Gangadhar Bogla Vs Hira Lal Bogla

Court: Calcutta High Court

Date of Decision: Jan. 19, 1916

Judgement

Sanderson, C.J.
This is a suit by Hira Lal Bogla against his brother Gangadhar Bogla in which the Plaintiff asks for a declaration that he

and the Defendant are entitled in equal shares to the property of Rani Mohori Bibee, a widow who had been the fourth wife of Raja Shew Bux

Bogla, for administration and partition of Mohori Bibee''s estate and other incidental relief. The case raises the question whether the Plaintiff, who

was the adopted son of Raja Shew Bux Bogla and his first wife, is entitled to any (and if so what) share of the stridhan property of Raja Shew Bux

Bogla''s fourth wife in competition with the Defendant who was the son of the Raja and his second wife.

2. The details of the family tree are given in the judgment of Chitty J. and I need not repeat them; the only point which I need emphasize being that

the fourth wife, whose property is in question, died without issue. It appears that a box of jewellery, alleged to be valuable, which had been

deposited in a bank by Mohori Bibee constituted the main part of her estate. It was, however, alleged by the Plaintiff, though denied by the

Defendant, that there was other property belonging to Mohori Bibee besides the jewellery, viz., certain hundis.

3. The first of the issues raised was as follows: - Were the ornaments claimed in the plaint the separate stridhan property of Mohori Bibee, or did

they belong to Raja Shew Bux Bogla?

4. This issue has not yet been decided and the result may be that if on the enquiry, which must be held hereafter, it turns out that the jewels in

question were the property of the Raja and were not the separate stridhan of Mohori Bibee, the above-mentioned question would not arise; for the

jewels would, pass under the Raja''s will to the Defendant and if there were no other property of Mohori Bibee besides the jewellery then the

discussion which we have had would become, merely academical.

5. It was not until some considerable time had been occupied hi argument that the true position became clear to the Court, otherwise personally I

should have been in favour of postponing the decision of this case until the above-mentioned enquiry had been held.

6. But in view of the fact that considerable time had already been spent over the case and that in one event the point will be material, we come to

the conclusion that in the interests of the parties it would be best for us to give a decision at once.

7. It is agreed that the family were governed by the Mitakshara School of Hindu Law, bat the learned Counsel for the Defendant urged that the

Mitakshara was uncertain or doubtful on the point in question and relied upon a passage in Maim--on the other hand it was argued for the Plaintiff

that the provisions of the Mitakshara were clear and admitted of no doubt. The Mitakshara in Chapter II, Section 11, para. 9, provides as follows:

- ""If a woman die without issue, that is, leaving no progeny, in other words, having no daughter, nor daughter''s daughter, nor daughter''s son nor

son, nor son''s son, the woman''s property, as above described, shall be taken by her kinsmen, namely, her husband and the rest as will be

(forthwith) explained."" Paragraph 11 contains further provisions as to the succession of a woman dying without issue having regard to the different

forms of marriage. This marriage, it was agreed, must be taken to be governed by one of the first named four modes in which event the whole

property of a woman dying without issue as before stated belongs in the first place to her husband; on failure of him it goes to the nearest kinsman

(savinda). This is confirmed by paragraph 25.

8. It was argued, however, on behalf of the Defendant that these paragraphs do not apply to this case, because it was said that Mohori Bibee was

not a woman who died without issue and reliance is placed upon the text of Mann, which says that. If among the wives of the same man one

becomes mother of a son, Mann says that by that son all of them become mothers of male children and inasmuch as Raja Shew Bux''s second wife

had a son viz., the Defendant Mohori Bibee, his fourth wife became a mother of male issue, and therefore, did not die without issue. In other

words the learned Counsel''s first and main point was that the Defendant succeeded as the direct issue of Mohori Bibee and that the Plaintiff, being

merely an adopted son, did not take a share.

9. In my judgment this argument ought not to prevail.

10. Even if the text in Mann has reference to questions of inheritance, as to which there seems considerable doubt [see Annapurni Nachiar v.

Forbes ILR (1895) Mad 1 : L.R. 26 IndAp 246 and Bhimacharya v. Ramacharya ILR (1909) Bom. 452, 460], in my judgment the provisions in

the paragraphs in the Mitakshara, to which I have referred, are not uncertain or doubtful and they govern this case. An examination of the

provisions of this section of the Mitakshara convinces me that the paragraphs, which are material to this case, viz., 9 and 11, refer to the case of a

woman dying without issue in the ordinary meaning of the words and that the fiction created by the above-mentioned text in Manu does not

exclude the case from these provisions.

11. Applying, therefore, the rules laid down, the property of Mohori Bibee on her death would have belonged to her husband if he had been alive;

but on failure of him, it goes to his nearest kinsmen sapindas.

12. Both the Plaintiff and Defendant are sapindas of their father, but it was contended on behalf of the Defendant that he was the nearest sapindas

and was superior to the Plaintiff who was merely an adopted son. With this I do not agree: with respect to this matter I think that the rights of the

Plaintiff, the adopted son, are similar to those of the Defendant, the natural born son see Joy Kishore Chowdhry v. Panchoo Baboo (1879) 4

C.L.R. 538, 555, Padma Kumari Debi v. Court of Wards ILR (1888) Cal. 302 : L.R. 8 IndAp 229 and that they both share in the property of

Mohori Bibee as sapindas of their father.

13. The next point taken on behalf of the Defendant was that even if both the Plaintiff and Defendant came in as sapindas of their father, the rule

which is applicable in certain cases, viz., that the adopted son takes one-fifth only, should be applied to this case, which is one of competition

between a real and an adopted son. The rule upon such a point as this has been laid down by the Privy Council in Padmakumari v. Court of

Wards ILR (1888) Cal. 302 : L.R. 8 IndAp 229 as follows: - An adopted son occupies the same position in the family of the adopter as a natural

born son except in a few instances which are accurately defined both in the Dattaka Chandrika and Dattaka Mimansa.

14. Now there has been no text produced which exactly covers the case in question, but the learned Counsel for the Defendant relies on a passage

in Mr. Sastri"s Hindu Law, 4th Ed., p. 171, which refers to the Dattaka Chandrika. This authority apparently extends the above-mentioned rule to

cases of partition between male descendants in the male line down to the great-grandson where there is competition between an adopted and real

descendant and he arrives at that result by way of an analogy which might cover all cases in which there is such a competition.

15. In my judgment, however, the proper course to adopt is to apply the rule laid down by this Court in the above-mentioned case, Joy Kishore

Chowdhry v. Panchoo Baboo (1879) 4 C.L.R. 538, 555 and in the above-mentioned Privy Council decision (2), viz., that the rights of an adopted

son unless curtailed by express texts, are in every respect similar to those of a natural son and as there is no express text curtailing the rights of an

adopted son who, like the Plaintiff in this case, is claiming succession to a share of the property of his adopting father"s fourth wife, in my judgment,

the Plaintiff is entitled to share equally with the Defendant.

16. Since the judgment was written my attention has been drawn to the decision of the Privy Council in Nagindas Bhagwandas v. Bachoo

Hurkissendas ILR (1915) Bom. 270 : 20 C.W.N. 702 which was given on the 26th November, 1915 and the report of which has only recently

reached this country. On the points which are material to this case, it confirms the conclusions I had arrived at.

17. As to the argument of estoppel which was raised but not strongly urged, there is nothing in the submission to arbitration or the award which, in

my judgment, prevents the Plaintiff from making the claim in this case.

18. Finally the learned Counsel for the Defendant asked that the question whether Mohori Bibee had any property of her own should be tried by a

learned Judge on the Original Side and intimated that he would take this issue at the Defendant''s risk.

19. In my judgment it is desirable that this issue should be disposed of as soon as possible: if decided in one way, it will dispose of the whole case

and this may save the parties further expense and the best way of getting a decision on this issue will be to refer it for trial to a Judge on the Original

Side.

20. This appeal will be dismissed with costs. The costs of the issue to be tried will be in the discretion of the learned Judge who tries it.

Woodroffe J.

21. I am opinion that the text of Manu, according to which the son of a man by one of his wives is as a son to all his wives who are thus all

mothers, does not operate for the purpose of determining the succession so as to make the Appellant issue of Sreemutty Mohori Bibee. In my

opinion the Appellant is not entitled to claim as the son of that lady. It is unnecessary then to consider whether this text should be construed to

include also the Plaintiff Hira Lal, who was an adopted son of Raja Shew Bux Bogla through his wife Soli Bibee, as well as Gangadhar his natural

son through his second wife Mohori Bibee. But if the text were to be held applicable to establish the Appellant''s contention that he by a fiction

takes as son of the deceased which in fact he was not, then as neither the one nor the other are sons of Mohori Bibee in the natural sense of that

term, I should in that case have seen no sufficient ground for distinguishing between the positions of the Plaintiff and the Defendant and both Plaintiff

and Defendant would be heirs in equal shares. As, however, pointed out by Chandavarkar J. in Bhimacharya v. Ramacharya ILR (1909) Bom.

452, 460, the text of Mann, on which learned Counsel for the Appellant relies, has been explained in such a way as to imply that its application is

of a limited character having no necessary reference to questions of inheritance. There are difficulties in applying that text in the way suggested by

the Appellant which the judgment of my brother Mookerjee explains. In my opinion, according to the Mitakshara text, both the Appellant and

Respondent succeed to the stridhan of their step-mother as the sapindas of their father her husband and the Appellant does not come in as issue as

he contends. For Hira Lal as the adopted son of Soli Bibee is the step-son of the deceased just as Gangadhar is. The question then arises whether,

if both the Plaintiff and Defendant are entitled to claim as sapindas of their father, in what shares do they take. For the Appellant it is argued that in

that case the Plaintiff as adopted son is only entitled to one-fourth which, according to the decision of this Court, is one-fourth of that which the

Defendant gets or one-fifth to his four-fifths. The natural justice of the case favours equality of division, for Hira Lal on being adopted ceased to

belong to his natural family and should not in the absence of any provision to that effect suffer by reason of the birth of the natural sons to the father

by other wives than she who was associated in such adoption. Though in succession to the estate of a father the adopted son takes a lesser share

than the natural born son, no authority has been cited which directly establishes such a rule in the present case of inheritance to stridhan where

neither Plaintiff nor Defendant are the natural or adopted sons of the lady whose property is claimed and where no natural reason exists for

distinguishing between their respective cases. On the other hand, both are sapindas and as regards this sapinda relationship there is no difference

between an adopted and natural son. The adopted son is his father''s sapinda as the natural son is. Both are then entitled as sapindas of their father

the deceased''s husband. There is no competition between them unless (as is not the case) there is any text which establishes a preferential claim in

favour of the adopted son. As against this there is authority in favour of holding that the adopted son in general occupies the same position as a

natural son. Thus in Joy Kishore Chowdhry v. Panchoo Baboo (1879) 4 C.L.R. 538, 555, it was held that the rights of an adopted son, unless

contracted by express texts, are in every respect similar to those of a natural born son. There is therefore, in my opinion, no ground for disturbing

the decision of Chitty J. on this point. But in the absence of any special rule affecting the kind of succession before us, the Plaintiff and Defendant

or adopted and natural stepsons of the deceased should take in equal shares. I hold, therefore, upon the fifth and sixth issues that the Plaintiff is an

heir of Mohori Bibee and that he is entitled to an equal share in her estate (whatever it may be) with the Defendant.

22. What that estate is and in particular whether the ornaments claimed in the plaint were in fact the stridhan property of the deceased to which the

above finding''s apply, is not here decided, for the facts are not before us nor any finding thereon. Mr. Chakravarti, for the Appellant, has

contended that the deceased had no estate which the Court can administer and that he should have been permitted to lead evidence as to this at

the time so that an administration account might have been avoided. On the other hand, it is contended that the Defendant has admitted that there is

some estate and therefore the question what that estate is will be determined under the preliminary administration decree. I think that this matter

should have been determined at the trial, for if it turned out that there was no property of the deceased the suit would have been dismissed and if

the amount of the estate had been shown to be trivial, the Plaintiff might not have elected to take an administration decree. The Court should,

therefore, first determine whether there is any estate of Sreemutty Mohori Bibee and only in the event of its finding in the affirmative make an

administration decree. As regards issues 3 and 4, the estoppel alleged is not in my opinion established and no question has arisen in this appeal as

to the learned Judge''s finding on the last or seventh issue. This disposes of all the issues raised.

23. In my opinion the appeal fails and should he dismissed with costs.

Mookerjee J.

24. This appeal involves an important question of Hindu Law of first impression, which may be formulated in these terms. A Hindu lady, governed

by the Mitakshara School of Law, dies possessed of stridhan property; the rival claimants to her estate are, respectively, an adopted son of her

husband taken in conjunction with another wife and a son of her husband born of the womb of a third wife; is the latter the preferential heir in

competition with the former, or do they both succeed by right of inheritance; if so, do they take in equal or in unequal shares? This question has

arisen in connection with the estate alleged to have been left by Raul Mohori Bibee, the widow of Raja Shew Bux Bogla of this city. The Raja

successively took four wives. He had no son by his first wife and consequently took a son in adoption in conjunction with her; that son is the

Plaintiff in these proceedings and is the Respondent before us. After the death of his first wife, the Raja took a second wife, by whom he had a

son, the Defendant in these proceedings and Appellant before us. After the death of the second wife, the Raja took a third wife by whom he had a

daughter; we are not concerned with her in these proceedings. After the death of the third wife, the Raja took Mohori Bibee as his fourth wife; the

Raja subsequently died on the 5th October, 1908 and about two years later, the Rani died on the 5th June, 1910. The Appellant claims her whole

estate as her sole heir and contends, in the alternative, that he is entitled to at least a four-fifths share thereof. The Respondent asserts, on the other

hand, that he is entitled to a half share of the estate left by the co-wife of his adoptive mother. Mr. Justice Chitty has upheld this contention. The

Defendant has reiterated in this Court the objections unsuccessfully urged on his behalf before the trial Judge and his claim has been sought to be

sustained by reference to texts of Maim (IX, 183) and Yajnavalkya. (II, 117, 145). Indeed, no reference was made to the Mitakshara by the

counsel for the Appellant till his attention was drawn thereto by the Court. It is, consequently, desirable to emphasise the cardinal rule enunciated

by Sir James Colvile in Collector of Madura v. Moottoo Ramalinga Sathupathy (1868) 12 Moo. I.A. 397, 436 namely, that 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. The

parties to this litigation are admittedly governed by the Benares School of the Mitakshara Law and we must consequently turn in the first place to

the Mitakshara, which, in the words of Sir James Colvile, is universally accepted by all the schools, except that of Bengal, as of the highest

authority and which, in Bengal, is received also as of high authority, yielding only to the Dayabhaga in those points where they differ.

25. Section XI of the second chapter of the Mitakshara, as translated by Colebrooke, treats of the separate property of a woman. The first eight

paragraphs embody an exposition of the nature of stridhan. The author next propounds the distribution of stridhan on the basis of the text of

Yajnavalkya (II, 145), ""her kinsmen take it, if she die without issue."" Paragraph 9 lays down that if a woman die without issue, that is, leaving no

progeny, that is, having no daughter, nor daughter''s daughter, nor daughter''s son, nor son''s son, the woman''s property shall be taken by her

kinsmen, namely, her husband and; and the rest. Paragraphs 10 and 11 distinguish different heirs according to the diversity of the marriage

ceremonies; it is there laid down that in any of the four approved modes of marriage, the property belongs, in the first place, to her husband; on

failure of him, it goes to his nearest kinsmen (sapindas). Vijnaneswara then proceeds, in paragraph 12, to consider the case of the woman who

leaves progeny, i.e., has issue, and in the six following'' paragraphs, defines the order of succession of daughters and their descendants. We next

come to paragraph 19: ""If there be no grandsons in the female line, sons take the property; for it has be in already declared ''the male issue

succeeds in their default'' (Yajnavalkya II, 118). Maim (IX, 192) likewise shows the right of sons as well as of daughters to their mother''s effects:

When the mother is dead, let all the uterine brothers and the uterine sisters equally divide the maternal estate."" Paragraph 20 interprets this to

mean that brothers and sisters do not succeed together, but that one class excludes the other. Paragraph 21 follows with an explicit statement that

the whole blood is mentioned to exclude the half blood. Paragraphs 22 and 23 deal with the exceptional case of the daughter of a rival wife of a

superior class, who takes the property of a childless step-mother of an inferior class. Paragraph 24 treats of grandsons who, on failure of sons,

inherit the wealth of their paternal grandmother. Paragraph 25 then lays down that, on failure of grandsons also, the husband and other relatives

succeed and thus brings us back to the rule formulated in paragraph 9. The question consequently arises, whether the lady, whose estate forms the

subject of controversy, died ""without issue"" within the meaning of paragraph 9, or left progeny ""within the meaning of paragraph 12. The Appellant

maintains the latter alternative and in support of his contention relies upon the text of Mann (IX, 188): ""if among ail the wives of one husband, one

has a son, Manu declares them all to be mothers of male children through that son."" The argument is founded on this text, that if one of the several

wives of a person gives birth to a son, all the wives become the mothers of such son, who thereupon becomes entitled to succeed by inheritance to

the wealth of all the wives of his father, as if he were their son within the meaning of the text of the Mitakshara. In my opinion, this process of

reasoning is based on a manifest misapplication of the text of Manu. Kulluka Bhatta and Raghabananda, two of the commentators of Manu

(Mandalik''s edition, p. 1208), explain the purpose of this text; the former points out that an adoption by the childless wife is excluded in such a

case; the latter observes that this excludes levirate. This is also the view taken by Sarvajnanarayana, another commentator of Manu. In this view, it

is needless to consider whether the term in the text of Manu means (mother of a naturally born son) as the commentator Nandana interprets it. It is

sufficient for our present purpose to note that texts of the same import are found in other Institutes, which indicate that this fiction had a very

restricted application. Thus, Vishnu (XV, 41) ordains that ""amongst wives of one husband also, the son of one is the son of all;"" this is asserted to

show that such son must present funeral oblations to all the wives of his father after their death (S.B.E., Vol. VII, 65). To the same effect is the

ordinance of Vasishtha (XVII, 11): ""if among many wives of one husband, one have a son, they all have offspring through that son; thus says the

Veda."" This has no reference to the right of succession of the son to the wealth of the wives of his father (S.B.E., Vol. XIV, p. 85). The context

where the text mentioned occurs in Manu makes it reasonably plain that it has no reference to the question now under consideration. The text

which immediately precedes declares as follows: ""if among brothers, sprung from one father, one have a son, Manu has declared them all to have

male offspring through that son."" This is quoted in the Mitakshara (Chapter I, Section 11, paragraph 36) and is explained by Vijnaneswara as

intended to forbid the adoption of others, if a brother''s son can possibly be adopted, but not intended to declare him as the son of his uncle. It may

be observed here parenthetically that the Judicial Committee have ruled that not only does not this text invalidate an adoption in such

circumstances, but that all texts which prescribe the preferential adoption of the son of a brother of a whole blood are merely binding upon the

consciences of pious Hindus and do not possess the imperative force of laws, Wooma Daee v. Gokoolanund Dass (1878) ILR 3 Calc. 587. I feel

no doubt that a similarly restricted interpretation should be adopted in the case of the text whereon the Appellant relies and this view is plainly

indicated by the Judicial Committee in Annapurni Nachiar v. Forbes (1899) ILR 23 Mad. 1 : L.R. 26 IndAp 246 where this very text of Manu is

quoted and its scope and purpose explained as follows: ""We must suppose that all take the spiritual benefits of male issue; but the law is clear that

for the purpose of inheritance, the natural mothers and fathers respectively are preferred."" If the contention of the Appellant were to prevail,

whenever a son is born of the womb of one of the wives of a person, all his wives would stand in the position of mothers to the boy and would be

entitled to succeed to him equally by right of inheritance; for it would be obviously illogical to hold that the ladies become his mothers, but he does

not become their son. Yet it was ruled by a Full Bench of this Court in Lata Joti Lal v. Duranikower (1864) B.L.R. (F.B.) 67 : W.R. (F.B.) 173,

that according to the Mitakshara, in a divided family, a step-mother cannot succeed to the estate of her stepson; and this exposition of the law has

been accepted as correct for over half a century.

26. Further, it is plain that the argument of the Appellant involves an Atideca upon an Atideca, that is, a fiction upon a fiction, or a remote analogy

on a remote analogy; the adopted son would by a fiction be a real son of the adopter, and then, by another fiction, a real son, not only of the

adoptive mother, but of all the other wives of the adoptive father; a train of reasoning most repugnant to a Hindu jurist. We may also add that the

contention of the Appellant is not supported by the decisions in Manilal Rewadat v. Bai Rewa (1892) ILR 17 Bom. 758, Mahadu Gami v. Bayaji

Sidu ILR (1893) Bom. 239 and Bai Kesserbai v. Hunsraj Morarji ILR (1906) Bom. 431, where a co-widow was preferred to the husband''s

brother and husband''s brother''s son as heiress to the stridhan of a Hindu widow who had died without issue; nor is assistance derived from

Bachha Jha v. Jugmon Jha ILR (1885) Cal. 348, where, under the Mithila law, the husband''s brother''s son was preferred to the sister''s son. We

have been pressed, however, with the opinion of commentators on the Institutes of Yajnavalkya as also on the Mitakshara, but, in my opinion, they

do not support the contention of the Appellant that in paragraph 19 of Section XI of Chapter II of the Mitakshara the term son includes the son of

a rival wife. I am not now concerned with the question, which may, perhaps, hereafter arise, whether the term son includes a son taken by the

woman in adoption in conjunction with or under an authority conferred by her husband. The only question for determination now is, whether the

expression includes the son of a rival wife. In my opinion, the answer must be in the negative; the terms used by Yajnavalkya and Vijnaneswara,

namely, and make it clear that the text refers to the case where the woman dies ""without issue"" or ""leaves no progeny"" in the ordinary acceptation

of those phrases. This is made clearer by the phrase used in paragraph 12, , that is ""a woman who has given birth to child."" This is farther

emphasised in paragraph 19, where reference is made to the text of Manu (IX, 192) which speaks expressly of uterine brothers and uterine sisters.

It is inconceivable that Vijnaneswara should have used the expressions he did in paragraphs 9, 12 and 19 or referred to the text of Manu (IX,

182), if he had intended to import into the term son a secondary sense of step-son. Why should we impute to Vijnaneswara a manifest violation of

an elementary rule of interpretation, namely, that he uses the same word in two different senses in the course of the same discussion [Dattaka

Mimansa II, 35; Vyavahara Mayukha, Ch. I, Section I, 11-15, Dayabhaga, Ch. III, Section II, pl. 30, which furnish illuftrations of the Arthaikatva

Axiom, to'' a word or sentence occurring at one and the same place, a double meaning should not be attached for let it not be overlooked that

although in the translation by Colebrooke, the text of the Mitakshara is divided into distinct paragraphs, in the original the passage appears as one

continuous and unbroken discussion. Reference has been made to Subodhini (Setlur''s Ed., pp.848-853), the Balambhatti (Setlur''s Ed., p. 853, 1.

9)(both commentaries on the Mitakshara), the Viramitrodaya (Ch. V, Pt. II, Section 14), Apararka (Anandasrama Ed., Vol. II, 754), Vivada

Ratnakara (Ch. X.) and Kamalakara (Baroda Ed., p. 462); Dwarkanath Ray v. Sarat Chandra Singh (1911) 15 C.W.N. 1036. These do not

support the contention that the term ""son"" in paragraph 19 includes the son of a rival wife, though some of them, for instance, the Viramitrodaya

apparently treats the son of a rival wife as a preferential heir to the husband. I am not now concerned with the question, whether the son of a rival

wife can be squeezed in between the son and the husband and thus allowed to break through the compact line of heirs enumerated in the

Mitakshara in paragraphs 20-24, but I may state that I do not at present see any plausible answer to, much less any valid criticism on, the view

expounded by Chandavarkar J. in Bhimacharya v. Ramacharya ILR (1909) Bom. 452. That view is supported by a number of commentators,

amongst others by Apararka (Vol. II, p. 754) and Kamalakara (p. 462). I hold accordingly that neither the Appellant nor the Respondent is

qualified as son, to take by inheritance the estate of their step-mother who died without issue and left no progeny. It follows necessarily that her

estate, upon her death, has devolved upon the sapindas of her husband in accordance with paragraph 25 read with paragraphs 9 and 11 of Ch. II,

Section 11, of the Mitakshara. The Appellant and the Respondent are incontestably sapindas of their father in the same degree and consequently

they have jointly inherited the estate of their step-mother.

27. The question then arises for consideration, whether the Plaintiff and the Defendant are entitled to the estate in equal halves or whether the

Respondent as the adopted son of his father is in a position of relative disadvantage. The Appellant affirms the latter alternative and relies upon the

well-known text of Vasistha: ""if after he has been adopted, a legitimate son be born, then the dattaka shall obtain a fourth share."" This is of no

assistance to the Appellant; for the context shows that the text of Vasistha refers only to the estate of the adoptive father (Vasistha XV, 1-9,

S.B.E. Vol. XIV, p. 76). I am not unmindful that the principle has been extended to other cases (Dattaka. Mimansa X, 1; Dattaka Chandrika II,

11, V. 17), but there is no text directly applicable to the contingency before us. On the other hand, we have the text of Vriddha Gautama cited in

the Dattaka Mimansa (V, 43) which says that an adopted son endowed with excellent qualities and an after-born son are equal sharers. Of similar

significance is the qualification formulated by Vasistha himself (XV, 10), ""provided he be not engaged in rites procuring prosperity"" which Krishna

Pandit interprets as indicating that in this case the estate is to be divided equally between the legitimate son and the adopted son; the interpretation

adopted by the author of the Dattaka Chandrika (V, 17-18) is obviously forced, and if one may say so without impropriety, erroneous. There is

thus plain indication that even in archaic times, the rule was deemed harsh and an endeavour was made to restrict its operation. Consequently, We

should not extend its application to cases, nor only not comprised strictly within its letter, but undoubtedly beyond its true spirit; in this connection

we may bear in mind that Hindu jurists, quite as much as English jurists Ebbs v. Boulnois (1875) L.R. 10 Ch. App. 479, 484, recognise the well-

known canon of interpretation that a special text or statute forming an exception to a general text or statute should be construed strictly and applied

only to the cases falling clearly within it; the Mitakshara itself recognises the principle that where an exception exists to a general rule, the exception

should be confined within the strictest limits so as not to encroach unduly upon the general rule Gangu v. Chandrabhagabai ILR (1907) Bom. 275,

Anandi v. Hari Suba ILR (1909) Bom. 404, 409, Dattaka Chandrika, Section V, 27, Mitakshara on Prayaschitta, Ed. Moghe, p. 292. . That the

rule is not of universal application is clear from the decision in Surjokant Sundi v. Mohesh Chunder Dutt Mozoomdar (1882) ILR 9 Calc. 70,

where an adopted son of one daughter and the legitimate son of another daughter were held to be equal sharers in the estate of their maternal

grandfather. The only case where the rule has been applied, though it is not covered expressly by the text of Vasistha, is Raghubanund Doss v.

Sidhu Churn Doss ILR (1878) Cal. 425, where partition was sought amongst the members of a joint Mitakshara family composed of the adopted

son of one brother and the legitimate sons of the two other brothers. The correctness of this decision, which is in conflict with Tara Mohun

Bhattacharjee v. Kripa Moyee Debia (1868) 9 W.R. 423 and Dinonath Mukerji v. Gopalchurn Mukerji (1881) 8 C.L.R. 57 : 9 C.L.R. 377, was

doubted in Baramanand Mahanti v. Chowdhury Krishna Charan Patnaik (1884) 14 C.L.J. 183, Birabhadra Rath v. Kalpataru Panda (1905) 1

C.L.J. 383 and Raja v. Subha Raija ILR (1883) Mad. 253. It was, however, recently followed by the Bombay High Court in Bahoo Harkisondas

Vs. Nagindas Bhagwandas, . On appeal to the Privy Council, the decision of the Bombay High Court has been reversed and the view adopted by

this Court in Raghubanund Doss v. Sadhu Churn Doss (1878) I.L.J. 4 Cal. 425 definitely overruled by a judgment which has been received in this

country since the present judgment was composed, Nagindas v. Bachoo ILR (1915) Bom. 270 : L.R. 43 IndAp 56. The position then is that there

is neither authority nor principle which can be successfully invoked by the Appellant in support of his contention that the estate of his stepmother

should be unequally divided as between himself (the real son of his father) and the Respondent (the adopted son of his father). We are

consequently thrown back upon the fundamental position, recognised in a long series of decisions, that the adopted son becomes for all purposes

the son of the father by adoption and occupies the same position in the family of the adopter as a natural born son, except in a few instances which

are accurately defined in the Dattaka Chandrika and the Dattaka Mimansa, Sumbhu Chunder Chowdhry v. Naraini Dibesh (1835) 3 Knapp 55,

Padmakumari Debi v. Court of Wards ILR (1881) Cal. 302 : L.R. 8 IndAp 229, Kali Komul Mozumdar v. Umasunker Moitra ILR (1883) Cal.

232, Umasunker Moitro v. Kali Komul Mozumdar ILR (1880) Cal. 256, Joykishore Chowdhry v. Panchoo Baboo (1879) 4 C.L.R. 538, Anandi

v. Hari Suba ILR (1909) Bom. 404, Maharajah Juggernath Sahaie v. Musst. Mukhun Koonwar (1865) 3 W.R. 24, Teencouree Chatterjee v.

Dinonath Banerjee (1865) 3 W.R. 49, Radhaprasad Mullick v. Raneemani Dassee ILR (1906) Cal. 947, Narasammal v. Balaramacharlu (1863)

1 Mad. H.C. 420, Annapurni Nachiar v. Collector of Tinnevelly ILR (1895) Mad. 277. The only point for consideration then is whether there is

any text applicable to the present case which reduces the share of the adopted son. I have not been able to trace any text expressly applicable, nor

can I find any which even by implication supports the contention of the Appellant. I am not unmindful that in Ch. II, Section XI, paragraph 9, of the

Mitakshara, the property goes to the kinsmen of the woman, namely, her husband and the rest and in paragraph 11, on the failure of the husband,

it goes to his sapindas. In my opinion, this does not show that the property descends as if it belonged to the husband; the only effect of the two

paragraphs is to determine the heir to the woman by application of the test of sapindaship with her husband. It follows accordingly that the

Respondent takes the same share in the estate of her step-mother as he would have done if he had been a real and not the adopted son of his

father. I hold Anally that Mr. Justice Chitty correctly decided both the points in the case.

28. As regards the question of estoppal, there is nothing in the arbitration proceedings which debars the Respondent from contesting the claim of

the Appellant and the point which indeed was not seriously pressed does not require elaborate investigation.

29. I agree with the Chief Justice and Mr. Justice Woodroffe in the directions they propose to give with regard to the costs and the further trial of

the suit.