
(1870) 07 CAL CK 0002

Calcutta High Court

Case No: Regular Appeals No. 82 of 1869

Thakur Jibnath Sing

APPELLANT

Vs

The Court of Wards
and Another

RESPONDENT

Date of Decision: July 12, 1870

Final Decision: Dismissed

Judgement

Sir Richard Couch, Kt., C.J.

This is an appeal from the decision of the Deputy Commissioner of Lohardagga, dismissing the plaintiff's suit with costs. The suit was brought to obtain possession of the Ramghar estate, as heir to Trilokenath Sing, deceased. The plaintiff is the son of the sister of Trilokenath's father, and the defendant, Barmnarayan, is the great-grandson of the great-grandfather of the grandfather of Trilokenath; and the main question which has been raised in this appeal is, whether the plaintiff is, under the law contained in the Mitakshara, the heir to the deceased Trilokenath, in preference to Barmnarayan, it being assumed that, by the custom of the family, the defendant, Maharani Hiranath Kumari, the mother of the deceased, is incapable of inheriting. The argument for the plaintiff has been rested upon the interpretation, which it is contended should be put on the 5th Section of the 2nd Chapter of the Mitakshara; and it is said that in that section the author refers to the text in Section 1, verse 2, and enumerates the heirs; and that only those are gentiles (Gotrojas) who come within the scheme of Section 5, by which it is said the collateral succession is limited to the grandson of the common ancestor, the degrees being reckoned in the direct line, and on failure of these the cognates succeed. Thus Barmnarayan, who is a great-grandson of the common ancestor would be excluded; and the plaintiff, who is the nearest cognate, entitled to the inheritance. Before noticing the decided cases upon the point, we think we had better consider the text of the Mitakshara.

2. In Chapter II, Section 1, verse 2, the rule of Yajnavalkya is given: "The wife, and the daughters also, both parents, brothers likewise, and their sons, gentiles, cognates, a pupil, and a fellow student; on failure of the first among these, the next in order is indeed

heir to the estate of one who departed for heaven leaving no male issue. This rule extends to all (persons and) classes."

3. In Section 5, the author having, in the previous sections, commented on the right of the wife, the daughters and the daughters' sons, the parents and the brothers, proceeds to comment on the succession of the gotrojas, or gentiles. In the first place the paternal grandmother takes the inheritance, and on failure of her "the paternal grandfather, the uncles, and their sons"--(Section 4): "On failure of the paternal grandfather's line, the paternal great-grandmother, the great-grandfather, his sons, and their issue inherit"--(Section 5.) It is argued that the author thus limits the inheritance to the grandsons of the paternal grandfather and paternal great-grandfather and that the words which follow--"In this manner up to the seventh degree must be understood, the succession of kindred belonging to the same general family,"--apply the same rule to the descendants of remoter ancestors. If this be the interpretation, the author of the Mitakshara does not expound the text of Yajnavalkya by stating the order in which the gotrojas, or gentiles, are to succeed, but he makes a different rule of succession by which some of them are altogether excluded from the inheritance, the text of Yajnavalkya being that, on failure of the gentiles, the cognates (the next in order) are to succeed.

4. It is reasonable to suppose the author intended to state the order of succession among gotrojas rather than to introduce a different rule; and it has been suggested in the argument for the respondent that the making the enumeration in the collateral line cease at the grandsons is explained by the offering of funeral oblations. It is argued for the respondent that as the sapindas are of two grades, the nearer who offer and partake of pinda (the rice ball) entire, and the remoter who offer and partake of merely the wipings of the hands. The author, keeping in mind the text he had before cited in Section 3, verse 3, and Section 4, verse 5: "To the nearest sapinda the inheritance next belongs," enumerates the sapindas in the order of propinquity, omitting the great-grandsons of the father, of the paternal grandfather, and of the paternal great-grandfather, because they are remoter than the kindred he mentions. And the passage in Subhadini translated in the note at page 144, West and Buhler is consistent with this. It is "on failure of the father's line, the line of the father (must be understood to) end with the brothers and their sons," which may mean for the purpose of determining who are the nearest sapindas. It cannot be supposed that it was intended entirely to exclude the father's great-grandson, and that the inheritance should go to another family.

5. That the 5th section was not intended to be an exhaustive enumeration of the gotrojas, but only a statement of the order in which they would take seems to be the interpretation which is consistent with the text which was being expounded, and with the ruling principle of the Hindu law of inheritance, and ought to be preferred. But the question is really settled by the decision in *Rutcheputty Dutt Jha v. Rajundernarain Rae* 2 Moore's I.A. 133. It was there held that, by the Hindu law in force in Mithila, the party in possession being descended in the sixth degree in the paternal line was to be preferred to the maternal line. At the close of the judgment it is said that the Mithila law was against the claim of

any relation on the mother's side till those on the father's side to the seventh degree have been exhausted. Some of the authorities quoted in that case, the Vivada Chintamani, and Vivada Chandra, for instance, do not belong to the Benares school, by the law of which the case before us is governed; but this is not a point upon which there appears to have been a difference between the Mithila and Benares schools. In *Mussamut Dig Dayi v. Bhatan Lal* ⁽¹⁾, it was held by Mr. Justice L.S. Jackson and Mr. Justice Mitter, that gentiles must be exhausted before the cognates can succeed. There are several decisions in the North-Western Provinces upon the law according to the Benares school. In *Duroo Sing v. Rai Sing S.D.A.*, N.W.P., 1864, 521, it was held that though the great-grandsons of the paternal great-grandfather of the last male owners are not expressly enumerated by Sir W. Macnaghten as heirs according to the law as current in Benares, yet they are entitled to inherit. In *Agur Singh v. Ram Singh Id.*, 1865, 4, it was also held that, in the tracts governed by the Benares law, a great-grandson is included among near heirs, and several previous decisions to the same effect are quoted at page 11. In that case both the claimants and the deceased appear to have been in the fifth degree from the common ancestor. There is another decision in the same Court--*Shoodhyan v. Mohan Panday Id.*, 1863, 134.

6. In the Bombay Presidency, the same construction has been put on the Mitakshara, and the series has been considered by the shastrees as not exhaustive, nor intended to exclude others than those named, but only as an exemplification of the general doctrine--*Digest of Hindu Law by West and Buhler*, Book I, page 137. It was also recognized as the law under the Mitakshara in *Rang Srimuty Debeah v. Rang Koond Luta* 4 Moore's I.A., 292. We are, therefore, clearly of opinion that the appellant is not entitled to the inheritance in preference to the respondent Barmnarayan, and that the decision of the lower Court on this point is right. As regards that part of the case which is described in the plaint, and is called in the grounds of appeal the constitution of an heir by appointment, we need only say that taking the evidence of Maharani Prem Kumari to be entirely true, there was no adoption nor anything which would, by Hindu law, alter the status of the plaintiff, and give him any other right of succession than he had as the father's sister's son. The question between the Maharani and the defendant Barmnarayan is the subject of another suit. As between the plaintiff and Barmnarayan, the decision of the lower Court is right, and the appeal must be dismissed with costs as against the second and third respondents, but without costs as against the first respondent, the Court of Wards. In No. 120 of 1869, the Court of Wards has appealed solely on the question of the amount allowed for costs. This is a matter in which we think we ought not to interfere, and that appeal must be dismissed without costs.

(1) Before Mr. Justice L.S. Jackson and Mr. Justice Hitter.

Bhatan Lal alias Bhatu Lal and Others (Defendants).*

The 14th May 1869.

Mr. Montriou (with him Mr. R.E. Twiddle and Baboo Hem Chandra Banerjee) for appellants.

Mr. Paul (with him Baboos Anukul Chandra Mookerjee, Srinath Dass, and Nil Madhab Sein) for respondents.

Jackson, J.--This case was before us on the 17th of November last, and we sent it down to the Principal Sadder Ameen, in order to his trying an issue of fact which had been pretermitted. He has now returned his finding, and that finding is in favor of the defendant; that is to say, he reports to us, upon the evidence, that the defendants are descended in the degree in which they state themselves to be from Bhawani Sing, the common ancestor of the plaintiffs and the defendants. The evidence, upon which that finding has been based, has been read to us and commented upon by the learned Counsel for the appellant.

The learned Counsel has very candidly admitted the difficulties with which he has to contend in this case, and his comments, I think, have been of a very fair and proper character. At the same time I am bound to say that upon those points on which both parties have given such evidence as they had to adduce, it seems to me that the evidence is all one way, and that the testimony of the witnesses on the defendant's side, is, generally speaking, wholly unimpeached. It comes, in a great part, from persons who were relations of the family, and their credit is in no way attacked. There are, as it is inevitable there must be, certain inaccuracies and discrepancies in points of detail of a lengthy pedigree which they undertook to set out; but the principal fact still remains that the defendants, who are eleven persons, are sworn to have descended from Bhawani Sing who is also the ancestor of the plaintiffs through the maternal line, and that no effort whatever has been made to show who, if not Bhawani Sing, was the progenitor of all these persons. In that state of things we cannot hesitate for a moment to say that the defendants have made out the descent which they claimed.

That being so, we have to inquire what the rule of Hindu law applicable to such a case is. I confess that I feel myself very much comforted and assured by the presence in this case of Mr. Justice Mitter, but even if it were not so, the language of the Mitakshara, Chapter II, section 5, clauses 5 and 6, and section 6, clause 1, appears to be perfectly unmistakable. The 5th clause of section 5 says, "On failure of the paternal grandfather's line, the paternal great-grandmother, the great grandfather, his sons and their issue, inherit. In this manner must be understood the succession of kindred belonging to the same general family and connected by funeral oblations": and the 6th clause of section 5 says "if there be none such, the succession devolves on kindred connected by libations of water, and they must be understood to reach to seven degrees beyond the kindred connected by

funeral oblations of food, or else, as far as the limits of knowledge as to birth and name extend:" and in section 6, clause 1, it is said:--"On failure of gentiles, the cognates are heirs." It is quite clear from these two very simple texts that we must exhaust the gentiles before the cognates can succeed. I think, therefore, that the plaintiff's case wholly fails, and that the judgment of the lower Court must be affirmed with costs.

Mitter, J.--I am of the same opinion.

* Regular Appeal, No. 332 of 1867, from a decree of the Subordinate Judge of Zilla Patna, dated the 27th August 1867.