

(1864) 04 CAL CK 0001

Calcutta High Court

Case No: Special Appeal Nos. 8 of 1861 and 3024 of 1862

Lala Joti Lal

APPELLANT

Vs

Mussamat Durani Kower

Mussamat Lal Kower Vs Baboo
Jaikaran Lal

RESPONDENT

Date of Decision: April 11, 1864

Judgement

Sir Barnes Peacock, Kt., C.J.

This case was referred, for the opinion of a Full Bench, by Mr. Justice Kemp and Mr. Justice Campbell. The question to be considered is, whether, assuming the family to be a divided one, a step-mother can succeed to the estate of her step-son, according to the law prevalent in Mithila. It is clear that, according to the law as current in Bengal, the step-mother cannot succeed to the estate of her step-son. But it is contended that, according to the Mitakshara, which is the law prevalent in Mithila, a different rule prevails. We have considered the authorities cited in the course of the argument, and are clearly of opinion that the step-mother cannot succeed⁽¹⁾. It was admitted that the decisions in Bishenprea Mune v. Ranee Soogunda 1 Sel. Rep., 37 and Narainee Dibeh v. Hirkishor Rai 1 Sel. Rep., 39 are the only express authorities in her favor. In those cases, the right of the step-mother was upheld, but doubts are thrown upon them by Mr. Macnaghten in his Notes.

2. The question depends upon the sense in which the word "mata" is used in the Mitakshara, on the Chapters on Inheritance. It was urged that when a distribution is made after the life of the father, a step-mother is included under the word "mother." In the Mitakshara, the rule is laid down at page 285, paragraph 2, where it is said "of heirs separating after the decease of the father, the mother shall take a share equal to "a son"⁽²⁾; and our attention was called to the fact that in the Mitakshara there is nothing to show that the step-mother was not included, whereas in the Dayabhaga, page 63, paragraph 30⁽³⁾, the step-mother is expressly excluded. We think that the rule, whatever it may be in the case of partition, is not necessarily applicable in the case of inheritance; and that although the word "mata" may, in some cases, include

a stepmother, it does not necessarily do so in all cases. The cases cited from Macnaghten's Hindu Law, page 50, related to partition; we must look to the circumstances of each particular case in which the word is used. It would be contrary to the reason for which, according to the Mitakshara, a mother succeeds to her natural son in preference to his father to hold that the mother includes a step-mother. In Chapter II, page 343 of the Mitakshara⁽⁴⁾, it is said: "On the failure of those heirs" (speaking of daughters and daughters' sons) the two parents (meaning the "mother and the father) are successors to the property."--Paragraph 1. Paragraph 2 assigns a reason why, in construing the above text, the mother takes the estate in the first instance, and on failure of her, the father. Paragraph 3 proceeds: "Besides, the father is a common parent to other "sons, but the mother is not so; and since her propinquity is consequently greatest, it is fit that she should take the estate in the first "instance, conformably with the text--"To the nearest Sapinda, the inheritance next belongs."" In the note to paragraph 3 it is said: "The "mother is, in respect of sons, not a common parent to several sets of "them, and her propinquity is, therefore, more immediate, compared "with the father"s. But his paternity is common, since he may have "sons by women of equal rank with himself, as well as children by "wives of the Kshetriya and other tribes, and his nearness is, therefore "mediate in comparison of the mother"s. The mother, consequently, is "nearest to her child, and she succeeds to the estate in the first instance, "since it is ordained by a passage of Menu, that the person who is "nearest of kin shall have the property."

3. The reason given in the above-cited passage from paragraph 3, shows that a step-mother is not intended to be included in the word "mother" and Strange, in his book on Hindu Law, page 144, refers to the paragraph as an authority for the text: "Step-mothers, where they exist, are excluded"⁽⁵⁾. There are other passages in the Mitakshara with regard to the right of grandmothers, to succeed to the property of grandsons in preference to grandfathers, which show that step-grandmothers could not be included. See Chapter II, section 4, paragraph 2, and section 5, paragraph 2, and the notes in those passages. For the above reasons, we are of opinion that a step-mother cannot take by inheritance from her step-son.

4. We may remark that our opinion is in conformity with the table of succession prevalent in North-Western Schools, including Mithila, prepared by Baboo Prasanna Kumar Tagore, according to the Mitakshara, Vivida Chintamani, and other works, in which it will be found that "step-mother" and "step-grandmother" are entered as nil. The table immediately succeeds the preface to Vivida Chintamani by Prasanna Kumar Tagore.

5. This opinion will be communicated to the Division Court by which the question was referred to us, for their information and guidance.

6. In the second case (No. 8 of 1861), the question was whether, under the Mitakshara law, assuming a family to be divided, the widow of the paternal

grandfather of the deceased can succeed, she not being the mother of deceased's father.

7. The case came on in regular appeal before Bayley and Campbell, JJ., who were of opinion that the step-grand mother was entitled to succeed, but on application for a review of judgment, they referred the question for the opinion of a Full Bench.

8. The opinion of the Full Bench was delivered by

We are clearly of opinion, for the reasons given in our judgment in Special Appeal No. 3024 of 1862, that a step-grandmother cannot, under the circumstances above stated, succeed to the property of the step-grandson.

(1) See the remarks of their Lordships of the Privy Council, in the case of the Collector of Madura v. Mutu Ramalinga Sathupathy, 1 B.L.R., P.C., 20.

(2) Stokes' Hindu Law Books, p. 697 Mitakshara, Chap. I, s. 7, para, 2;

(3) Stokes' Hindu Law Books, p. 231 Dayabhaga, Chap. III, s. 2, para. 30

(4) Stokes' Hindu Law Books, p. 441

(5) See also Macnaghten's Notes. Sel. Rep., 39, 42