(1919) 07 CAL CK 0030

Calcutta High Court

Case No: None

Trailokya Nath Nath		APPELLANT
	Vs	
Radhasundari Debi by her Father and Guardian Hari Nath Nath and Srimati Gyanada Sundari Debi		RESPONDENT

Date of Decision: July 22, 1919

Citation: 55 Ind. Cas. 704

Hon'ble Judges: Walmsley, J; Asutosh Mookerjee, J

Bench: Division Bench

Judgement

1. This is an appeal by the plaintiff in a suit for recovery of possession of land on establishment of title by purchase. The property belonged to one Babu Lal Nath, and, upon his death, was inherited by his three sons, all of whom were dead at the date of the institution of this suit. The first defendant is the widow of the eldest son and has admittedly inherited one-third share of the property. The dispute relates to the remaining two-thirds share. The second defendant is the widow of the original owner and claims to have inherited this two-thirds share on the death of her second and third sons, both of whom were unmarried. The ease for the plaintiff is that be has purchased their two-thirds share from the second defendant. The case for the first defendant, on the other hand, is that the second defendant, her mother-in-law, became unchaste, shortly after the death of her husband Babu Lal, and, consequently, never succeeded to the estate left by her two sons, which accordingly passed to their brother, her husband. The Courts below have concurrently found the facts in favour of the first defendant and have held that the plaintiff has derived no title under his conveyance from the second defendant who was in his keeping. On the present appeal, the findings of fact could not be and have not been challenged, but it has been contended that under the Bengal School of Hindu Law an unchaste mother is entitled to succeed to the estate of her son. It has not been disputed that in the case of Ramnath Tolapattro v. Durga Sundari Debt 4 C. 550 which was decided

in 1878, Mr. Justice Romesh Chandra Mitter held that, under the Dayabhaga School of Hindu Law, a mother guilty of unchastity before the death of her son is precluded from inheriting his property. This decision has hitherto been accepted as good law, but we have been invited by the appellant to dissent from it and to refer the matter to a Full Bench for consideration. After examination of the authorities on the subject, we have arrived at the conclusion that the view taken by Mr. Justice Mitter is correct.

2. The determination of the matter in dispute ultimately depends upon the true construction of paragraphs 30 and 31 of Section 2 of Chapter XI of the Dayabhaga. In Chapter XI, Section 1, paragraphs 7, 43 and 56, Jimutavahana refers to the following texts of Brihatmanu, Vyasa and Katyayana, respectively:

(i) The widow of a childless man, keeping unsullied her husband''s bed, and persevering in religious observances, shall present his funeral oblation and obtain his entire share" (Brihatmanu).

(ii) After the death of her husband, let a virtuous (chaste) woman observe strictly the duty of continence and let her daily, after the purification of the bath, present water from the joined palms of her hands to the manes of her husband, etc," (Vyasa).

(iii) Let the childless widow, preserving unsullied the bed of her lord and abiding with her venerable protectors, enjoy with moderation the property until her death; after her, let the heirs take it" (Katyayana).

3. These texts form the foundation of the following rules:

(i) An unchaste wife does not inherit her husband''s property.

(ii) When the widow inherits, she can only enjoy the estate with moderation, in other words, she possesses a qualified power of alienation.

(iii) On the death of the widow, the estate of her husband passes not to her but to his heirs.

4. The question in controversy is whether these special rules are restricted in their operation to a widow who inherits the estate of her husband, or are applicable to all females who take by inheritance the estate of their male relations. The answer depends upon the interpretation of paragraphs 30 and 31 of Section 2 of Chapter XI of the Dayabhaga. In the second of these paragraphs, Jimutavahana observes that the word "wife" in paragraph 56 of Section 1 of Chapter XI (where the text of Katayana is quoted) is employed with a general import and implies that the rule must be understood as applicable generally to the case of a woman''s succession by inheritance. The matter thus narrows down to the point, whether Jimutavahana intended that the generalised interpretation of the expression "wife" is limited to the rule that "the wife must only enjoy her husband''s estate after his demise," or covers the entire text of Katayana which enunciated a more comprehensive

proposition. Upon this subject, we have the interpretation of Raghunandan, who flourished in the fifteenth century and has since then been universally respected in Bengal as a jurist whose authority is surpassed only by Jimutavahana. Raghunandan in his commentary on paragraph 31 of Section 2 of Chapter XI of the Dayabhaga writes as follows (Text A): "The word ''wife'' implies females generally. In the text of Katayana--Let the childless widow preserving unsullied the bed of her lord and abiding with her venerable protectors enjoy with moderation the property until her death; after her let the heirs take it''--and in the first half of the next text of the same sage--''the wife who is chaste takes the wealth of her husband''--the word ''wife'' is illustrative. According to the rule of construction, deducible from reason, that a text used in one part of the Sastra has the same import in another, both ''wife'' and ''daughter'' are impliedly meant by the use of the word ''wife'' in these texts." There is consequently no room for doubt that more than three centuries ago Raghunandan understood the passage of the Dayabhaga in question to lay down a rule, applicable to all female heirs, that chastity is a condition precedent to entitle them to succeed by right of inheritance to the estate of their male relations. In the absence of evidence to the contrary, the assumption may fairly be mads that the interpretation adopted by Raghunandan represented the view then current among orthodox lawyers of the Bengal School: otherwise, a jurist of his learning and ability would, according to the prevalent practise, have stated and controverted the opinion held by his opponents. This is confirmed by passages from his Dayatatwa (Text B). In these circumstances, our duty is to follow the rule enunciated by the Judicial Committee in Collector of Madura v. Moottuo Ramalinga Sathupathy 12 M.I.A. 397 : 1 B.L.R.P.C. 1 : 10 W.R.P.C. 17 : 2 Sar P.C.J. 361 : 2 Suth P.C.J. 135 : 20 E.R. 389: "the duty of an European Judge who is under the obligation to administer Hindu Law, is not so much to enquire whether a disputed doctrine is fairly deducible from the earliest authorities, as to ascertain whether it has been received by the particular school which governs the district with which he has to deal and has there been sanctioned by usage; for, under the Hindu system of law, clear proof of usage will outweigh the written text of the law." We are not unmindful of the dictum of Sir Barnes Peacock in Moniram Kolita v. Keri Kolitani 5 C. 776 (P.C.) : 6 C.L.R. 322 : 7 I.A 115 : 4 Sar. P.C.J. 103 : 3 Suth. P.C.J. 765 that paragraph 31 of Section 2 of Chapter XI of the Dayabhaga only extends to other women the rule applicable to a wife that a gift, sale or mortgage of the estate is not to be made and that after her death the heirs of the deceased owner are to take, and not that part of the rule which is included in the words "keeping unsullied the bed of her lord." But we must not overlook the fact that Sir Barns Peacock had no access to the commentary of Raghunandan and that, notwithstanding the restricted interpretation adopted by him, he favoured the view Moniram Kolita v. Keri Kolitani 5 C. 776 (P.C.) : 6 C.L.R. 322 : 7 I.A 115 : 4 Sar. P.C.J. 103 : 3 Suth. P.C.J. 765 that an unchaste daughter is excluded from inheriting her father''s estate and an unchaste mother that of her son.

5. We may further point out that the view adopted by Mr. Justice Romesh Chandra Mitter in Ramnath Tolapattro v. Durga Sundari Debi 4 C. 550 is in accordance with the opinion expressed Mr. Justice Dwarka Nath Mitter in the case of Kerry Kolitanee v. Monee Ram Kolita 13 B.L.R. (F.B.) 1 : 19 W.R. 367 . It was there held that the daughter''s estate was precisely of the same character as that of the widow and was governed by the same text of Katyana in which the word "wife" is employed with a general import, so as to make the rule applicable generally to the case of a woman''s succession by inheritance. The question was expressly raised in Ramananda v. Raikishori Barmani 22 C. 347 where Mr. Justice Banerjee, upon an exhaustive review of the authorities, overruled the contention advanced by Sastri Golap Chandra Sarkar that, according to the Bengal School of Hindu Law, a daughter, though unchaste, is still entitled to take by inheritance the property of her father. We are in full agreement with the line of reasoning adopted by Mr. Justice Banerji which was, without challenge, accented as correct in the case of Sundari Letani v. Pitambari Letani 32 C. 871 : 9 C.W.N. 1003 : 2 C.L.J. 97.

6. But the appellant has strenuously contended that a contrary view has been adopted in respect of other schools of Hindu Law by the other Indian High Courts. Our attention has been invited to the decisions of the Madras High Court in Kojiyadu v. Lakshmi 5 M. 149 and Vedammal v. Vedanayaga 31 M. 100 : 18 M.L.J. 70 : 2 M.L.T. 533 which are authorities in favour of the proposition that unchastity is no ground of exclusion in any female heir except the widow. There are also decisions which support the right of the unchaste daughter [Khojiyaau v. Lakshmi 5 M. 149; Argammal v. Venkata Reddy 26 M. 509; Vedammal v. Vedanayaga 31 M. 100 : 18 M.L.J. 70 : 2 M.L.T. 533; Deokee v. Sookhdeo 2 N.W.P.H.C.R. 361; Ganga Jati v. Ghasita 1 A. 46 (F.B.) Advyapa v. Rudrava 4 B. 104 and Tara v. Krishna 31 B. 495 : 9 Bom. L.R. 774 as also of the unchaste mother Kojiyadu v. Lakshmi 5 M. 149; Dal Singh v. Dini 5 Ind. Cas. 521 : 32 A. 155 : 7 A.L.J. 80 and Baldeo Singh v. Mathura Kuari 11 Ind. Cas. 43 : 33 A. 702 : 8 A.L.J. 811. But we need make only two observations in respect of these cases. In the first place they are all under schools of Hindu Law other than the Bengal School and were decided with reference to authorities different from those that are specially recognised and followed in this Province; and it would be indeed a novel mode of interpretation of Hindu Law to import the authorities of one school for the determination of controverted questions which require decision in another school. In the second place, even if we were competent to invoke the aid of the authorities prevalent in other schools, a wide divergence of opinion would, as might be anticipated, be discovered, among recognised text writers. The Mitakshara and the Mayukha, no doubt, omit to mention, in the case of female heirs other than the widow, that chastity is a condition precedent before the right of inheritance can accrue. On the other hand, the Smriti Chandrika (Chapter XI, Section 2, paragraph 26) and the Viramitradaya (Chapter III, part 2, Section 3) appear to impose chastity as a condition precedent to the vesting of inheritance in women generally (Texts C & D). Reference may also be made to the elucidation of Vijananeswara on the text of

Yajnavalkya, verses 137--139 (Text C). In these circumstances, it would be wrong, in our opinion, to depart from what has been recognised as the settled rule in the Bengal School of Hindu Law.

7. Our attention has finally been invited to the decision of the Full Bench in Hari lal Singh v. Tripura Charan Roy 19 Ind. Cas. 129 : 40 C. 650 : 17 C.L.J. 438 : 17 C.W.N. 679 Where it was ruled that the fact that a Hindu woman had adopted the life of a prostitute did not sever the tie which connected her to her kindred by blood and that consequently upon her death her Stridhan property passed, in the absence of nearer heirs, to her brother''s son as an heir under the Bengal School of Hindu Law. That doctrine clearly is of no assistance in the solution of the question raised before us. Nor need we consider the effect of the decision in Nogendra Nandini v. Binoy Krishna Deb 30 C. 621 : 7 C.W.N. 121 where Stephen, J., held that unchastity does not disqualify a woman from inheriting the Stridhan property of her female relations.

8. We hold accordingly that the vendor of the plaintiff, as an unchaste mother, never inherited the property of her sons, and that his claim is consequently unfounded. The appeal thus fails and is dismissed with costs.