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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.

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## APPELLATE CIVIL.

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*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—Dekkhani 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.

not affect and be *res judicata* in the second suit, which was of a different character given to it by a special law unless the previous suit also could fall within the class of suits to which that law applied.

SECOND appeal from the decision of H. S. Phadnis, District Judge of Ratnagiri, amending the decree passed by P. S. Pathak, First Class Subordinate Judge at Ratnagiri.

Suit to foreclose a mortgage.

The facts were that the defendant executed a mortgage in favour of the plaintiff in 1903, for Rs. 400. In 1906, the plaintiff brought a suit against the defendant to recover from him interest on the mortgage amount for two years. In that suit the principal amount was taken to be Rs. 400, and interest was awarded on that amount. In 1909, the plaintiff brought another suit to foreclose the mortgage, under the provisions of the Dekkhan Agriculturists' Relief Act, 1879.

The Subordinate Judge found that the mortgage amount was Rs. 350 and made the sum together with interest recoverable in instalments from the defendant.

On appeal, the District Judge varied the decree by holding that the mortgage amount was Rs. 400.

The defendant appealed to the High Court.

*P. D. Bhide*, for the appellant.

*N. V. Gokhale*, for the respondent.

CHANDAVARKAR, J. :—We must confirm the decree with costs. The objection raised to the admission, by the Court of appeal, of the receipt, Exhibit 9 in appeal, is clearly unsustainable, because the record shows that that document had been produced in the Court of first instance, that its genuineness was admitted by the present appellant, but that the Court for some reason or other omitted to make it a part of the evidence. The lower appellate Court, therefore, was right in admitting it in evidence formally. It is urged, however, that the lower appellate Court's finding that the principal sum advanced was Rs. 400 and not Rs. 350 is bad in law because the question as to the amount of the principal is *res judicata* by reason of a finding in a previous suit. That previous suit was, however, one

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which had been brought by the mortgagee for interest due on the principal amount for certain years. The present suit is brought on the mortgage contract, and the plaintiff prays for relief by way of sale of the mortgaged property. Being therefore a suit for sale, it falls within section 3, clause (y); and section 12 of the Dekkhan Agriculturists' Relief Act directs the Court in such a suit to go into the history of the transaction between the parties from the date of the transaction, notwithstanding any admission that may have been made by either party. The Act is in relief of a certain class of His Majesty's subjects, and therefore, the finding in the previous suit could not affect and be *res judicata* in the present suit, which is of a different character given to it by a special law, unless the previous suit also could fall within the class of suits to which that law applies.

For these reasons the decree must be confirmed with costs.

*Decree confirmed.*

R. R.

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## APPELLATE CIVIL.

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*Before Mr. Justice Batchelor.*

1912.  
March 15.

MAHADEV LAXMAN WAGLE AND OTHERS (ORIGINAL DEFENDANTS),  
APPELLANTS, v. GOVIND PARASHRAM WAGLE, DECEASED, BY HIS HEIRS  
AND DAUGHTERS SAKHUBAI AND ANOTHER (ORIGINAL PLAINTIFFS), RESPONDENTS.\*

*Suit for partition—Decree awarding shares—Appeal—Death of a sharer leaving daughters—Decree for partition final—Severance effected by the decree can be displaced only by a legal decree in appeal.*

In a suit for partition the first Court passed a decree awarding to the sharers their respective shares. While an appeal against the decree was pending, one of the sharers died leaving two daughters. Thereupon a question having arisen as to whether the shares of the surviving sharers were liable to be increased owing to the death of the sharer pending the appeal,

\* Second Appeal No. 228 of 1910