APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Batchelor.

1912. *February* 26.

DHONDI WALAD MAHIPATI (ORIGINAL DEFENDANT No. 1), APPELLANT, *v.* RADHABAI MARD SHAHAJI AND ANOTHER (ORIGINAL PLAINTIFFS), RESPONDENTS.*

Hindu Law—Inheritance—Paternal grand-mother—Estate taken by her is limited estate—Women entering family by marriage take limited estate.

Under Hindu Law the paternal grandmother, inheriting to her grandson, takes a limited estate for life.

All the women who bel ng to a family by marriage, not by birth, take a limited estate in the property which they inherit from any male member of that family.

SECOND appeal from the decision of Vajeram Maniram, First Class Subordinate Judge, with Appellate Powers at Nasik, confirming the decree passed by N. V. Desai, Subordinate Judge at Malegaon.

The property in dispute belonged originally to one Kedari, who had a younger brother Mahipati. Mahipati had two sons: Dhondi (defendant No. 1) and Ganu. Ganu died leaving him surviving his widow Parvati (defendant No. 2) and two sons Karbhari and Kedari (defendants Nos. 3 and 4).

Kedari was married to Bhiki and had by her one son Chima and two daughters, Radhabai and Saru (plaintiffs). The property was inherited by Chima on Kedari's death; and on Chima's death, it was inherited by his son Gaba. On Gaba's death, his paternal grandmother Bhiki inherited the property. The plaintiffs, the daughters of Bhiki, claimed the property on Bhiki's death. The defendants, who were heirs of Malhari, resisted the claim contending *inter alia* that the property was held jointly by Kedari and Malhari; and that therefore they were entitled to succeed to the property.

The lower Courts held that the property in question was the separate property of Kedari and decreed the plaintiff's claim.

The defendant No. 1 appealed to the High Court.

S. S. Patkar, for the appellant (defendant No. 1).—We contend that the defendant No. 1 is entitled as *gotraja*

* Second Appeal No. 426 of 1911.

sapinda to succeed to Gaba in preference to the plaintiffs who are paternal aunts: see *Ganesh* v. *Waghu*[1]. The plaintiffs cannot derive their title as succeeding to Bhiki, the paternal grandmother of Gaba. Bhiki cannot become a fresh stock of descent, for she takes merely a life estate: see *Tuljaram Morarji* v. *Mathuradas*[2]. There is no express case on the point. But it is decided that a mother takes a limited estate in inheriting to her son: *Vrijbhukandas* v. *Bai Parvati*[3]. Further in *Bhau* v. *Raghunath*[4], it is laid down that in this presidency female heirs, except those who come into the family of the propositus by marriage, take absolute interests. This rule must govern the case of the grandmother on the principle *stare decisis*.

P. B. Shingne, for the respondents.—We say that the grandmother takes an absolute estate. She comes in as heir in her own right: see *Gandhi Maganlal* v. *Bai Jadab*[5]. The cases relied on by the other side are cases of mother.

CHANDAVARKAR, J.:—The lower Courts have found that Gaba was a divided member of the family of Kedari and Mahipati, originally joint. When Gaba died, Bhiki as his grandmother and heir inherited his property with a limited estate, and, on the death of Bhiki, the appellant, being the nearest male *gotraja sapinda* of Gaba, and therefore his reversionary heir, became entitled to the property in preference to the plaintiffs, the paternal aunts of Gaba: see *Vrijbhukandas* v. *Bai Parvati*[6] and *Ganesh* v. *Waghu*[1]. We have been asked by Mr. Shingne, the learned pleader for the respondents, to hold that Bhiki took an absolute estate and that, therefore, on her death, the property in question which she had inherited from Gaba became her *stridhan*, and as such descended to the plaintiffs, her daughters. According to the settled law of this Court, the widow and the mother of a propositus, succeeding as heirs, take each but a limited estate for life. It is true that there is no

(1) (1903) 27 Bom. 610.
(2) (1881) 5 Bom. 662.
(3) (1907) 32 Bom. 26.
(4) (1905) 30 Bom. 229.
(5) (1899) 24 Bom. 192 at p. 212.
(6) (1907) 32 Bom. 26 at p. 29.

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decision of the Court which directly settles the question of the character of the estate taken by a paternal grandmother inheriting the property of her grandson. But the reason of the rule of law, which in this Presidency applies to a widow and a mother, applies equally to the grandmother and all other females, who come into the family of the propositus by marriage. The rule is that all women, who belong to a family by marriage, not by birth, take a limited estate in the property which they inherit from any male member of that family. It is too late in the day to ask us to upset the rule and we must now apply the principle of *stare decisis*. The decree must, therefore, be reversed, and the plaintiffs' suit dismissed with costs of this appeal upon the respondents. There will be no order as to the costs in the two Courts below.

Decree reversed.

R. R.

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Batchelor.

1912. *March* 1.

VITHAL RAMCHANDRA DESHKULKARNI (ORIGINAL DEFENDANT), APPELLANT, *v.* SITABAI BHRATAR SITARAM MORESHVAR VAIDYA (ORIGINAL PLAINTIFF), RESPONDENT.*

Civil Procedure Code (Act V of 1908), section 11—Res judicata—Suit to recover interest on mortgage money—Award of interest on a certain principal sum—Suit for foreclosure—Finding as to principal amount in the first is not res judicata *in the second suit—Dekkhan Agriculturists' Relief Act (XVII of 1879).*

In a suit brought by a mortgagee to recover interest on his mortgage money, the amount was found to be Rs. 350 and interest was awarded on that sum. The mortgagee subsequently brought another suit to foreclose the mortgage, under the provisions of the Dekkhan Agriculturists' Relief Act, 1879; the mortgage amount was found to be Rs. 400 and relief was accordingly granted. It was contended in appeal that the finding as to the mortgage amount in the first suit operated as *res judicata* in the second suit:—

Held, that the Dekkhan Agriculturists' Relief Act, 1879, was in relief of a certain class of His Majesty's subjects, and, therefore, the finding in the first suit could

* Second Appeal No. 164 of 1911.