solitary day, viz., May 27, 1947, because till May 26, 1947, it was in force by virtue of the old Act. On May 27, 1947, the old Act was repealed and the new Act came into force. By the amendment, according to Mr. Limaye, the D. A. R. Act was re-enacted as from May 28, 1947. The result would be that you will have one, as it were, *dies non* on which the D. A. R. Act would not be in force. I do not think that would be a proper interpretation to put upon this section. Mr. Limaye says that the Legislature has again used the expression "from" in the latter part of this sub-section when it says, "and shall continue in force for a period of three years from the said date." But I cannot overlook the fact that the expression "with effect" is used in the earlier part of the sub-section and the meaning to be given to the expression "with effect" in the earlier part of the sub-section must be the meaning which must be given to the expression "from" in the latter part of s. 56 (*1*). Therefore, in my opinion,the learned Judge was in error in coming to the conclusion that the D. A. R. Act was in force on May 27, 1950. The result is that the right of the plaintiff to maintain a suit under the D. A. R. Act no longer existed on May 27, 1950. Therefore, the suit as filed is not maintainable.

Result is that the order of the learned Judge will be set aside and the suit will be dismissed with costs. Rule absolute with costs.

Rule absolute.

M. W. P.

APPEAL FROM TESTAMENTARY AND INTESTATE JURISDICTION

Before Mr. M. C. Chagla, Chief Justice and Mr. Justice Bhagwati.

PANDURANG GANPATRAO RAUT AND OTHERS, (ORIGINAL DEFENDANTS) APPELLANTS *v.* THE ADMINISTRATOR OF BOMBAY (ORIGINAL PLAINTIFFS) RESPONDENTS.*

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Hindu law—Inheritance and Succession—Illegitimate daughter—Mother's collaterals—Whether mother's collaterals entitled to succeed to illegitimate daughter.

Under Hindu law collaterals of the mother are not entitled to succeed to her illegitimate daughters.

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* T. & I. J. Appeal No. 12 of 1952; T. & I. J. Suit No. 12 of 1950.

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Narayan Pundlik Valanju v. *Lakshman Daji Sirsikar*[1], and *Dattatraya Tatya Khurd* v. *Matha Bala Jasud*[2], distinguished.

Jagar Nath Gir v. *Sher Bahadur Singh*[3], and *V. Subramania Ayyar* v *Rathnavelu Chetty*,[4] referred to.

Dharma Lakshman Gharat v. *Sakharam Ramjirao Deshmukh*,[5] and *Zipru Chindu Shimpi* v. *Bombtya Dagadu Kumbhar*,[6] relied on.

One Arjun had a son by the name of Ramchandra and a daughter by the name of Kashibai. Ramchandra had a son Ganpatrao who had 4 sons, Pandurang, Arjun, Bhimrao and Narayan (Appellants). Kashibai had a daughter Bhimabai who was not born to her in wedlock but through an illicit connection with one Hiroo. Bhimabai died on February 20, 1949, leaving a will, dated February 18, 1949. The Administrator General of Bombay (Respondent) applied for letters of Administration with the will annexed to the estate of Bhimabai. The appellants filed a caveat. At the hearing a preliminary objection was raised by the petitioner that the caveators had no *locus standi* to file the caveat as they had no interest in the estate of the deceased. Mr. Justice Tendulkar upheld the objection and dismissed the caveat.

The caveators appealed.

K. K. Desai, with *V. S. Shah,* for the appellants.

M. P. Amin, Advocate General, with *G. N. Joshi,* for the respondent.

CHAGLA C. J. A very interesting question arises of Hindu law in this appeal which has been very ably argued by Mr. K. K. Desai on behalf of the appellants. One Bhimabai died on February 20, 1949, having made a will prior thereto on February 18, 1949. The Administrator General applied to the Court for letters of administration with the will annexed and the appellants filed a caveat, and the question arose as to whether the appellants were entitled to maintain that caveat. The learned Judge held that they were not so entitled and dismissed the caveat. It is from that decision that this appeal is preferred.

Now, one Arjun had a son by the name of Ramchandra and a daughter by the name of Kashibai. Ramchandra had a son by the name of Ganapatrao and the caveators are the sons of Ganapatrao. Kashibai had a daughter Bhimabai who was born to her not in wedlock but through an illicit connection with

(1) (1927) 29 Bom. L. R. 930.
(2) (1933) 35 Bom. L. R. 1131.
(3) [1935] A. I. R. All. 329.
(4) (1917) 41 Mad. 44.
(5) (1919) 44 Bom. 185.
(6) (1921) 46 Bom. 424.

one Hiroo, and in order to maintain the caveat the appellants have to satisfy us that they are the heirs of Bhimabai. Mr. Desai accepts the test laid down by the learned Judge below that the appellants could only be the heirs of Bhimabai provided Bhimabai could have been the heir of the appellants. This is what is known as the test of reciprocity. The learned Judge has held that Bhimabai being the illegitimate daughter of Kashibai was excluded from collateral succession, and if she was excluded from collateral succession, in turn the appellants were excluded from collateral succession to Bhimabai. The contention of Mr. Desai is that there is nothing in Hindu law to exclude the appellants from succeeding to Bhimabai. In order that the appellants should succeed, *sapinda* relationship must be established between them and Bhimabai, and *sapinda* relationship is described as connection through particles of the same body, and Mr. Desai strenuously argues that there are particles of the same body, both in Bhimabai and in the appellants. What is argued is that undoubtedly Kashibai had the particles of the body of Arjun, her father, and Kashibai transmitted those particles to her daughter Bhimabai, and, therefore, in Bhimabai there were particles of the body of Arjun, and as Arjun is the common ancestor both of the appellants and of Bhimabai, the appellants are entitled to succeed to Bhimabai through collateral succession. In putting forward this contention Mr. Desai has overlooked a very important and elementary principle of Hindu law, and that principle is that *sapinda* relationship is based upon wedlock and can only arise out of legal wedlock. To this principle, as I shall presently point out, certain exceptions have been engrafted, and really what Mr. Desai contends for is the extension of those exceptions. The Courts have been strict in not extending the exceptions to this important principle of Hindu law, and unless, therefore, we find any authority which lays down that an illegitimate daughter is entitled to succeed to the collaterals of her mother, it is not possible to hold that in this case the appellants were entitled to succeed to Bhimabai.

The first case relied upon by Mr. Desai is a decision in *Narayan* v. *Lakshman*.[1] The question that arose there was whether the sister of a prostitute could succeed to her property. That was a case of Bhavins who are a caste of prostitutes, and Mr. Justice Patkar was dealing with the law applicable to the Veshya class and as the learned Judge expressly points out Hindu law applies to the prostitute class

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only by analogy, and the reason why the learned Judge held that the two uterine daughters of a mother can be heirs to each other although they were not born in wedlock was that the mother transmits to the two children heritable blood or particles of her body, and in this connection Mr. Justice Patkar cited a text of Hindu law which lays down that sons of the same mother and different father can succeed to each other. Therefore, the exception that was recognised in that case to the ordinary principle of Hindu law was that where you have a mother who gives birth to children out of wedlock, the children can succeed to each other because the children have the particles of the body of the mother. But that case was confined to considering the law applicable to prostitutes and the principle was restricted to the case of mother and children. The next case relied upon is a case in *Dattatraya* v. *Matha.*[1] In that case Mr. Justice Shingne laid down that under Hindu law a daughter born of a woman by adulterous intercourse succeeds to her brother similarly born. So that was a case similar to the one I have just referred to and here also the learned Judge was dealing with the case of a mother and her illegitimate children. The reliance has been placed on a judgment of the Allahabad High Court in *Jagar Nath* v. *Sher Bahadur.*[2] That was a case of a mother succeeding to her illegitimate child, and the learned Chief Justice in his judgment points out the distinction between the case of a mother and her illegitimate child and the case of a father and his illegitimate child, and he points out that whereas in the case of a mother she can succeed to her illegitimate child and the illegitimate child can succeed to the mother, there is no *sapinda* relationship as far as the regenerate classes are concerned between the putative father and his son and *vice versa.* Then finally reliance is placed on a judgment of the Madras High Court in *Subramania Ayyar* v. *Rathnavelu Chetty.*[3] The question that arose for the consideration of the Full Bench in that case was whether a putative father was entitled to succeed as the heir of his illegitimate son. The Court was dealing with the case of Sudras and the Court held that a putative father could so succeed. Even in that case Mr. Justice Kumaraswami Sastriyar points out that so far as collateral succession is concerned, an illegitimate son is not the heir to his putative father's collateral relations, and the learned

[1] (1933) 35 Bom. L. R. 1131. [2] [1935] A. I. R. All. 329.
[3] (1917) 41 Mad. 44, F. B.

Judge gives the reason why the Courts have held this, and that is (p. 72):

"...The ground on which the exclusion is based is that the rule which guides collateral succession is based on the text of Manu as to the inheritance going to the nearest *sapinda* and as consequently excluding an illegitimate son as *sapindaship* presupposes a lawful marriage."

As against this there are two decisions of this Court which emphasis the fact that an illegitimate son is exculded from all collateral relationship. The first is a judgment in *Dharma Lakshman* v. *Sakharam Ramjirao*.[1] In that case a Sudra died and his property was claimed by two sons (*sic*)*, one of whom was his divided brother, and the other was the illegitimate son of his father, and Mr. Justice Shah and Mr. Justice Hayward held that the former was entitled to succeed, since the illegitimate son was under Hindu law, excluded from all collateral succession. And Mr. Justice Shah expressed the same opinion in a later case in *Zipru* v. *Bomtya*.[2] In that case Mr. Justice Shah with Sir Norman Macleod, Chief Justice, was considering the case of a Sudra dying leaving a legitimate son and an illegitimate son and on the death of both the sons it was held that the son of the legitimate son could not inherit the property of the illegitimate son, and Mr. Justice Shah emphatically points out in his judgment that he did not see how a collateral could succeed to the property of an illegitimate son, when that son is not entitled to collateral succession.

Now, Mr. Desai says that all these cases are of collateral succession through the father, but according to him there is no case with regard to collateral succession through the mother. But I fail to see what difference this makes on principle, because if marriage is the basis of *sapinda* relationship, then the collaterals of Bhimabai cannot succeed to her estate because Bhimabai was not born in wedlock and there is no *sapinda* relationship between the collaterals of Bhimabai and Bhimabai herself, and the descent cannot be traced through the common ancestor Arjun because in the eye of the Hindu law Bhimabai has no *sapinda* relationship with Arjun. Only the caveators have a *sapinda* relationship with Arjun. Mr. Desai says that he could undoubtedly have succeeded to the estate of Kashibai. That is perfectly correct because Kashibai was born in wedlock and was the legitimate daughter of Arjun. But when Kashibai gives birth to Bhimabai who is an illegitimate daughter,

* Ed.

[1] (1919) 44 Bom. 185.

[2] (1921) 46 Bom. 424.

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Hindu law has gone to the extent of recognizing the right of Bhimabai to succeed to Kashibai and the right of Kashibai to succeed to Bhimabai because the authorities have pointed out that there is a connection and an intimate connection between mother and daughter which made it possible for the law givers to assume that there was a "*sapinda* relationship and the presence of the particles of the body of Kashibai in Bhimabai which entitled Bhimabai to succeed to Kashibai and *vice versa*. But that principle is absent as far as the collaterals of Bhimabai are concerned. Hindu law has not even recongnised *sapinda* relationship between a putative father and his illegitimate son, as far as the regenerate classes are concerned. Therefore, what Mr. Desai is asking us really is to lay down a principle which would go even beyond the recognition of the right of an illegitimate son to succeed to the estate of his putative father in the regenerate classes. If Hindu law has been chary of giving recognition to that principle, it is more difficult to accept the principle for which Mr. Desai is contending that the collaterals of an illegitimate child should be recognized as entitled to succeed to her estate.

In my opinion, therefore, the learned Judge below was right in the conclusion he came to and the caveators are not entitled to succeed to the estate of Bhimabai and, therefore, they are not entitled to maintain the caveat. The result is that the appeal must fail and is dismissed.

With regard to costs, we think that the fairest order to make will be that as far as the trial Court is concerned there will be no order as to costs of the caveators and the costs of the Administrator General will come out of the estate as between attorney and client. With regard to costs of this Court, the appellants must pay the costs of the appeal. If the Administrator General fails to recover the costs, he will be at liberty to recover them from the estate.

Bhagwati J. I agree.

Attorneys for appellants: *Dabholkar & Jeshtaram.*

Attorney for respondent: *B. G. Desai.*

Appeal dismissed.

P. M. P.