
Sukhamayee Biswas Vs Monoranjan Chaudhury and Others

None

Court: Calcutta High Court

Date of Decision: March 4, 1925

Acts Referred:

Transfer of Property Act, 1882 " Section 6(e)

Citation: AIR 1926 Cal 428

Hon'ble Judges: Greaves, J; Cuming, J

Bench: Full Bench

Judgement

Greaves, J.

This is an appeal by the defendants against a decision of the Additional District Judge of Sylhet modifying a decision of the

Munsif of the Second Court at Habignnge. The suit out of which this appeal arises was brought by the plaintiffs for declaration of their title to and

for possession of certain property. He also claimed mesne profits which, I understand, were disallowed and in respect of which there is a cross-

objection.

2. The case for the plaintiffs was that one Surjymani Sen was a jotedar; that he made during his lifetime a gift of the lands in question to his

widowed daughter. The plaintiffs claimed to have purchased the land in suit after the widowed daughter's death from Defendant No. 5 who, the

plaintiffs alleged, was the heir of the widowed daughter being her sister's son. The defence of the defendant was this: that the property was

streedhan property and that on the death of the widowed daughter it descended not on the sister's son but on the step-brother or half brother of

the widowed daughter as her preferential heir.

3. Both the Courts below have decided in favour of the plaintiffs' contention holding that on the death of the widowed daughter the property

descended to her sister's son and not to her step-brother. The lower appellate Court has relied on a decision of this Court in the case of Debi

Prasanna Rai Chowdhury v. Harendra Nath Ghose [1910] 37 Cal. 863 to which I shall have presently to refer.

4. Now four points have been urged before us by the learned vakil for the appellant.

5. First of all he contends by a reference to Ch. IV, Section 3 of the Dayabhaga, which relates to succession to separate property of a childless

woman that his client is entitled as the preferential heir of widowed daughter and he seeks to establish this by a reference to Sloka 37 of Ch. 4 of

Section 3. Now in Section 3 which, as I have already stated, deals with succession to separate property of a childless woman. Sloka 10 relates to

3 kinds of streedhan. The translation is as follows: ""But wealth received by a woman after her marriage from the family of her father, of her mother

or of her husband goes to her brothers as Yajnavalkya declares that which has been given to her by her kindred, as well as her fee or gratuity and

anything bestowed after marriage, her kinsman take if she dies without issue. Then in the next sloka the property given by her kindred is dealt with

and so on until we come to Sloka 19 which deals with sulka or what is denominated as a fee. The following slokas deal with various kinds of

property of this nature and then we come to sloka 29 which is as follows: Therefore, the property goes first to the whole brothers, if there be none

to the mother if she be dead to the father; but on failure of all these, it devolves on the husband."" Thus Katyayana says ""that which has been given

to her by her kindred goes on failure of kindred to her husband."" Now the difficulty that faced the appellants in this case was that if Sloka 29

applies to all the slokas from 10 onward he may be excluded from the inheritance by the fact that Sloka 29 says that the properties referred to in

the previous slokas descend to the whole brother and no mention of a half-brother is made. Consequently it was argued before us that Sloka 29

did not apply to all the properties referred to in the slokas from 10 onward but merely to sulka which was dealt with in Sloka 19 and the following

slokas. That is the first argument that is put forward and it is said that if this is so then the properties referred to in Sloka 10 or such property as is

now in question before us comes under Sloka 37 and that, therefore, a half-brother is entitled to inherit in preference to the sister's son. Now this

first argument was raised so long ago as the year 1873 and it was then negatived by a decision of this Court which is reported under the heading of

Judoo Nath Sircar v. Bussunta Coomar Roy Chowdhury 19 W.R. 264. That was a case decided by Mr. Justice Jackson and Mr. Justice Dwarka

Nath Mitter. The question in issue was as to the descent of property coming from the father to a daughter before her marriage under a

testamentary devise. Of course the point that then arose is different from the point that arises in this appeal. But in the course of the argument the

same argument with regard to Sloka 29 was addressed to the Court as has been addressed to us in this appeal and that argument was negatived

by the judgment of the Court which was delivered by Mr. Justice Dwarka Nath Mitter. He deals with Sloka 29 and says: ""It has been argued that

the reference is merely to that kind of streedhan only which is called sulka (fee or perquisite)."" He says this argument is evidently founded on a

mistake, He goes on to consider the provisions of the various slokas from Sloka 10 onward and he sums up his decision on this point at page 265

where he says: ""It is clear, therefore, that the proposition laid down in Clause 29 is nothing but the final resume of the various matters discussed in

the proceeding clauses, commencing from Clause 10, and its applicability to all the three kinds of streedhan mentioned in the text Yajnavalkya

referred to in the last-mentioned clause is, consequently, beyond all dispute. It would be absurd to contend that the author of the Dayabhaga has

laid down, in the case of property given by a woman's kindred a rule of succession different from that laid down by him in the case of sulka

property, when it is beyond all question that both of those kinds of property are governed by the same text of Yajnavalkya which is cited by him at

the very threshold of the discussion."" A similar decision to the same effect is to be found in Gopal Chandra Pal v. Ram Chandra Pramanik [1901]

28 Cal. 311. The judgment of the Court which consisted of Mr. Justice Banerjee and Mr. Justice Brett is to be found at pages 312 and 313. There

the same contention as has been raised before us was raised and the learned Judges state that they are unable to assent to this contention as it is

clearly opposed to the language of the Dayabhaga and opposed to the interpretation of the Dayabhaga as given in the case to which I have just

referred. To the same effect is another decision of this Court in the case of Debt Prasanna Rai Chowdhury v. Harendra Nath Ghose [1910] 37

Cal. 863 to which I have already referred. The same point was then taken before Mr. Justice Mukerjee and Mr. Justice Carnduff and at page 384

of the judgment it was held that Sloka 29 referred to all the slokas from 10 to 28 which preceded it. So much then for the first point that was

urged.

6. The second point which was urged was that in any case even if Sloka 29 governed all the kinds of properties referred to in Sloka 10 even then a

half-brother came in before sister's son, as it was argued that he could confer spiritual benefit on the lady and, therefore, he was entitled to inherit.

This question was considered by this Court in the case of Debi Prasanna Rai Chowdhury v. Harendra Nath Ghose [1910] 37 Cal. 863, to which I

have already referred and the contention was then negatived. As is pointed out in the judgment of the Court the word which is used in Sloka 29 is

sodara"" which means ""a uterine brother"" and not the word ""bhrata"" or brother which might be taken to cover a brother and a half-brother as well.

As has been pointed out at page 386 in the judgment in that case having regard to the use of the word ""sodara,"" it cannot be contended that it can

include a half-brother. It is significant that if you examine the various slokas of the Dayabhaga you will find that in some of them the word "bhrata

or brother is used. It seems from this that where the word ""sodara"" or uterine brother is used it must be intended to refer to uterine brother only

and not to include a half-brother as well. The use of the particular word ""sodara"" must be taken as an indication that for the purpose of inheritance

a half-brother is not entitled to succeed. Then, thirdly, it was argued that the real test so far as inheritance is concerned is the possibility of

conferring spiritual benefit upon the deceased, and it is said that inasmuch as half-brother is entitled by performing sradh and by offering funeral

cakes to confer spiritual benefit upon the deceased, therefore he should not be excluded from inheritance and we were referred to the 4th Edition

of Babu Golap Chandra Sarcar's book on Hindu Law, page 464, as an authority for the proposition that in a property of this nature a half-brother

is entitled to inherit. But it is noticeable that although in dealing with succession to Ayautuka (other than father's gift) a half-brother is included after

a whole brother as the person possibly entitled to inherit the learned author states at the end of the paragraph that ""a half brother's true position in

the order is not free from doubt and difficulty."" So at the most this can be taken as an authority for the proposition that possibly after the failure of a

whole brother a half-brother is entitled to inherit but I do not think that that can be taken as an authority for any further proposition. I may say here

that although the learned author after dealing with succession to Ayautuka (other than father's gift) says at page 465 that the same rule of

succession as is already laid down applies to father's gift in an ordinary case there is no separate rule of succession laid down in the Dayabhaga

with regard to these gifts. Having regard, therefore, to the authorities to which I have already referred and notably on this point the authority in

Debi Prasanna Rai Chowdhury v. Harendra Nath Ghose [1910] 37 Cal. 863, we do not think that this point is well founded and the mere fact that

a half brother can confer spiritual benefit as in a case of this kind does not necessarily mean that he is entitled to inherit.

7. The 4th point that was raised was with regard to a certain reading of Sloka 10 and it was attempted to give a narrower interpretation to the

word gifts mentioned in Sloka 10 as meaning joint gifts by father and mother as well. But the same point was raised in the case of Judoo Nath

Sircar v. Bussunta Koomar Roy Chowdhury 19 W.R. 264 to which I have already referred and was then negatived.

8. For the reasons, therefore, which I have indicated I think the decision of the Courts below is right and the appeal must fail and is dismissed with

costs.

9. In the cross-objection the respondents claim profits in respect of the lands in suit for the year 1326. They purchased in May 1920 from the heir

of the previous owner, who died in October 1919. By the conveyance the lands were sold to the respondents together with profits of any previous

period. And that is what they are now suing for. It is urged before us that this claim does not fall within the purview of Section 6(e) of the Transfer

of Property Act, but is an actionable claim within the meaning of Section 3 of the Transfer of Property Act. I think this contention is clearly ill-

founded. One has only got to state the fact as I have stated it to realize that this is a suit for past profits in respect of the lands and that it is a mere

right to sue which cannot be transferred by the provisions of Section 6, Clause (e). An actionable claim is something entirely different and does not

extend to claim for profits such as is now sought to be established by the respondents.

10. The result is that the cross-objection fails and is dismissed with costs.

Cuming, J.

11. I agree.