(1869) 03 CAL CK 0012

Calcutta High Court

Case No: None

Srimati Matangini Debi	APPELLANT
Vs	
Srimati Jaykali Debi	RESPONDENT

Date of Decision: March 10, 1869

Judgement

Barnes Peacock, Kt., C.J.

This case has been very ably argued on both sides. It appears to me that the judgment of the Court of original jurisdiction ought to be affirmed. There is no doubt that, according to the Hindu law of inheritance, a wife who commits adultery during the life-time of her husband, loses her right to inherit her husband''s estate, unless the act is condoned by her husband, or expiated by penance. But the question involved in the present case is, whether a widow who succeeds to her husband''s estate by inheritance, holds that estate merely so long as she remains chaste, or forfeits the estate which has become vested in her if she is guilty of unchastity. There are some authorities both ways. Giving the case my best consideration, it appears to me that the Judge in the Court below arrived at a correct conclusion. He has so fully entered into the authorities and arguments, that I do not purpose to go to much length in the consideration of the question.

2. Mr. Colebrooke''s opinion, as expressed in his remarks upon the Trichinopoly case 2 Strange''s H.L., 272, appears to me to be correct. He says:-- "An unchaste woman is excluded from the inheritance of her husband. But no misconduct, other than incontinency, operates disinherison; nor after the property has vested by inheritance does she forfeit it, unless for loss of caste, unexpiated by penance, and unredeemed by atonement."

3. It was said in argument that the right of inheritance or succession according to the Hindu law is founded on benefits to be conferred upon the ancestor. "He who takes the estate of the deceased is to perform his obsequies." This is not true in every case, for it is laid down that, "if one be heir to an estate, and another be qualified to perform the shraddha, he must give sufficient property, and cause the

rites to be celebrated by him who is qualified to perform them;" see Vyavastha Darpana, page 363, where reference is made to Colebrooke''s Digest, Volume III, pages. 545, 546. But, however that may be, there is no authority to show that the person who takes an estate by inheritance, holds that estate only so long as he performs those duties which are morally imposed upon him, or that he forfeits the estate which he has taken if he ceases to perform those duties. It is clear that, according to the Bengal school, a man who takes an estate by inheritance may sell or otherwise dispose of it.

4. As regards male heirs, an estate taken by descent is not forfeited by neglect of those moral duties which are imposed upon an heir; and I see no authority sufficient to induce me to think that the estate taken by a Hindu widow by inheritance is an estate only so long as she continues chaste, or an estate liable to be forfeited by an act of unchastity. If the estate is to continue only so long as she continues chaste, it would cease immediately upon an act of unchastity; and in that respect a widow would be in a worse position than a wife, inasmuch as a wife may inherit if her offence is expiated before the death of her husband; but if a widow''s estate cease, expiation could not restore it.

5. So, in the case of persons incapable of inheriting, such as a leper, leprosy at the time when the right of inheritance accrues would destroy the right of inheritance; but leprosy, after an heir has succeeded, is no ground of forfeiture; nor is the estate of an heir held only so long as he is free from a sinful disease which would prevent him from inheriting.

6. In Baboo Shama Churn''s Vyavastha Darpana, it is stated that a "woman who is adulterous at the time when succession opened, or who previously committed adultery which remained unexpiated by penance, forfeits her right to inheritance and maintenance; and not she who was previously adulterous, but ceased to be so, and cohabited with her husband, or expiated, or was about to expiate, the sin by penance before the time of succession; and not she also who became adulterous after inheriting property," is not prevented from holding the estate, "unless the crime were such as to cause complete degradation by loss of caste unredeemable by atonement."--Vyavastha, 663, page 1016. Although Baboo Shama Churn Sircar is no authority on Hindu law, it appears to me that he has there given a correct view of the law on the subject.

7. In the case of Katama Natchier v. The Rajah of Shiva Gunga 9 Moore''s I.A., 539, it was held that a decree in a suit brought by a Hindu widow binds the heirs who claim in succession to her; but that can only be in a suit brought by her so long as she holds a widow''s estate. It would cause infinite confusion if a decree in a suit brought by a widow could be avoided, if it could be shown that she had committed an act of adultery before she commenced the suit. But if the rule contended for is correct, and the estate which a widow takes by inheritance is merely an estate so long as she continues chaste, all the acts which a Hindu widow could do in reference

to the estate, might be avoided by taking up some act of unchastity against her. Inconvenience would not be aground for deciding a case like the present, if the law were clear upon the subject; but it is an argument which may be fairly adduced when the authorities in favor of the opposite view are merely the expressions of opinion by Hindu law officers, or by European or modern text writers, however eminent, or even decisions of a Court of Justice, when they are in conflict with the decisions of other Courts of equal weight.

8. The case which was cited from Chambers''s notes in Mr. Montriou''s edition of Morton''s decisions, Doe d Radhamoney Raur v. Neelmoney Doss Montriou''s H.L., Cases. 314, is given very shortly. In that case it was held that the incontinence of a widow creates a forfeiture of her claim to the succession. That decision is counterbalanced by the case of Doe d Saummoney Dossee v. Nemy Churn Doss 2 Taylor & Bell, 300 which was later in date, and also decided by the Supreme Court. Sir Lawrence Peel in that case held that a widow did not forfeit her estate by living an immoral and unchaste life. He said: "Further, in this case, the widow had been for some time in rightful possession, and the Court would be disinclined to disturb her, in the absence of any decision of a Court of law, showing that such a person, for such reason as above stated, might be expelled from possession."

9. Mr. Justice Markby has stated that adultery is not sufficient to deprive a widow of an estate, which she has taken by inheritance from her deceased husband, in the absence of degradation or expulsion from caste. I wish to avoid being supposed to express any opinion that, if she were degraded, or deprived of her caste, her estate would cease to exist.

10. Conflicting opinions have been expressed as to the construction of Act XXI of 1850. With reference to that Act, Sir Lawrence Peel, in the case to which I have referred of Doe d Saummoney Dossee v. Nemy Churn Doss 2 Taylor & Bell, 300, observed, "that it was provided by Act XXI of 1850 that so much of any law or usage now in force in India, as inflicted on any person forfeiture of rights of property, or might be held in any way to impair or affect any right of inheritance by reason of his or her being deprived of caste, should cease to be enforced as law." His opinion, therefore, appears to have been, that the Hindu law so long as it inflicted forfeiture of rights of property, or impaired or affected rights of inheritance by reason of deprivation or loss of caste, was intended to be abolished by the Act to which he refers. The late Sudder Court took a different view of that Act in the case of Raj Koonwaree Dassee v. Golabee Dassee 14 S.D.A. (1858), 1895. They read it with the light thrown upon it by the preamble, for, referring to the case which had been decided by Sir Lawrence Peel, they say: "With every respect for that opinion, and without the means of ascertaining whether the particulars of the present case are the same as those upon which it was given, we must determine the point irrespectively, and with reference solely to the intent and meaning of the Act, as they may be fairly and reasonably gathered from the latter portion of it taken in

connection with the preamble," Mr. Sconce says: "the title of Act XXI of 1850 declares its purpose to be the extension of the principle of section 9 of Regulation VII of 1832, and in the preamble this principle is embodied, being to the effect that if one party to a suit should not be of the Hindu (or Mahomedan) persuasion, the laws of the Hindu religion shall not be suffered to deprive him of any property, to which, but for the operation of such laws, he would have been entitled. Accordingly, in the body of the Act it is declared that any law, which may impose a forfeiture of rights, as a consequence of the renunciation of, or exclusion from, the communion of any religion, or of being deprived of caste, shall cease to be enforced as law." He holds that being deprived of caste, reading it in connection with Regulation VII of 1832, meant loss of caste by reason of renunciation of religion or by reason of excommunication from religion.

11. Looking very carefully at Act XXI of 1850, it appears to me that the preamble is wholly irrelevant to the enacting part of that Act. The Act is called "an Act for extending the principle of section 9, Regulation VII of 1832, of the Bengal Code, throughout the territories subject to the Government of the East India Company." It recites that it was enacted "by section 9, Regulation VII of 1832, of the Bengal Code, that whenever in any civil suit the parties to such suit may be of different persuasions, when one party shall be of the Hindu, and the other of the Mahomedan persuasion, or where one or more of the parties to the suit shall not be either of the Mahomedan or Hindu persuasions, the laws of those religions shall not be permitted to operate to deprive such party or parties of any property to which, but for the operation of such laws, they would have been entitled; and whereas it will be beneficial to extend the principle of that enactment throughout the territories subject to the Government of the East India Company, it is enacted as follows: So much of any law or usage now in force within the territories subject to the Government of the East India Company, as inflicts on any person forfeiture of rights or property, or may be held in any way to impair or affect any right of inheritance, by reason of his or her renouncing, or having been excluded from the communion of any religion, or being deprived of caste, shall cease to be enforced as law in the Courts of the East India Company, and in the Courts established by Royal Charter."

12. The principle of section 9, Regulation VII of 1832, was that a party to a suit of one religion was not to avail himself of the laws of the religion of the other party which deprived him of any property. If a Hindu had sued a Hindu, the Hindu defendant might possibly have set up against the Hindu plaintiff, that he had no right to sue, in consequence of his having been degraded from his caste. The Regulation would have prevented a Mahomedan defendant from taking advantage of that rule of the Hindu religion, which would have deprived the Hindu plaintiff of his right, by reason of his degradation from caste. Act XXI of 1850 says that "so much of any law as inflicts on any person forfeiture of rights of property, by reason of his being deprived of caste, shall cease to be enforced as law." It was therefore an enactment,

that in suits between Hindus, the loss of property by deprivation of caste should not be enforced. The principle, if it can be so called, of that Regulation, which prevented the laws of the Mahomedan or Hindu religion which deprived a party of a right of property in suits between persons of different persuasions, was extended to persons of the same persuasion; and that which could not be taken advantage of by a Mahomedan, in a suit by a Hindu, so far as it related to deprivation of property by loss of caste, was not to be taken advantage of now by a person of the same persuasion. The enactment, rather than the principle of the enactment, was extended, and the rule which was laid down to be observed in suits between persons of different persuasions, was intended to be extended to suits between persons of the same persuasion.

13. Under the Regulation of 1832, I think it is clear, that, in any place in which that Regulation had effect, a Mahomedan in a suit by a Hindu could not have availed himself of any part of the Hindu law which deprived a Hindu of a right of property, by reason of a deprivation of caste. If so, it appears to me that by the extension of that law by Act XXI of 1850 to all parts of the territories of the East India Company, it was declared that all the rules which inflicted any forfeiture of rights on any person on account of his renouncing his religion, or being deprived of caste, should cease to be enforced as law. It appears to me that the words "being deprived of caste by reason of renouncing religion" were useless. If the renunciation of religion deprived a man of his right, his being deprived of caste by reason of that renunciation would not carry the case further. If a Hindu lost his right to property by renouncing his religion, Regulation VII of 1832 deprived a Mohamedan of his right of setting up that defence as against a Hindu, and the Act of 1850 deprived a Hindu from setting up against a Hindu that which a Mahomedan could not set up against a Hindu in that respect.

14. If a Hindu widow, without reference to loss of caste, held her estate only so long as she remained chaste, Act XXI of 1850 did not affect the case. If her estate was an estate only to continue so long as she remained chaste, Act XXI of 1850 did not affect the case. But if the widow of a Brahmin lost her estate by reason of the loss of caste entailed upon her by having a child by a Sudra, Regulation VII of 1832 prevented that law from taking effect in suits in which both parties were not Hindus, and Act XXI of 1850 prevented that law from taking effect in suits between Hindus.

15. In Menu, it is said that "he who associates himself for one year with a fallen sinner, falls like him; that man who holds an intercourse with any one of those degraded offenders must perform, as an atonement for such intercourse, the penance ordained for that sinner himself. They must thenceforth desist from speaking to him, from sitting in his company, from delivering to him any inherited or other property, and from every civil or usual attention, as inviting him on the first day of the year, and the like."--Chapter XI, verses 181, 182, and 185.

16. Now I apprehend that the object of Act XXI of 1850 would get rid of such a defence as that. If a Brahmin should bring a suit against a Mahomedan to recover his property, that Mahomedan, after Regulation VII of 1832, could not have set up as a defence that the plaintiff had associated himself with a fallen sinner, or that he had held intercourse with any of the degraded offenders referred to in that chapter of Menu. Is it more unreasonable to suppose that the Legislature intended to prevent a Brahmin or any Hindu from setting up, as against another Hindu, a defence of that nature, than to prevent a Hindu from setting up against another Hindu any defence which he might otherwise have had by reason of the plaintiff having renounced the Hindu religion?

17. It appears to me that it is not so; and that when the Legislature intended to prevent a Hindu from taking advantage, as against another Hindu, of any part of the Hindu law which deprived his opponent of a right of property by reason of his having renounced his religion, or of his having been excommunicated from his religion, it is not unreasonable that they should also go on and deprive a Hindu of his right to take advantage of any rule of the Hindu religion which deprived his opponent of any part of the Hindu religion by reason of his loss of caste. Looking at the case even as between Hindus, it appears to me that the removal of loss of caste cannot be more objectionable than the removal of that part of the religion which deprived a man of his right by reason of renunciation of religion, or excommunication therefrom.

18. I, therefore, notwithstanding the decision of the Sudder Court in the case of Raj Koonwaree Dassee v. Golabee Dassee 14 S.D.A. (1858), 1891, take the same view of Act XXI of 1850, which was taken by Sir Lawrence Peel, in the case to which I have referred; and I there-'' fore am of opinion that the principle of this case is not affected by the fact that the defendant had a child by a Sudra. As far as chastity was concerned, it made no difference whether the father of the child was a Sudra or a Brahmin. It is only as regards caste that that circumstance would make any difference.

19. Sir Colley Scotland, in the case of Pandaiya Telaver v. Puli Telaver 1 Mad. H.C., 482, seems to have taken the same view as I do of Act XXI of 1850. He says:-- "Further, so to decide in this case, would in effect be giving to illegitimacy as a disqualification, an operation which it would be contrary to the spirit, if not the letter of legislative enactment (see Act XXI of 1850) to allow to degradation from caste;" treating degradation from caste simply and without reference to its being a degradation on account of the renunciation of religion or of excommunication.

20. The Hindu Widows'' Marriage Act, XV of 1856, has also been referred to. By the 1st section it was enacted that "no marriage contracted between Hindus shall be invalid, and the issue of no such marriage shall be illegitimate by reason of the woman having been previously married or betrothed to another person who was dead at the time of such marriage, any custom and any interpretation of Hindu law

to the contrary notwithstanding."

21. Then section 2 enacted that "all rights and interests which any widow may have in her deceased husband''s property by way of maintenance, or by inheritance to her husband, or to his lineal successors, or by virtue of any will or testamentary disposition conferring upon her, without express permission to re-marry, only a limited interest in such property, with no power of alienating the same, shall, upon her re-marriage, cease and determine as if she had then died." It is said that we are to infer from this that the Legislature considered that a Hindu widow forfeited her estate by reason of an act of unchastity. I draw no such inference from this enactment. The Legislature enacted that the marriage of a Hindu widow should not be void; but at the same time they declared that the right which she had taken in her deceased husband''s estate should cease on her marriage. Therefore it appears to me that the provisions of this Act have no bearing on this case. The decision of Mr. Justice Markby is affirmed with costs.

Macpherson, J.

I concurred.

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[1] See Abhiram Das v. Sriram Das, 3 B.L.R., A.C., 421; and Sayamalal Dutt v. Saudamini Dasi, 5 B.L.R., 362.

[2] See also Vyavahara Maynkha, Chapter IV, section 8, verse 4.