
(1870) 02 CAL CK 0018

Calcutta High Court

Case No: Special Appeal No. 1427 of 1869

Anand Lal Ghose
Mazumdar and Others

APPELLANT

Vs

Guru Gobind Shaha
Mandal and Others

RESPONDENT

Date of Decision: Feb. 4, 1870

Judgement

Mitter, J.

The question which we are required to determine in this case is whether, under the Hindu law current in the Bengal school, the son of a paternal uncle's daughter is entitled to succeed to the estate of a deceased Hindu, if no nearer heirs are forthcoming. The solution of this question depends upon the true construction of the Dayabhaga, and treatise on the Hindu law of inheritance by Jimuta Vahana, the acknowledged founder and chief of the Bengal school. The other authorities current in that school, such as the Dayakrama Sangraha of Srikrishna Tarkalankar, the Daya Fatwa of Raghunandan, and the Vivada Bhangamul of Jagarnatha Tarkapanchanana, are all of them almost exclusively founded on the Dayabhaga; and such difference of opinion as there is between them and the fundamental treatise is entirely confined to a few cases of detail which involve no conflict of principle of any kind whatever. Such then being the state of our authorities, it is necessary, first of all, to ascertain whether the Dayabhaga itself is founded on any general doctrine or principle, which will enable us to arrive at a satisfactory conclusion on the point now under our consideration. We are of opinion that there is such a principle, and that it is no other than that of spiritual benefit. That the Hindu law of inheritance, in the widest acceptation of the term, is essentially based upon considerations relating to the spiritual welfare of the deceased proprietor, is a proposition beyond all dispute. All the ancient Rishis, or Hindu sages, whose texts are regarded as the fundamental source of that law, and all the commentators on it whose opinions are recognized as authorities in the different schools current in the country, are unanimously agreed in accepting these considerations as their chief, if not as their exclusive, guide. The author of the Dayabhaga is no exception to the rule. On the contrary he is clearly and

expressly of opinion, as we will presently show, that the whole theory of inheritance is founded upon the principle of spiritual benefit, and that it is by that principle alone that questions relating to it must be determined. It is to be borne in mind that the Mitakshara, or rather the Benares school of Hindu law, was the dominant school in Bengal when the Dayabhaga was written, and that some of the lawyers of that school were of opinion that the word sapinda, as used by Menu, indicated mere consanguinity, and not the power of conferring spiritual benefit. The author of the Dayabhaga, as the founder of a new school, expressly repudiates this doctrine, by declaring that the nearness of kin indicated by Menu is absolutely dependent on the presentation of offerings. "Nor should it be pretended," he says, Colebrooke's Dayabhaga, verse 18, Section 6, Chapter XI, "that the text of Menu (to the nearest sapinda, male or female, the inheritance belongs) is intended to indicate nearness of kin according to the order of birth, and not according to the presentation of offerings, for the order of birth is not suggested by the text. But Menu declaring that oblations of food as well as libations of water are to be offered to three persons, and that the fourth in descent is the giver of oblations, but neither is the fifth in ascent a receiver of offerings, nor is the fifth in descent a giver of them, thus declares nearness of kin, and shows that it depends on superiority of (benefits by) presentation of oblations". We shall have occasion hereafter to comment at length upon the text of Menu referred to in this verse, but what we wish to be particularly borne in mind for the present is that, according to that text, as interpreted by the author of the Dayabhaga, the nearest heir is he who is competent to confer the greatest amount of spiritual benefit on the soul of the deceased proprietor. "It is by wealth," he says in verse 13 of the same section, "that a person becomes a giver of oblations. Two motives," he continues in the same verse, "are indeed declared for the acquisition of wealth, one temporal enjoyment, the other the spiritual benefit of alms and so forth. Now since the acquirer is dead, and cannot have temporal enjoyment, it is right that his wealth should be applied to his spiritual benefit." Then again in verse 29 of the same section he says, "inheritance is in right of benefits conferred, and the order of succession is regulated by the degree of benefit," and the same principle is laid down still more clearly and emphatically in the preceding verse, which says, "therefore, such order of succession must be followed as will render the wealth of the deceased most serviceable to them."

2. In order to remove all reasonable doubts on a point of such capital importance, we think it necessary to make a few observations on the mode in which the principle of spiritual benefit has been actually worked out in the Dayabhaga. The work purports, on the face of it, to be a treatise on the partition of heritage; but it is really divisible into two distinct branches, one relating to the subject of partition among co-heirs, the other to the order of succession to be followed when different persons are claiming the same estate by right of inheritance. The first of these two branches has no material bearing on the point involved in the present discussion, and we will, therefore, confine our remarks entirely to the second.

3. Now it is beyond all dispute, that the whole of this portion of the Dayabhaga is nothing but a mere elaboration of the doctrine of spiritual benefit. Every point for which a discussion is thought necessary is ultimately determined by that doctrine; and it is by that doctrine that every difficulty is ultimately removed. The texts of Menu and various other Hindu sages are frequently cited, it is true, as the highest authorities on Hindu law; but it is by the light of the doctrine of spiritual benefit that every one of those texts is interpreted, and it is by that light that every discrepancy existing between them is reconciled. If examples are necessary, we have only to go through Chapter XI of the Dayabhaga, which contains the whole law of inheritance relating to the estate of one who has left neither sons, nor grandsons, nor great-grandsons. It will be seen, that the first and most prominent characteristic of the order of succession laid down in this Chapter, is the studious exclusion of female relatives generally. It is to be borne in mind that these relatives are as a class disqualified by their sex to perform the religious ceremonies prescribed by the Hindu shastras for the promotion of the spiritual welfare of a deceased individual; and hence it is that the author of the Dayabhaga has generally excluded them from the category of heirs. The few that are allowed to come in are allowed to do so on the authority of special texts, but even in their case the doctrine of spiritual benefit is expressly put forward as the ultimate reason for the selection. Thus, for instance, the widow is no more competent than other relatives of her sex to perform the ceremony of the Parvana Shrad, to which we shall have to refer more specifically hereafter; but she is, nevertheless, according to the author of the Dayabhaga "half the body of her deceased husband;" and the consequences of all her acts whether virtuous or vicious must be necessarily borne by his soul. It is for this reason that she is recognized as an heir, and it is by the light of that reason that the numerous conflicting texts bearing upon her case are reconciled with one another. "Since by these and other passages," he says, Colebrooke's Dayabhaga, verse 44, Section 1, Chapter XI, "it is declared that the wife rescues her husband from hell, and since a woman doing improper acts through indigence causes her husband to fall into a region of horror, for they share alike the fruits of virtue and vice, therefore the wealth devolving on her is for the benefit of the former owner, and the wife's succession is consequently proper." The discussion on the question of precedence between the widow on the one side, and the son, the grandson, and the great-grandson on the other, is significant. If the widow is really half the body of her husband, how is it that sons, grandsons, and great grandsons are allowed to supersede her? The author of the Dayabhaga answers this objection by stating that the power of the widow to confer spiritual benefit commences from the date of her husband's death, whereas sons, grandsons, and great-grandsons confer such benefit from the moment of their birth,--see verse 43, Section I, Chapter XI. The next exception made is in the case of the daughter; and she is allowed to come in because she can confer great spiritual benefit on her father, by giving birth to a son who will deliver him and his ancestors from hell, and hence it is that those daughters who are barren or childless widows are carefully excluded from the line of inheritance. The maiden daughter is allowed to come in first, because her marriage might be delayed on account of indigence beyond the age of puberty, and the salvation of her father's soul and of those of his ancestors might be thereby jeopardized;

so that even here the spiritual welfare of the deceased proprietor is distinctly recognized as the ultimate ground of the decision. The same remarks are also applicable to the mother, the grandmother, &c., for it will be seen that in each of these cases, some peculiar spiritual benefit or other is invariably put forward as the basis of the discussion. As to the male heirs, we may divide them for the sake of convenience into the following classes:--

1. Sapindas strictly so called, or in other words relatives connected through the medium of undivided oblations.
 2. Sakulayas, or relatives connected through the medium of divided oblations.
 3. Samanodakas, or relatives connected by libations of water.
 4. Certain specified strangers, commencing with the spiritual preceptor, and ending with the learned Brahmin of the same village, leaving aside the king, who is entitled to come in more by right of escheat than by that of inheritance.
4. Here again we find that the same principle is in operation throughout. The sapindas are allowed to come in before the sakulayas, because undivided oblations are considered to be of higher spiritual value than divided ones; and the sakulayas are in their turn preferred to the samanodakas, because divided oblations are considered to be more valuable than libations of water. The members of the last class are not competent, it is true, to offer either oblations of food or libations of water; but even in their case the doctrine of spiritual benefit is not forgotten. Thus, for instance, the lowest amongst them, namely the learned Brahmin of the same village, is allowed to come in upon the express ground that the virtue of the deceased proprietor "is renewed by the acquisition of fresh merit through the circumstance of his wealth devolving on a Brahmin:" (verse 26, Section 6, Chapter XI). This, no doubt, is an extreme case of the kind; but we wish to draw particular attention to it as an instance of the extreme solicitude evinced by the author of the Dayabhaga to provide for the spiritual welfare of a deceased proprietor. Again, when we come to look at the internal arrangement of each of these classes, so far as the details of such arrangement are actually given in the Dayabhaga, we find that the same principle is always kept in view. Thus among the sapindas, those who are competent to offer funeral cakes to the paternal ancestors of the deceased proprietor are invariably preferred to those who are competent to offer such cakes to his maternal ancestors only; and the reason assigned for the distinction is that the first kind of cakes are of superior religious efficacy in comparison to the second. Similarly those who offer larger numbers of cakes of a particular description are invariably preferred to those who offer a less number of cakes of the same description; and where the number of such cakes is equal, those that are offered to nearer ancestors are always preferred to those offered to more distant ones. The same remarks are equally applicable to the sakulayas and samanadokas; but it would be tedious to enter into further details.

5. Having shown by the preceding observations that the principle of spiritual benefit is the sole foundation of the theory of inheritance propounded in the Dayabhaga, we proceed to determine whether the particular claimant before us, namely the son of a paternal uncle's daughter, is competent to confer any such benefit on the deceased proprietor. We are of opinion that he is, and we may add that this point was not even contested before us by the pleader for the respondent.

6. That the paternal uncle's daughter's son of a Hindu is one of his sapindas, is a proposition beyond all controversy. The whole doctrine of sapinda is contained in the following passage of the Dayabhaga:

Since the father and certain other ancestors partake of three funeral oblations as participating in the offering at obsequies, and since the son and other descendants to the number of three present oblations to the deceased (or to be shared by his manes); and he, who while living presents an oblation to an ancestor, partakes, when deceased, of oblations presented to the same person; therefore, such being the case, the middlemost of seven who, while living, offered food to the manes of ancestors, and when dead partook of offerings made to them, became the object to which the oblations of his descendants were addressed in their life-time, and shares with them, when they are deceased, the food which must be offered by the daughter's son and other descendants beyond the third degree. Hence, those ancestors to whom he presented oblations, and those descendants who present oblations to him, partake of an undivided offering in the form of (pinda) food at obsequies. Persons who partake of such offerings are "sapindas."--Colebrooke's Dayabhaga, Chapter XI, Section 1, verse 38.

7. It is clear from the above passage, that if two Hindus are bound during the respective terms of their natural life to offer funeral oblations to a common ancestor or ancestors, either of them would be entitled after his death to participate in the oblations offered by the survivor to that ancestor or ancestors; and hence it is that the person who offers those oblations, the person to whom they are offered, and the person who participates in them, are recognized as sapindas of each other. That this definition of sapinda is good for all purposes of inheritance is conclusively shown by the very next verse, which says:

This relation of sapindas (extending no further than the fourth degree) as well as that of sakulayas, has been propounded "relatively to inheritance."--Colebrooke's Dayabhaga, Chapter XI, Section 1, verse 39.

8. In order to apply this definition to the particular case under our consideration, we think it necessary to make a few preliminary observations on the ceremony of the Parvana Shrad, which has been already referred to in an earlier part of this judgment. This ceremony consists in the presentation of a certain number of oblations, namely one to each of the first three ancestors in the paternal and maternal lines respectively; or, in other words, to the father, the grandfather, and the great-grandfather in the one line, and the maternal grandfather, the maternal great-grand-father, and the maternal

great-great-grandfather in the other. It is for this reason that this ceremony is frequently referred to in the Dayabhaga under the name of the Troipurosik Pind, or Pind relating to three ancestors; and it is through the oblations presented at this ceremony, that the relation of sapinda propounded in that treatise admittedly arises. Every Hindu is bound by his religion to perform this ceremony, for his own salvation, which is intimately connected with that of his ancestors, is absolutely dependent on such performance; and of all the ceremonies prescribed by that religion, it is, therefore, the most important.

9. Such then being the nature of the Parbana Shrad, and of the obligation to perform it, it is clear that the deceased proprietor was just as much bound to fulfill that obligation as his paternal uncle's daughter's son, who is now claiming his estate by right of inheritance. Now, it is obvious, from the very position of the parties, that the maternal great-grandfather and the maternal great-great-grandfather of the latter are no other persons than the paternal grandfather and the paternal great-grandfather respectively of the former; and the conclusion is, therefore, inevitable that they are sapindas of each other according to the strictest interpretation of the Dayabhaga. The deceased proprietor was bound to offer funeral cakes to his own paternal grandfather and paternal great-grandfather, during his lifetime; and he is, therefore, entitled, after his death, to participate in the cakes that are now offered to those very persons by the son of his paternal uncle's daughter.

10. But there is another mode for arriving at the same conclusion. The deceased proprietor, it will be seen, was the grandson of the maternal great-grandfather of the appellant; and it is admitted that the grandson of the maternal great-grandfather is entitled to inherit as a sapinda according to all the authorities current in the Bengal school. If, therefore, the deceased proprietor was a sapinda of the appellant, it would necessarily follow, from the very definition of that term, that the latter is also a sapinda of the former, for if A. is connected with B., through the medium of undivided oblations, the conclusion is irresistible that B. is also connected with A. through the same medium. There is, however, an important distinction between the two cases, to which particular attention is required. The oblations which the deceased proprietor would have offered to his own paternal grandfather and paternal great-grandfather would have gone to the maternal great-grandfather and the maternal great-great-grandfather of his paternal uncle's daughter's son; whereas the oblations offered by the latter to his own maternal great-grandfather and maternal great-great-grandfather would go to the paternal grandfather and the paternal great-grandfather of the former. Now, it has been already observed that, according to the Dayabhaga, oblations offered to paternal ancestors are of higher spiritual value than those offered to maternal ancestors, so that it is clear that the appellant is a much nearer sapinda of the deceased proprietor than the deceased proprietor was of the appellant.

11. Having shown by the foregoing observations, that the son of a paternal uncle's daughter is fully entitled to come within the principle of spiritual benefit which constitutes the fundamental basis of the law of inheritance propounded in the Dayabhaga, we will

now proceed to examine the various objections that have been urged before us against his right to succeed as an heir.

12. It has been contended that the son of a paternal uncle's daughter has been nowhere mentioned as an heir in the Dayabhaga. We are of opinion that this objection is entitled to no weight whatever. Every one who has gone through the Dayabhaga must have perceived that the specific enumeration of each individual heir was not the object which the author had in view. It is perfectly true, that a few of the heirs have been mentioned by name here and there; but the great majority of them have been left to be determined by the application of the principle of spiritual benefit. Thus of the numerous relatives who are entitled to come in as sapindas by virtue of their right to offer oblations to the maternal ancestor of the deceased proprietor, the maternal uncle is the only one who has been mentioned by name. Then again among the sakulayas, or kinsmen connected by divided oblations, the grandson's grandson is the only person who has been specifically enumerated; and of the samanodakas, or kinsmen connected by libations of water, not one even has been so enumerated. In the face of all these facts, it is impossible to contend that the mere absence of specific enumeration is any ground whatever for excluding one single individual who is really competent to fulfill the conditions of heirship laid down in the Dayabhaga itself. It has been further contended that the order of succession specified in the Dayabhaga down to the sakulayas is so precise and complete by itself, that there is no room left for the introduction of the paternal uncle's daughter's son, who, if he is entitled to come in at all, must come in among the earlier class of heirs, namely, the sapindas. We are of opinion that this objection, too, must fail. If the Dayabhaga were a work of the same character as the Dayakrama Sangraha of Srikrishna Tarkalankar, which does not pretend to do anything more than to lay down a mere table of succession, or categorical list of heirs, there might have been some foundation for this argument. But when we consider that the real object which the author of the Dayabhaga had in view, was to establish a general principle of his own, and not to go through all the particular applications of that principle, as is evident from our answer to the first objection, it is impossible to attach any weight whatever to an argument of this sort. If the claimant in this case had been the son of a maternal uncle's daughter, or some other relative of the same description, who is merely competent to offer oblations to the maternal ancestors of the deceased proprietor, no such objection could have been possibly urged against him, according to the strictest interpretation of the Dayabhaga. Why then are we to suppose that the author of that work intended to exclude the son of the paternal uncle's daughter, when it is beyond all question that he is competent to offer oblations to a much higher class of ancestors, namely, the paternal? Why in fact are we to suppose that the enumeration of the one class of sapindas was intended to be exhaustive, whilst that of the other and a far inferior class was intended to be merely illustrative? If doubts are still entertained on this point, we have only to refer to the provisions of verse 19, Section 6, Chapter XI of the Dayabhaga. The following is a literal translation of that verse from the original:

Therefore, a kinsman who is allied by a common oblation as presenting funeral oblations called the Troipurosik Pind in the family of the father, or in that of the mother of the deceased owner, such kinsman having sprung from his kool, or stock, though of different male descent, as his own daughter's son or his father's daughter's son, &c., or having sprung from a different stock, as his maternal uncle, &c., is heir; and the text (to three must libations, &c.) is intended to propound the succession of such kinsmen, and the subsequent passage (to the nearest sapinda the inheritance belongs) must be explained as meant to discriminate them according to their degree of proximity.

13. Now, it is beyond all question that the son of a paternal uncle's daughter is a sapinda of the same description as the son of the father's daughter; and if it is once conceded, as it must be, that the word "&c." used after the words "maternal uncles" is comprehensive enough to include every relative who is competent, like the maternal uncle, to offer funeral oblations to the maternal ancestors of the deceased proprietor, we do not see any reason whatever why the same word "&c.," which is also used after the words "father's daughter's son," should not be considered as comprehensive enough to include every relative who is competent, like the father's daughter's son, to offer such oblations to his paternal ancestors. It is perfectly clear that both the texts of Menu, relied upon in this verse, are as general in their character as possible, for the name of a single heir is not mentioned in either of them. Why then are we to suppose that the author of the Dayabhaga intended to limit the operation of those texts in the case of those sapindas who are competent to offer funeral oblations to the paternal ancestors of the deceased proprietor, at the very time when he was extending that operation to every sapinda who is competent to offer such oblations to his maternal ancestors only? Surely, if this had been the real object of the author of the Dayabhaga, in open defiance of his own construction of Menu, who is universally regarded as the highest authority on all questions of Hindu law, he would have not only expressed it in a language which could not possibly be mistaken, but he would have also assigned some reason, good, bad, or indifferent, to justify such gross departure from the very principle which he has so often declared to be the fundamental basis of all his speculations. On the contrary, let us consider for one moment what he has himself stated in verse 30, Section 6, Chapter XI. This verse, which contains the final resume of all his discussions on the subject of inheritance, as is clear from the very position which it occupies in the Dayabhaga, runs as follows:--

In like manner the appropriation of the wealth of the deceased proprietor to his benefit in the mode which has been stated should, in every case, be deduced according to the specified order.

14. Here then is a positive injunction to determine every case relating to the law of inheritance according to the doctrine of spiritual benefit; and it is distinctly stated in the very next verse that this doctrine has the fullest sanction of "Menu and other sages," from whom the whole Hindu law is derived. The word "deduced" used in the passage above quoted demands particular attention. If the author of the Dayabhaga had supposed that all the details connected with the law of succession had been finally settled by himself, no

necessity for any kind of deduction whatever could have possibly existed. On such an hypothesis all that he would have required us to do would have been merely to follow those details according to his own directions in each particular case. It has been said that the words "according to the specified order" would rather go to support such an hypothesis; but it is clear that the specification referred to in this place is no other than that contained in the preceding verse, which merely says that the order of succession is regulated by the degree of benefit.

15. Lastly, it has been urged that the precise position which the son of a paternal uncle's daughter would be entitled to hold according to the principle of spiritual benefit would interfere with that which has been assigned, by the author of the Dayabhaga, to some of the heirs specified in the earlier part of Chapter XI. Whether this is really the case or not, we need not pause to enquire, for what we have to determine in the present case is not the precise position which the son of a paternal uncle's daughter is entitled to occupy in the category of heirs, but whether he is entitled to inherit at all. If the author of the Dayabhaga has in fact given to any particular heir or heirs a position which, if not strictly consistent with the principle which he has himself laid down for our guidance, the utmost that can be said is that that particular heir or heirs should be allowed to retain that position. But the circumstance, even if true, cannot be accepted as a sufficient reason to justify the total exclusion of one single individual who is really competent to satisfy all the requirements of that principle. If in any case which may arise hereafter, it should become necessary for us to determine the precise position which the son of a paternal uncle's daughter is entitled to hold in the order of succession, the question would fairly arise whether the details of a work like the Dayabhaga ought to be permitted to override the principle upon which it is admittedly based. We have already shown that, according to the author's own interpretation of Menu, the nearest heir is he who is competent to confer the greatest amount of spiritual benefit on the deceased proprietor. But if, in any case, we are bound to depart from that interpretation, merely because he himself has done so, we do not see any reason whatever why we should add to the inconsistency by pushing it further than the requirements of that particular case. "Decision must not be made," says Vrihaspati, "solely by having recourse to the letter of written codes; since if no decision were made according to the reason of the law, there might be a failure of justice." That this rule of construction is perfectly consistent with the dictates of good sense and natural justice is beyond all question; and that we can safely accept it for our guide in the present case, is evident from the fact that the authority of its framer is repeatedly acknowledged in the Dayabhaga itself, to be one of the very highest on all questions relating to the Hindu law of succession.

16. For the foregoing reasons, we are of opinion that the son of a paternal uncle's daughter is entitled to be recognized as an heir according to the Hindu law current in the Bengal school.

Barnes Peacock, C.J.

17. I concur in the above judgment, and I would add that the above view is borne out by the Dayakrama Sangraha, Chapter I, Section 10, verse 9, where it is said:--"In default of the paternal grandfather's daughter's son, the uncle's daughter's son succeeds, because he presents two oblations, in which the deceased owner participates, namely, to the owner's paternal grandfather and great-grandfather (i.e., his own maternal great-grandfather and great-great-grandfather.)"

Kemp, J.

18. I concur in the judgment.

Macpherson, J.

19. I concur.

Sir C.P. Hobhouse, J.

I adhere to my original judgment given on the reference, and I concur in this judgment as practically in accordance with my own.