Vijnaneshwara explains the same doctrine also where, in the same section, he points out that women ought to be maintained, supported, and protected, because they are for the acquisition of progeny and religious merit (धर्मप्रजासंपाप्तिः प्रयोजनं दारसंग्रहस्य): See Moghe's Publication, 3rd Edition, pp. 20 and 21).

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The same principle underlies the rule as to succession to a maiden. Her brothers come in first as heirs to her *stridhan*, because she is their *bhagini*—"she who shares with her brothers." In default of brothers, come the parents, the original state of dependence is revived, and she sinks into her parents.

For these reasons, I am of opinion that the lower Courts have rightly held the sister of the father of the maiden in the present case to be heir to the maiden's *stridhan*, in preference to his *gotraja sapindas* five or six degrees removed. The decree under appeal must, therefore, be confirmed with costs.

SCOTT, C. J.:—I agree.

BATCHELOR, J.:—I agree.

HEATON, J.:—I concur.

Decree confirmed.

G. B. R.

APPELLATE CIVIL.

Before Mr. Justice Russell and Mr. Justice Chandavarkar.

1911. *November* 30.

NATHUBHAI NARANDAS (ORIGINAL OPPONENT NO. 2), APPELLANT, *v.* MANORDAS LALDAS AND ANOTHER (ORIGINAL OPPONENT NO. 1 AND APPLICANT), RESPONDENTS.*

Civil Procedure Code (Act V of 1908), sections 96, 100—Land Acquisition Act (I of 1894), sections 53, 54—Land—Compulsory acquisition—Compensation—Award by Assistant Judge—Appeal to the District Judge—Second appeal—Practice and procedure.

Where an award is made by the Assistant Judge under the provisions of the Land Acquisition Act, 1894, and there has been an appeal to the District Judge, no second appeal can lie from the appellate decision.

SECOND appeal from the decision of P. J. Talyarkhan, District Judge of Thana, confirming the awards made by A. W. Varley, Assistant Judge of Thana.

Proceedings under the Land Acquisition Act, 1894.

* Second Appeal No. 916 of 1910.