
Srimati Rajabala Dasi Vs Shyama Charan Banerjee and Others

None

Court: Calcutta High Court

Date of Decision: Nov. 21, 1917

Acts Referred:

Penal Code, 1860 (IPC) & Section 294

Citation: 45 Ind. Cas. 714

Hon'ble Judges: Syed Shamsul Huda, J; Fletcher, J

Bench: Division Bench

Judgement

Fletcher, J.

This is an appeal by the plaintiff against the decision of the learned Subordinate Judge of Burdwan, dated the 31st July 1914.

The plaintiff, who is a Hindu female, brought the suit for a declaration of her title as the reversionary heir of her deceased father to certain

properties and for recovery of possession, following on the declaration that a certain deed of compromise entered into in Suit No. 21 of 1910 was

inoperative and that certain transfers made by the plaintiff's mother following on the compromise were invalid and without legal necessity. The

various defendants in the suit, excepting the defendants Nos. 6 and 7 who are the plaintiff's sons and who took no part in this litigation, filed

different defences. The defendant No. 5 raised a distinct plea that the plaintiff before the time the succession opened was leading an unchaste life

and was, therefore, according to the Hindu Law, incapable of inheriting on the death of her mother. It has been argued before us that that view of

the Hindu Law is not accurate and a text-book has been cited in support of that contention. We are not concerned with the Hindu Law as it has

been interpreted in other presidencies. On the decisions of learned Hindu Judges of this Court, it is established without doubt that the rule as it

obtains in the Bengal School of Hindu Law is that any female who was unchaste before the succession opened out is excluded from the inheritance.

There cannot be any doubt as to that. It is sufficient to refer to the two cases that were cited, namely, the cases of Ramnath Tolapattro v. Durga

Sundari Debi 4 C. 550pc : 2 S L.R. 89 : 2 Ind. Dec. (N.S.) 349. and Ramananda v. Roikishori Barmani 22 C. 347pc : 11 Ind. Dec. (N.S.) 233.

In each of those cases, one of the learned Judges was a Hindu and the cases they cited in the course of their judgments carried the case back much

earlier than the dates of those cases. It is much too late now to raise that that is not the rule according to the Bengal School of Hindu Law. The

question is, was the learned Judge of the Court below right when he held that the plaintiff, before the date when the succession opened, that is the

date of the death, of her mother, was leading an unchaste life?" The evidence consists, first of all, of the statement on oath subjected to cross-

examination of the mother, who stated without doubt that her daughter, the plaintiff, was leading an irregular life with the person who was looking

after the present suit on behalf of the plaintiff--a man called Lahori Koer, who is the father-in-law of the elder son of the plaintiff. This man was the

Mukhtear of the mother and that this man was living on the closest terms with this woman, the plaintiff, cannot be doubted on the evidence. They

lived in the same house and the documentary evidence shows that, on the 10th June 1910, the plaintiff and Lahori Koer were convicted of an

offence u/s 294, Indian Penal Code, that is, singing an obscene song in a public place. It has been suggested that the Rajendra Bala mentioned in

the record of the Court in that criminal case is some other Rajendra Bala. Well, first of all, the plaintiff herself in her deposition has not sworn that

she was not convicted by the Magistrate of an offence u/s 294, Indian Penal Code. Although, in the first place, in her deposition in the present case

she said that she was not, but eventually she said that she could not remember whether she was. Another fact is that Lahori Koer who conducted

the case on behalf of the plaintiff and who was present in Court did not go to the witness-box to explain who was the Rajendra Bala who was

convicted along with him of an offence u/s 294, Indian Penal Code. Then there is the evidence of one Haripada Mandal who is a cousin of the

plaintiff, and his statement is that the plaintiff and Lahori Koer were living together and leading an irregular life. On that evidence the learned Judge

came to the conclusion that the evidence established that the plaintiff was leading an irregular and unchaste life at the time when the succession

opened. I think the evidence can lead to only one result, and that is that the plaintiff was unchaste at the time the succession opened out to her. She

was found singing an obscene song with a man in a public place and was taken before a Magistrate and fined Rs. 15 or 20 or, in the alternative,

was sentenced to 15 days' rigorous imprisonment; and no explanation has been given to show how this woman, if she was leading the ordinary life

of a modest woman in the house of Lahori Koer, came to be out with him singing these sing-songs, which apparently they sang in concert or

unison, on the day when the complaint was made by the gentleman named Satya Kinkar Mukerjee. If that is right, what is the position of the

plaintiff's suit? First of all, if the compromise is binding, this suit must fail. This suit only asks for relief that the compromise is void and illegal. If the

compromise is binding the present suit must fail and the rights which the plaintiff has got under the compromise she can enforce in a proper suit. If

the compromise is not binding, then what interest has the plaintiff got to maintain the present suit? If the compromise is not binding, the only right

she has got would be as the heiress of her father on the death of her mother. But it has been found by the learned Judge of the Court below that at

the time the succession opened out to her--a finding in which I agree, the plaintiff was unchaste. According to the rules of the Hindu Law, the

plaintiff would be excluded from succession which she would have taken if she had been leading a chaste life. In that view, the present suit cannot

succeed. The plaintiff, as already stated, if the compromise is binding, has got the right to enforce it in a proper suit. If it is not binding, which is the

present case, then she cannot maintain the present suit, on the ground that she is excluded from succession. I think that, on that view, the present

appeal fails and must be dismissed with costs. The hearing fee will be divided amongst the defendants who have appeared on the following scale:

Defendant No. 1 Rs. 150; defendants Nos. 2, 3, 4 and 5 Rs. 75 and defendants Nos. 8 and 9 Rs. 75.

2. Shamsul Huda, J.--I agree.