Bombay High Court
Vatsalabai Vinayak Nimkar vs Vasudev Vishnu Musale on 29 January, 1929
Equivalent citations: (1929) 31 BOMLR 666, 136 Ind Cas 177
Author: Baker
Bench: Baker
JUDGMENT Baker, J.

1. This case involves a point of Hindu law. The facts are simple, and are set out in the judgments of the Courts below. The plaintiffs, who are the granddaughters of one Parvatibai, sued to recover possession of the plaint property, their case being that the property is the stridhan property of Parvati, that Parvati's daughter Dwarkabai died during the lifetime of Parvati leaving no male isaue, and plaintiffs as her daughters are Parvatibai'a heirs, The defendants who are respectively the brother of the husband of Parvati, and his son, contend that on the death of the widow, they as reveraioners of the husband of Parvati, are entitled to the property. It is admitted that if the property is the stridhan property of Parvati, her granddaughters, the present plaintiffs, are the heirs, whereas if it was property of her husband, the defendants are the heirs. It seems that the husband of Parvati, and his brother, defendant No. 1, were separate, and after the death of Pandurang, the husband of Parvati, who died in 1894, a farkhat was passed between Parvati and defendant No. 1 and his son. This is Exhibit 38, and the decision of this case will depend on the construction of that document. The first Court was of opinion that the language of the document was perfectly clear, and conferred an absolute estate on Parvati in the share allotted to her. He, therefore, awarded the plaintiffs' claim, On appeal the District Judge of Ratnagiri was of a contrary opinion, and he, therefore, ordered the suit to be dismissed. Plaintiffs make this second appeal.

2. Exhibit 38, which is a partition deed dated January 20, J902, passed by the present defendants to Parvati, the widow of the deceased brother of defendant No.], Pandurang, recites that Pandurang was the sole owner of certain properties, and had become separated from the defendants twelve years before his death, his death having occurred seven years before. It then proceeds to allot certain property to Parvati subject to the payment of certain family debts. The important portion of the document is the concluding paragraph, which states: "We hereby declare that we have no right, title and interest whatever in the said property under any circumstances whether you adopt a son and give it to him or whether you give it to your daughter or whether yon alienate to anybody in any way as full owner thereof." The learned Judge of the first Court was of opinion that this conferred an absolute estate in the share allotted to her. The learned Judge of the appellate Court held that Exhibit 38 could not be considered to alter the character of the property for intestate succession. He says :

I grant that, Id her lifetime, Exhibit 38 gave Parvati an absolute right over the property. She could have alienated the same or given away the same to aoyone. I also grant that as she was given an absolute power of disposal, she could have even made a will about the property according to her pleasure. But in the absence of any alienation by her in her lifetime or any will made by her about its disposition, I think the property remained as the property held by Parvati as widow of Pandurang and inheritable by her husband's heirs and not her stridhan heirs, see 23 Mad, 504, p. 509; 34 All. 234, p. 243.

I can only read in Exhibit 38 an intention to authorize Parvati to alienate or give away the property in her lifetime or to will it away, bub no intention to alter the character of the property so as to make it descendible to her stridhan heirs in case of intestate succession.

3. Now of the two oases before the learned District Judge, Kanni Ammal v. Ammalkannu Ammal (1899) I.L.R. 23 Mad. 504 has not been referred to in arguments, and aeems to have a very remote bearing, if any, on the point before the Court, It lays down that while one of two daughters cannot by any alienation alter the character of the daughter's estate so far as the right of survivorship or that of the reversioners is concerned, she may alienate her interest in the property or have that interest taken in execution of a decree against her. The bearing of this in the present case is not clear to me, and I need not further refer to this case. The other case, which is a Privy Council case, Bebi Mangal Prasad Singh v. Mahadeo Prasad singh (1911) I.L.R. 34 All. 234 lays down the following proposition. According to the Mitakahara, there is no substantial difference in principle between a woman's property acquired by inheritance and that acquired by partition, It was held, therefore, reversing the decision of the Courts in India that the share which the mother in a joint Hindu family obtains after the death of the father on partition of the joint family property between the mother and the sons, is not her stridhan, but is given her for her maintenance, and on her death it devolves upon the heirs of her husband and not upon her own heirs. The Privy Council in this decision after referring to the cases by which it was held that property acquired by inheritance by a woman from her husband is of the same nature as property acquired on partition say (p. 242):

If the share given to a widow on partition is given to her as a substitute for that to which she would be entitled upon inheritance, then, according to the foregoing authorities, it would seem reasonable that it should follow the same rule of descent and revert on her death to her husband's heirs, If, on the other hand, it is given to her by way of provision for her maintenance, it seems equally reasonable that when the necessity for her maintenance has ceased the property should revert to the estate from which it was taken. Of course, the members of a joint family effecting a partition may agree that a portion of the property shall be transferred to the widow by way of absolute gift, as part of her stridhan, so as to constitute a provision fur her stridhan heirs; bat, in the absence of any such intention, their Lordships do not feel justified in putting property acquired by a widow, on a partition of the joint estate, upon a footing different from that on which property coming to her by way of inheritance has been placed.

It follows, therefore, that the share acquired by a widow on partition does not become her stridhan, but should be regarded in the same light as property acquired by her as heir of her husband, unless there is an express intention to the contrary, and the learned Counsel for the appellants has rested his case mainly on the passage of the judgment of the Privy Council that I have just read, which is at the bottom of p. 242. The present case is not precisely a case of inheritance or of partition. From the terms of Exhibit 38 it would appear that the necessity of a partition or rather of a partition deed between the brother of Paudurang and the widow of Panel urang, arose in this way, Although Pandurang was separate, as the document recites, from his brother, and although the properties had been acquired by his exertions and were practically his self-acquisition, the documents relating to them appear to have been in the names of other members of the family. This will be found in the earlier portion of the farkhat. It recites:

While we were living jointly your husband the deneased Pandurang Vishnu acquired properties by his own exertions, The sale deed as well an mortgage deeds of the said properties were taken in the names of thrice who were present at home on various occasions but irrespective of these documents your husband Pandurang is the sole owner of the said property. We acquired nothing by Oar own exertions.

The effect, therefore, of this farkhat is to admit that these properties are the self acquisition of Pandurang, and although the deeds may be in the name of other members of the family, they as a matter of fact have no right to the property. Now this is not precisely, in my opinion, a partition of a joint estate, but rather a recognition by the members that these properties are the separate self-acquisitions of Pandurang, and as such would belong to him solely, and on his death, as he died separate from his brothers, his widow would succeed to them in the ordinary course under Hindu law, but she would under Hindu law succeed to them as the heir of her husband, and would only take a widow's estate in regard to them as laid down by the Privy Council in Debi Mangal Prasad Singh v. Mahadeo Prasad Singh. The argument of the learned Counsel based on the observations of the Privy Council at p. 242 is based on a partition by the members of a joint, family agreeing that a portion of the property should be transferred to the widow by way of absolute gift. It seems to me that in order that there should be a transfer by the other members of the family of any property to the widow by means of an absolute gift, we must presuppose that the other members of the family had an interest in the property which they could transfer. I can quite see that supposing certain properties were the joint property of the family, so that the persona executing the farkhat had an interest according to their shares in that property, they can very well transfer it to the widow in any way they chose by resigning all their rights in it, and thus making it her absolute property, and that it can be contended in such cases that such property would form her stridhan. But this is not quite a case of that character. As I read the farkhat, the admissions of the defendants would show that the properties which they were transferring to the widow were properties in which they never had any interest from the beginning, that is to Bay, these properties were the absolute property of Pandurang. They were his self-acquisitions, and the other members of the family even in the period of jointness had no interest in them as they have admitted. What then is the result ? The result, as it seems to me, is that the last paragraph of the Exhibit 38, which I have already given, cannot be regarded as a family arrangement by which these persona gave these properties to Parvati in gift, for this reason that they had no interest which they could transfer by way of gift or otherwise, for you cannot of course make a gift of that which does not belong to you. The expressions at the end of the farkhat are merely designed to show that they have no claim upon this property, and it seems to me that Parvati took this property which belonged to her husband as her husband's heir. If that is so, it could not be her stridhan, as it would be property inherited by her from her husband. Under the ordinary Hindu law she takes a widow's estate in it, and on her death it would revert to her husband's heirs. For these reasons I am in agreement with the view taken by the learned District Judge, but not perhaps for precisely the same reasons. I admit that until a very 'short time ago I was prepared to hold that the concluding paragraph of Exhibit 88 evidenced such a family arrangement as is referred to in Debi Mangal Prasad Singh v. Mahadeo Prasad Singh by the Privy Council (p. 242), but on reading Exhibit 38 again, I am decidedly of opinion that the admissions made by the male executants of that document show that they did not assert any title at all in those properties which were handed over to Parvati, and as I have already said, there cannot be any question of a gift

of property which does not belong to you. Therefore the property must be taken to be property inherited by her from her husband, and that being so, under the ruling of the Privy Council, the property at her death would descend in the ordinary course, and does not become her stridhan.

4. For these reasons I confirm the decree of the lower appellate Court, and dismiss the appeal with costs.