Privy Council Appeals Nos. 99 and 100 of 1918.

Balwant Rao and others - - - - - - *Appellants*

v.

Baji Rao and others - - - - - - *Respondents*
(19 *Appeals*)

Sitaram and others - - - - - *Appellants*

v.

Baji Rao and others - - - - - - *Respondents*
(3 *Appeals*)

(Consolidated Appeals)

FROM

THE COURT OF THE JUDICIAL COMMISSIONER, CENTRAL PROVINCES.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 24TH JUNE, 1920.

Present at the Hearing:
LORD BUCKMASTER.
LORD DUNEDIN.
SIR JOHN EDGE.
MR. AMEER ALI.

[*Delivered by* LORD DUNEDIN.]

In 1868, one Bapuji died, leaving, amongst other properties, two mouzahs, Chikni and Bidhi, situated in the Wardha district of the Central Provinces. He was succeeded by Saraswati, his daughter, who entered into possession of the mouzahs. She died in 1889, leaving three sons. During her lifetime she alienated various portions of the mouzahs to different persons. After her death her sons raised action to recover their alienated portions, and cross actions were raised by the purchasers. All the actions depended on the determination of the same question, viz., had Saraswati an absolute right in the mouzahs, or had she only the

same class of limited interest as is possessed by a Hindu widow ? Accordingly, one action was taken as a test case, the others abiding by its result. The learned District Judge found that she had an absolute interest ; but on appeal the Judicial Commissioner reversed his decree. Formal judgments in all the actions were pronounced. Appeal has been taken to this Board, and all the appeals are consolidated.

The quality of the right which a daughter takes, who inherits immovable property from her father, has been differently determined in different parts of India. The absolute right has been affirmed by the Courts of Western India, according to the view of the High Court of Bombay. The limited right has been affirmed by the other Courts, and this Board has upheld the rule as determined in each case as applicable to the persons whose law is the law of western or of other parts of India. The question, therefore, is, what was the law which regulated the succession of Bapuji ?

Now it is absolutely settled that the law of succession is in any given case to be determined according to the personal law of the individual whose succession is in question. It is well put by Mr. Mayne in paragraph 48, where he says :—

> " *Primâ facie* any Hindu residing in a particular province of India is held to be subject to the particular doctrines of Hindu law recognised in that province. . . . But this law is not merely a local law. It becomes the personal law, and part of the status of every family which is governed by it ; consequently where any such family migrates to another province governed by another law, it carries its own law with it."

Ample authority for this statement may be found in *Rutcheputty Dutt Iha* v. *Rajunder Narain Rai*, 2 Moore, I.A. 132 ; in *Soorendronath Roy* v. *Mussament Heeramonee Burmoneah*, 12 Moore, I.A. 81 ; and in more recent times in *Srimati Rani Parbati Debi* v. *Jajadis Chunder Dhabal*, L.R. 29 I.A. 82. Now it is certain that Bapuji did not originally live at Chikni, the place where he was actually living when he started on the pilgrimage in the course of which death overtook him. He was an immigrant. What law did he bring with him ? Of course, if nothing is known about a man except that he lived in a certain place, it will be assumed that his personal law is the law which prevails in that place. In that sense only is domicile of importance. But if more is known, then in accordance with that knowledge his personal law must be determined ; unless it can be shown that he has renounced his original law in favour of the law of the place to which he migrated. What are the facts here ? Of renunciation there is no trace whatever. Now it is found clearly by both learned Judges that Bapuji was a Maharashtra Brahmin. The District Judge says so in the first sentence of his judgment. The Judicial Commissioner says :—

> " It is common ground that Bapuji's ancestors had at one time lived in Maharashtra, in the Bombay Presidency. It is not known whether Bapuji had himself emigrated, or whether his ancestors had done so."

In the opinion of their Lordships, that in this case settles the matter. His family was according to this admission subject to the law as expounded in Bombay. There is no trace of evidence that he ever renounced that law, and according to that law, the daughter succeeds to her father in an absolute inheritance.

This is a very simple view of the case, and their Lordships feel that explanation is needed why it did not commend itself to the Courts below. They think that the reason was that out of respect for authority the learned Judges below really approached the case from the wrong point of view.

In 1905, Mr. Drake-Brockman, Judicial Commissioner, in the case of *Narayan Vithal* v. *Govind Narayan*, 1 Nagpur L.R. 154, decided that the succession to a Maharashtra Brahmin who had migrated from Berar to the Central Provinces about 1800 fell to be regulated by the law as interpreted by the Courts of the Central Provinces rather than as interpreted by the Courts in Bombay. In 1908, Mr. Skinner, Judicial Commissioner, decided that a Maharashtra Brahmin settled in Berar had his succession regulated according to the law as interpreted in Bombay. Taking these two cases as laying down universal propositions, the learned Judges then proceeded to consider the question whether on the evidence Bapuji had his real domicile in Berar or in the Central Provinces. This turned on whether his real original home was at Manjur or at Chikni. The learned District Judge held that his original home in Berar had been established. The Commissioner held that the evidence fell short of so establishing, and that consequently the Central Provinces must be taken as his domicile, in which case the decision in the case of *Narayan Vithal* would rule. It will be clear from what their Lordships have already said that this is not the way to approach the subject. It would be well, however, that something should be said about the judgment in the case of *Narayan Vithal*.

First of all, it is necessary to remember what is the reason for the different results at which the Courts in the Bombay Presidency and the other Courts of India have arrived. The reason lies in the dominating influence of the particular commentaries. Further, it must always be remembered that the commentaries are only commentaries. They do not enact: they explain and are evidence of the congeries of customs which form the law. It is the fact that in the Presidency of Bombay the dominating commentary is the Mayukha, which is a supplementary commentary to the Mitakshara. The result has been that in the question of succession, the Courts of Bombay, guided by the Mayukha, have arrived at one result; the other Courts interpreting the Mitakshara without the dominating influence of the Mayukha have come to another. Now Mr. Drake-Brockman, reading the text for himself, and following the decision of Mr. Neill, Judicial Commissioner in 1886, came to the conclusion that there

was no difference on the point at issue between the Mayukha and the Mitakshara, and that the proper interpretation was that given by the Courts other than Bombay. In so doing, he was necessarily going in the teeth of the decision of the High Court of Bombay in the case of *Pranjeevandass* v. *Devkuvarbai*, reported in 1 Bombay H.C. 130, and also in a note at page 528 of 9 Moore I.A. He, however, was sitting in a Court not subject to the High Court of Bombay ; and he thought to avoid the question of whether that decision applied to the family with which he was dealing, by pointing out that the family had emigrated from Berar in 1800, and the date of the High Court decision was 1859. In this their Lordships hold that he was clearly wrong. He was treating the decision of 1859 as if it were a statute which imposed law for the first time. It was nothing of the sort. It was declaratory of the law as it had existed. As a matter of fact, the same point, viz., the quality of the succession of a daughter to her father, had been determined by a Sudder Court in 1808 (2 Borrowdaile 28), and the fact that the judgment of 1859 and the succeeding judgment of *Vinayak Anandrav* v. *Lakshmibai* in 1861, 1 Bombay H.C. 117, were only in accordance with the practice of the law as upheld in the Bombay Courts, is well stated by Westrupp, C.J., in *Tuljaram Moorarji* v. *Mathuradas*, 5 Bombay at page 671, where he says :—

> " It may here be properly mentioned that the decision of the Supreme Court in 1859, in *Pranjivandas* v. *Devkuvarbai*, and its decision in 1861 in *Vinayak Anandrav* v. *Lakshmibai*, were in accordance with the pre-existing traditions in that Court and in the local profession in Bombay. . . . The appellants in *Vinayak Anandrav* v. *Lakshmibai* resorted to Her Majesty's Privy Council against the advice given to them by counsel. The decision in that case and that in *Pranjivandas* v. *Devkuvarbai* have been steadily followed by the High Court in numerous unreported cases and by the legal profession. . . . Any departure now from those decisions would cause much confusion . . . and no advantage that we can perceive."

The decision in the case of *Narayan Vithal* may possibly have been right on facts if it could be shown that the family had allowed its succession after the emigration to be regulated according to the law prevalent in Central India. But the argument as it stands is unsound.

It was argued by Sir E. Richards that this would entail the consequence that the law of the emigrated family would be subject to every change brought about by the decisions of the Courts of the Province where they no longer were. This is not so. The law must be the family law as it was when they left. A judgment declaratory of law as having always been would bind ; but it would be a different thing if subsequent customs became incorporated in the law. The distinction is pointed out in the case of *Vasudevan* v. *The Secretary of State for India*, 11 Madras at page 162 in the judgment of the Court—Sir A. Collins, C.J., and Muttasami Ayyar J.

It only remains to make clear the point that the result come to by the High Court of Bombay is correct as applied to the persons who lived under the law of Western India.

The case of *Vinayak Anandrav* already cited was affirmed by the Board in 9 Moore I.A. 20. Doubts were subsequently raised as to the effect of certain other decisions of this Board. These were considered in the High Court of Bombay in *Bhau* v. *Raghunath*, 30 Bombay 229 by Sir Lawrence Jenkins, C.J., and Aston J., where Sir Lawrence Jenkins said as follows :—

> " In *Pranjivandas* v. *Devkuvarbai* it was determined by the Supreme Court that a daughter took an absolute interest, and though the case apparently arose in the Island of Bombay, still the decision was expressly based on a reading of Manu, the Mitakshara, and the Mayukha, and was in accordance with the opinions of the shastris, both of the Sadar Adalat of Bombay and of Poona.
>
> " In *Vinayak Anandrav* v. *Lakshmibai* it was said : ' In *Devkuvarbai's* case this Court, in 1859, after lengthened consideration of all the accessible authorities, and after consulting the shastris both in Poona and in the Sadar Adalat of Bombay, held that daughters, on this side of India taking by inheritance, take the estate absolutely.' In the case of *Devkuvarbai*, each shastri rested his opinion as to the inheritability of the daughters on this same passage of the Mayukha, referring to it as a work of high and generally received authority, not only in Gujarat, but in Bombay and the Dekhan, that is to say, over the larger and more important portion of this Presidency. . . . That the sisters took absolutely was determined on appeal by the Privy Council . . . and this result was apparently reached by the same train of thought.
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> " This view has ever since been followed, and it has now come to be recognised as the rule in Bombay that female heirs, except those who come into the family of the *propositus* by marriage, take absolute interests. To throw a doubt on this rule might be productive of great mischief."

With this view their Lordships agree.

The result is that the appeals must be allowed. The orders of the Judicial Commissioner and the orders of the Divisional Judge of the Nagpur Division must be set aside, and the decrees of the District Judge of Wardha restored. The appellants will have their costs in the Courts below and before this Board. Their Lordships will humbly advise His Majesty accordingly.

In the Privy Council.

BALWANT RAO AND OTHERS

v.

BAJI RAO AND OTHERS.
(19 *Appeals.*)

SITARAM AND OTHERS

v.

BAJI RAO AND OTHERS.
(3 *Appeals.*)

(*Consolidated Appeals.*)

DELIVERED BY LORD DUNEDIN.

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