

**(1873) 08 CAL CK 0001****Calcutta High Court****Case No:** None

Ramnath Tolapattro and Another

APPELLANT

Vs

Durga Sundari Debi and Another

RESPONDENT

**Date of Decision:** Aug. 14, 1873**Judgement**

Mitter, J.

The question raised in this special appeal is whether, according to Hindu law, an unchaste mother is entitled to succeed to the properties of a deceased son, it being established that she became unchaste before the succession opened out to her?

2. The District Judge in the lower Appellate Court has answered this question in the affirmative. In this opinion we do not concur. The District Judge relies upon a Full Bench decision of the Allahabad High Court--Musamat Ganga Jati v. Ghasita ILR All. 46. He is also of opinion, upon the authority of the judgments of Mr. Justice Markby and the Chief Justice Sir Barnes Peacock in the case of Matangini Debi v. Joykali Debi 5 B.L.R. 466, that Act XXI of 1850 removed the bar to the succession of an unchaste woman arising from loss of caste.

3. The question raised in the case before the Allahabad High Court was different. It was whether unchastity in a woman does not incapacitate her from inheriting any stridhan property? And the Court held that it did not. But the lower Appellate Court relies upon a portion of the judgment of the Officiating Chief Justice, in which he says that he was a party to a decision holding" that want of chastity in a mother does not defeat her right of inheritance." The case referred to is Musamat Deokee v. Sookhdeo 2 N.W.P.H.C. Rep. 361. The decision in that case is, that a mother, who has already inherited from her son an estate, is not divested of it by reason of her subsequent unchastity. The same view of the law has been taken by the majority of Judges in the case of a widow's inheritance by a Full Bench of this Court in Kery Kolitani v. Moniram Kolita 13 B.L.R., 1. But the question in this case is different. Here the mother is alleged to have become unchaste before the son's death, or, in other words, before the succession to the estate opened out to her. These cases,

therefore, do not support the view taken by the lower Appellate Court.

4. Then as regards the effect of Act XXI of 1850, the question becomes material only if the exclusion of the mother from the right of inheritance be based solely upon the ground of the loss of caste arising from unchastity. I shall refer to this question after I deal with the grounds upon which I think that a mother guilty of unchastity before the estate vests in her is precluded from inheritance according to Hindu law.

5. As a general rule females, according to Hindu law, have no right of inheritance. The widow, the daughter, the moth or, the grandmother and the great-grand mother are exceptions to this general rule. But their right of inheritance is subject to certain special rules. These rules have been at some length discussed and enunciated by the author of the Dayabhaga in the chapter on inheritance of the widow. But they are intended to apply to all the individuals of this exceptional class.

6. "Baudhyana, after premising "a woman is entitled," proceeds" not to the heritage; for females and persons deficient in an organ of sense or member are deemed incompetent to inherit." The construction of the passage is, "a woman is not entitled to the heritage." But the succession of the widow and certain others viz., the daughter, the mother, and the paternal grandmother) takes effect under express texts without any contradiction to this maxim."--Dayabhaga, Chap. XI, Sec. vi, v. 11.

7. Then in the chapter on the widow's rights of succession, the following texts have been cited in the Dayabhaga in support of that right:

8. "Thus Vrihat Menu says: "The widow of a childless man, keeping unsullied her husband's bed and persevering in religious observances, shall present his funeral oblation, and obtain (his) entire share." "--Dayabhaga, Chap. XI, Sec. i, v. 7.

9. "But on failure of heirs down to the son's grandson, the wife being inferior in pretensions to sons and the rest, because she performs acts spiritually beneficial to her husband from the date of her widowhood (and not, like them, from the moment of their birth) succeeds to the estate in their default. Thus Vyasa says;--"After the death of her husband, let a virtuous" [in the original the Word (Saddhi) occurs, which means "chaste"], "woman observe strictly the duty of continence, and let her daily, after the purification of the bath, present water from the joined palms of her hands to the manes of her husband, &c., & c., & c." "--Chap. XI, Sec. i, v. 43.

10. "But the wife must only enjoy her husband's estate after his demise. She is not entitled to make a gift, mortgage, or sale of it. Thus Katyayana says: "Let the childless widow, preserving unsullied the bed of her lord, and abiding with her venerable protectors, enjoy with moderation the property until her death. After her, let the heirs take it." "--Chap. XI, Sec. i, v. 56.

11. From these passages three special rules relative to the succession of the widow are deducible:First, that an unchaste wife does not inherit her husband's property;

second, that when the widow inherits, she can only enjoy the estate with moderation, but cannot exercise the ordinary rights of alienation of a male owner; third, that after her death, her heirs do not succeed, but the heirs of the last owner succeed.

12. These three special rules, I think, are applicable to the succession of all females who constitute the aforesaid exceptional class.

13. This will appear clear if we refer to vv. 30 and 31 of Sec. ii, Chap. XI of the Dayabhaga.

14. "But if a maiden daughter, in whom the succession has vested, and who has been afterwards married, die (without issue), the estate which was hers becomes the property of those persons, a married daughter, or others, who would regularly succeed if there were no such (unmarried daughter) in whom the inheritance vested, and, in like manner, succeed on her demise after it has so vested in her. It does not become the property of her husband or other heirs; for that (text which is declaratory of the right of the husband and the rest) is relative to woman's peculiar property. Since it has been shown by a text before cited (Sec. i, v. 56) that, on the decease of the widow in whom the succession had vested, the legal heirs of the former owner, who would regularly inherit his property if there were no widow in whom the succession vested,--"viz., the daughters and the rest,--succeed to the wealth; therefore the same Rule (concerning the succession of the former possessor's next heirs) is inferred a fortiori in the case of the daughter and grandson whose pretensions are inferior to the wife's"--(v. 30); "or the word "wife" (in the text above quoted, Sec. i, v. 56) is employed with a general import; and it implies that the rule must be understood as applicable generally to the case of a woman's succession by inheritance"--v. 31.

15. At first sight it would seem that only Rules 2nd and 3rd, mentioned above, are intended to be extended to the successions of females generally. But that it is not so, is evident from the commentary of Raghunandan. The authority of Raghunandan is acknowledged and respected universally in the Bengal school. Commenting on verse 31, he says: "The word "wife" implied females generally. In the text of Katyayana--"Let the childless widow, preserving unsullied the bed of her lord, and abiding with her venerable protectors, enjoy with moderation the property until her death; after her let the heirs take it": and, in the first half of the next text of the same sage, viz., "the wife who is chaste takes the wealth of her husband," the word "wife" is illustrative. According to the rule of construction deducible from reason that a text used in one part of the shaster has the same import in another; both wife and daughter are impliedly meant by the use of the word "wife" (in these texts)."

16. It is evident that, according to Raghunandan, the effect of v. 31 is to lay down generally for all females, as it has been repeatedly laid down for the wife, that

chastity is a sine qua non for their right of inheritance.

17. As our conclusion upon this question is not based on the ground of the loss of caste of the unchaste mother, the consideration of the effect of Act XXI of 1850 becomes wholly unnecessary.

18. The result is that the decision of the lower Appellate Court must be reversed, and the case remanded to that Court for the determination of the other questions. Costs to abide the result.

Maclean, J.

19. I cannot pretend to add any weight to the exposition of Hindu law as applicable to this case, which has just been delivered by Mr. Justice Mitter. I will, therefore, content myself with saying that I concur with him in holding that the authorities quoted all point in the same direction, and show that the position of a woman in respect of inheritance is the same, whether she be a widow succeeding to her husband, or a mother succeeding her childless son. But I certainly do not consider it satisfactory that we have been called upon to consider a matter which may really be of great importance in what I will call a speculative case. In this case the plaintiff based his claim on the alleged unchastity of the defendant Durga Sundari, and the Subordinate Judge, who went fully into the evidence bearing upon that question, dismissed the suit, on the ground that her unchastity was not proved. The District Judge has not pronounced any opinion upon this point, but has confirmed the Subordinate Judge's decision, on the ground that, even if Durga Sundari became unchaste before succeeding her son, she did not forfeit her right of inheritance. In our opinion, this is not a correct view of the Hindu law applicable to the case, and consequently the question of fact, viz., whether Durga Sundari was unchaste or not, has still to be decided by the Judge. Had the District Judge come to the same conclusion as the Subordinate Judge, the question we now decide need not have been raised at all; and it would have been better that it should not have been raised except under real necessity.