

(1878) 04 AHC CK 0002

Allahabad High Court

Case No: None

Phukar Singh and
Others

APPELLANT

Vs

Ranjit Singh and
Others

RESPONDENT

Date of Decision: April 9, 1878

Citation: (1875) ILR (All) 661

Hon'ble Judges: Pearson, J; Oldfield, J

Bench: Division Bench

Judgement

Oldfield, J.

The property in suit belonged to Sardar Singh, and at his death ho was succeeded in 1861 by his paternal grandmother, Muna Kuar, in the absence of nearer heirs. She died in 1873, leaving a daughter, Phul Kuar, still living. Some of the defendants are her sons, and the defendant, Ranjit Singh, is a son of a sister of Sardar Singh also living. The plaintiffs are grandsons of the full brother of Mohabbat Singh, great-grandfather of Sardar Singh, and they claim the estate as heirs of Sardar Singh. Another plaintiff, Ganjam Singh, has purchased part of their rights and interests. The Judge has dismissed the suit and reversed the decree of the first Court. The plaintiffs have preferred a special appeal. It is clear that Muna Kuar succeeded Sardar Singh in the ordinary course of succession, and her possession has not been adverse to the plaintiffs, to whom the succession only opened out at her death. There is therefore no bar by limitation, as the Judge appears to think; but it has been contended before us that the Judge's decree should be maintained on the ground that Muna Kuar succeeded to the property as stridhan, and that the plaintiffs would not be her heirs, but her daughter, Phul Kuar, for whom the defendants hold.

2. The question we have to determine is whether property inherited by the paternal grandmother from the grandson will rank as stridhan and devolve as such; and, to

support the affirmative, Mitakshara, ch. ii, Section xi, v. 2, is referred to, where property which a woman has acquired by inheritance is included in the category of "woman's property;" and Sir T. Strange has included this sort of property in the several kinds of stridhan--Strange's Hindu Law, 4th ed., p. 28. But on this subject Sir W. Macnaghten observes: "In the Mitakshara, whatever a woman may have acquired, whether by inheritance, purchase, partition, seizure or finding, is denominated woman's property, but it does not constitute her peculium"--Macnaghten's Hindu Law, 3rd ed., p. 38; and this distinction between woman's property generally and stridhan proper, which alone devolves on her relations, was noticed by the Privy Council in Thakoor Deyhee v. Baluk Ram LR 11 Ind. App. 139 at the time that they decided that one class of inherited property, viz., that inherited by a widow from her husband, does not rank as stridhan devolving on her heirs. The enumeration in Manu of woman's property has been held not to be exhaustive, and it is unnecessary for us in this suit to give an opinion as to what extent property acquired by inheritance will be stridhan. The question was discussed by the Privy Council in Brij Indar Bahadur Singh v. Ranee Janki Koer LR 5 Ind. App. 1 and left undetermined, but we are disposed to hold that property inherited by the paternal grandmother from her grandson is not stridhan. It may be gathered from the text-books on the Hindu Law that property must be held unconditionally, and subject to no restrictions, to constitute stridhan devolving on a woman's heirs. "That alone is her peculiar property which she has power to give, will, or use independently of her husband's control" Dayabhaga, ch. iv, Section i, v. 18. The property inherited by the grandmother from the grandson will not bear this test, since it is like property inherited by the mother from the son, subject to the same restrictions as to its disposal as that inherited by the wife from her husband. It has been held that the rules concerning property devolving on the widow equally affect property devolving on a mother from her son note to Bijya dibeh v. Unpoorna Dibeh S.D.A., Rep. vol i, 164--and it has already been decided by the Privy Council Thakoor Deyhee v. Balur Ram 11 Moo Ind. App. 139 and Bhugwandeem Doodeyv. Myna Baee 11 Moo Ind. App. 487--that property inherited from the husband by the widow will not rank as stridhan, and the ground on which that decision rests appears to us to apply equally to the case before us. This is the view of the law of succession taken by Sir T. Strange and Sir W. Macnaghten.--"Had the property been the mother's, in the Hindu sense of "woman's property," it would descend on her death to her daughters, but, having been inherited by her from her son, it passes according to the law as practised in Bengal, not to her heirs, but to his,"--Strange's Hindu Law, 4th ed., p. 144. "On her death (i.e., mother's) the property devolves on the heirs of the son, and not on her heirs."--Macnaghten's Hindu Law, 3rd ed., p. 26 and the rulings of the Courts accord with this view, See P. Bachirajee v. V. Venkatappadu 2 Mad HCR 402; Vinayak Anandrav v. Lakshmibai 1 BHCR 117; Pranjirandas Tulsidas v. Devkuvarbai 1 BHCR 130; and Narsappa Lingappa v. Sakharam Krishna 6 ACJ 215 though there appears some conflict of decisions in the Bombay High Court. We decree the appeal with costs, and reverse the decree of the lower Appellate Court,

and restore that of the Court of First Instance.