
(1950) 12 CAL CK 0019

Calcutta High Court

Case No: Appeal from Original Decree No. 168 of 1945

Anilabala Debi

APPELLANT

Vs

Somendu Narain Ray

RESPONDENT

Date of Decision: Dec. 12, 1950

Acts Referred:

- Succession Act, 1925 - Section 115

Hon'ble Judges: P.N. Mitra, J; Mookerjee, J

Bench: Division Bench

Advocate: Naresh Chandra Sen Gupta and Chowdhury fazlul Ali, for the Appellant; Hiralal Chakravarti and Lala Hemanta Kumar, for the Respondent

Final Decision: Allowed

Judgement

1. The judgment of the Court was as follows:

2. The Plaintiff-Respondents filed a suit, claiming maintenance land for declaration of their right of residence. This claim has been allowed and the Defendant has appealed to this Court.

3. The parties belong to an ancient family in the district of Murshidabad known as Jemo Kandi Raj family. The Raj family is divided into five groups, but in the present proceedings we are concerned with two amongst these five groups. The following genealogical table indicates the relationship between the parties:

Purnendu and Saradindu represented the two branches. Purnendu had no son and he adopted Ardhendu, the eldest son of Saradindu, who thereafter was known as Rajendu. Rajendu married Anilabala, who is the Appellant in this Court. Rajendu died on December 23, 1927, without any issue. On proceedings being taken for the grant of a probate to a will left by Rajendu, disputes arose between the parties. Such disputes were amicably settled and probate was thereafter granted to the second will left by Rajendu to Anilabala as the sole executrix. Immediately before probate

had been granted Anilabala had taken Dibyendu, a grandson of Saradindu, in adoption. Dibyendu was renamed Madhabendu Narayan. Madhabendu married Rajlakshmi in March, 1934. Madhabendu after attaining majority brought a suit for declaration against Anilabala that he was entitled to get immediate possession of Rajendu's estate, denying that Anilabala had any life estate. Anilabala denied having taken Madhabendu in adoption at all and also questioned the validity of the adoption. This suit was finally disposed of in an appeal brought to this Court. The adoption of Madhabendu was declared as valid and binding and it was held that, under Rajendu's will Anilabala had got a life estate, Madhabendu being entitled to get possession of the estate after her death. Very shortly, thereafter, Madhabendu died of gun-shot wounds, leaving his widow Rajlakshmi and two minor children Somendu and Anandamoyee who are the Plaintiffs in the present suit.

4. Rajlakshmi had filed a suit as a pauper against Anilabala for the grant of maintenance for herself and the minor children on the allegation that Anilabala was not taking any steps for the maintenance of the two young children. Rajlakshmi died suddenly and thereafter the present suit was filed by the minors represented by their maternal grandfather as the guardian. The Plaintiffs pray that they may be allowed maintenance at Rs. 150 per month with effect from March, 1941, out of the estate in the hands of Anilabala as executrix and also from her personal properties, the payment of such maintenance being made a charge on the said properties. The Plaintiffs further claim a right of residence in the ancestral house.

5. The defence was a reiteration of grounds as taken by Anilabala in the earlier proceedings, alleging that the adoption of Madhabendu was invalid and that further the minor children of the adopted son were not entitled in law to get any maintenance out of the estate in the possession of Anilabala.

6. So far as the allegation made about the invalidity of the adoption was concerned, the learned Subordinate Judge rejected the same, as having finally been decided in Madhabendu's suit which was binding on all the parties concerned. The only other question which was urged in the lower court on behalf of the Defendant was whether the Plaintiffs were entitled in law to any maintenance or could claim any right of residence. The learned Subordinate Judge decreed the Plaintiffs' suit and declared that the minor boy was entitled to maintenance grant at the rate of Rs. 100 per month and the minor girl Anandamoyee at Rs. 50 per month, with arrears from February-March, 1942. Such maintenance was declared a charge on the properties left by Rajendu. As regards their claim for residence, it was declared that the Plaintiffs were entitled to enforce the same in the ancestral building.

7. In the appeal now before us, the only point urged on behalf of the Defendant is that the Plaintiffs are not entitled either in law or equity to claim any right of residence or maintenance from Anilabala or the estate in her possession as executrix to the estate of Rajendu. At one stage, Dr. Sen Gupta appearing for the Appellant also questioned the quantum of maintenance as allowed by the learned

Subordinate Judge to be too high, considering the present resources of the estate but towards the end this objection was not pressed. The only question that requires consideration is about the legality of the claim for maintenance and for residence.

8. According to the learned Subordinate Judge, the Plaintiffs (sic) their claim before him on four grounds : "(1) legal, "(2) moral liability ripening into legal liability, (3) contractual, "and (4) equitable." The learned Subordinate Judge has allowed the Plaintiffs' claim as being supported on all the grounds abovementioned and all of them have been assailed before us.

9. By "legal" liability, apparently the learned Judge meant legal liability under the Hindu law. In that view, ground No. (2) is really not an independent ground of liability but is only one form or branch of legal liability under the Hindu law and is more conveniently dealt with under that head.

10. We shall take up these questions in a different order from that adopted by the learned Subordinate Judge and shall deal with the question of contractual liability first. We shall next deal with what has been called equitable liability and last of all we shall take up the question of legal liability under the Hindu law.

11. Contractual liability is founded by the Plaintiffs on Exs. 4 and 5 in the case. When the probate proceedings were pending in the court of the District Judge, Murshidabad, disputes between the parties were settled by the filing of a petition of compromise by Anilabala. and Amarendu on January 6, 1930 (Ex. 4). Paragraph 5 of that petition is in the following terms:

I, Anilabala Debi, remain bound to bring up, educate and give in marriage the minor Sreeman Madhabendu Narayan Ray according to the family custom, prestige and dignity of my deceased husband.

12. Reliance is also placed on the registered deed of adoption executed on January 4, 1930 (Ex. 5), between Anilabala, the adopter and Santi Debi, mother of Dibyendu. The following provision in the deed is relied upon:

From today the said Dibyendu Narayan Ray ceases to be related to you, Sm. Santi Debi, the 2nd party, as son and becomes the son of me, Sreemati Anilabala Debi, the 1st party. You cease to have any claim upon the said Dibyendu Narayan Ray as your son and all rights in respect of the same devolve on me. From today the said Dibyendu Narayan Ray comes to be treated as the son of my husband, late Rajendu Narayan Ray. The said Dibyendu Narayan Ray is from this day renamed as Sreeman Madhabendu Narayan Ray.

13. Though Anilabala had denied that she had spent anything for the maintenance of Madhabendu or that she had anything to do with his marriage with Rajlakshmi, the learned Subordinate Judge found that his marriage had been brought about by Anilabala. We see no reason to differ from that finding.

14. The learned Subordinate Judge holds that as Anilabala was responsible for the marriage of Madhabendu, she is bound to (sic) after the minor Plaintiffs, the fruits of that marriage. The (sic) that had Madhabendu not been taken in adoption and taken (sic) of the family of his natural father he would have inherited (sic) large estate is also referred to. On the basis of an implied contract Anilabala has been held to be liable to maintain the Plaintiffs.

15. It is urged on behalf of the Plaintiffs that, by the declaration as made in para. 6 of the compromise petition, Anilabala has taken upon herself the liability to maintain Madhabendu and (sic) issues. The condition accepted by Anilabala may be interpreter as creating a contractual liability for the maintenance (sic) Madhabendu. The particulars mentioned are such that the ordinary rule of Hindu law that the parents have the duty to maintain the son during his minority only was definitely modified Madhabendu was entitled to be maintained by Anilabala (sic) after the attainment of majority. There is no reference in para. of the petition of compromise to any undertaking given for the maintenance of the issues of Madhabendu. All that is stated (sic) the adoption deed (Ex. 5) is that Dibyendu on adoption become son of Anilabala. From that day the adopted son will be (sic) as the son of her husband Rajendu Narain Ray. This (sic) does not make any special provision in addition to the rights (sic) liabilities which the respective parties might have under the Hindu law. The decision by the learned Subordinate Judge that the Plaintiffs can claim maintenance as under a contract created by Anilabala must therefore be overruled.

16. Arguments had also been advanced in support of the claim for maintenance founded on quitable considerations. Either the Plaintiffs have got the right under the provisions of the law (sic) not. Application of principles of equity creating rights and obligations independent of legal rights and liabilities is foreign to the Indian system. The fact that had Madhabendu not been taken in adoption he would have been entitled to an estate yielding an annual income of Rs. 15.000 does not create any right in the son of that adopted son restricting the proprietary right of the adopter.

17. The legal obligation of the Defendant under the Hindu law may arise in any one of three ways:

(i) That Rajendu himself was under a legal obligation and the Defendant, being the legatee for life of his entire estate, has taken the estate burdened with the same obligation;

(ii) That Rajendu was under a moral obligation to maintain the Plaintiffs and the same has now ripened into a legal obligation upon the Defendant as the person taking his estate under his will;

(iii) That the Defendant herself is under a legal obligation to maintain the Plaintiffs.

18. The learned Subordinate Judge has quoted the following tests and has held practically, without any discussion, that under these the Defendant is under a legal obligation to maintain the Plaintiffs:

1. It is declared by Manu that the aged mother and father, the chaste wife and an infant child must be maintained even by (sic) a hundred misdeeds.--Manu cited in the Mitakshara while dealing with gifts.

2. They who are born and they who are yet unbegotten and they who are actually in the womb, all require means of support : and the dissipation of their hereditary source of maintenance is highly censured.--Manu cited in the Dayabhaga i, 45.

3. The father, the mother, the guru (an elderly relation worthy of respect), a wife, an offspring, poor dependants, a guest and a religious mendicant are declared to be the group of persons who are to be maintained.--Manu cited in Srikrishna's commentary on the Dayabhaga, ii, 23.

4. (A widow inheriting her husband's estate) should honour with food and presents (for their benefit) the husband's paternal uncle, (and the like) venerable elderly relation, daughter's son, sister's son and maternal uncle, as well as aged and helpless persons, guests and females (of the family).--Vrihaspati cited in the Dayabhaga xi, 64.

19. In the case of Khetramani Dasi v. Kashinath Das (1868) 2 B.L.R. 15 which at various stages came to be considered by twelve learned Judges of this Court, it was pointed out that every text was not to be taken as creating legal rights and liabilities and that a distinction appeared to be drawn by the Hindu commentators themselves between texts which are merely moral precepts and texts laying down legal rights and obligations enforceable by the ruling authority. That was a case in which the widow of a predeceased son leading a chaste life but living in her own father's house not because of any neglect or ill-treatment by the deceased husband's people but out of her own choice, claimed a monetary allowance by way of maintenance against her father-in-law and it was held by the overwhelming majority--in fact, by ten out of twelve--that she was not entitled under the Hindu law to make any such claim.

20. Text No. 3 simply enumerates the persons who come within the category of : and is really supplementary to another text of Manu which reads as follows:

21. The support of the group of persons who should be maintained, is the approved means of attaining heaven, but hell is the man's portion if they suffer : therefore he should carefully maintain them.--Manu cited in the Dayabhaga ii, 23.

22. This text as well as text No. 2, quoted above, were considered in that case. The authorship of text No. 2 was attributed to Narada, but that is a point that is not material. Norman J. observed--and for this purpose his observations may be treated as being typical of the view of the majority--If those texts are carefully considered, it

will appear clearly that the duty there prescribed is treated as of divine ordinance; a breach of it as a sin or offence against divine law, not as a crime or offence against human law. The penalties under which such duty is enjoined are the displeasure of heaven, the pains of hell and the reprehension of mankind. Men are urged to the performance of such duty by Manu by the promise of bliss in heaven; and by Narada by an argument addressed to their reason, pointing out the necessity of securing a due provision for the helpless. Hindu commentators and specially those of the Bengal School, have distinguished duties of moral obligation from breaches of municipal law. In the Smritisara, it is said--

The gift of man's whole estate is valid, for it is made by the owner; but the donor commits a moral offence, because he observes not the prohibition.

23. So in the Dayabhaga, Jimutavahana, commenting on the above text of Manu, says--

Since it is denied that a gift or sale should be made, the precept is infringed making one, but the gift or transfer is not null.

24. Very different language is used when the law-giver is dealing with a breach of duties prescribed by municipal law. In Colebrooke's Digest, Book II, Ch. IV, Section 1, Article X, a (sic) from Katyayana is cited--

Neither the husband, nor the son, nor the father, nor the brother, has power to (sic) or alien the legal property of a woman against her consent, he shall be com-(sic) to pay interest to her and shall also pay a fine to the King.

25. In this case, which points to a breach of municipal law, an infraction of the law of property, the legislator treats it as an (sic) against human law, or the law prescribed by the supreme (sic) in the State and indicates a civil remedy. So Manu speaking of cases which are to be decided by the King) amongst the eighteen principal titles of law, speaks of sales without ownership. There is nothing which tends to show that he ever (sic) that the King was to interfere with the government, conduct and management of the affairs of a Hindu family by its head.

26. Text No. 4 deals with the case of a widow who has inherited (sic) husband's estate and may, therefore, be also taken to deal with a widow who has taken his estate as legatee under his will. It is to be noted that it simply lays down a moral (sic). Obedience to it is not even sought to be secured either by the lure of heavenly bliss as a reward for conformity or by the threat of suffering in hell as a punishment for its infringement. Moreover, the enumeration of the persons who are to be honoured with food and presents, even guests being included within the category, points to the conclusion that it is only a moral injunction that is being laid down. It should be remembered that here we are dealing with an obligation which is personal to the widow herself and not with any question of a moral obligation imposed ML her deceased husband.

27. Text No. 1 has been held to have laid down a rule of legal obligation. The persons mentioned are to be maintained even by doing a hundred misdeeds. No penalty by the sovereign authority is prescribed for its infraction, but this text may be taken along with another text of Manu which reads as follows:

28. Neither mother, nor father, nor wife, nor son deserves abandonment; one abandoning these when not degraded (or out-(sic) for commission of any heinous sin) shall be punished by the King six hundred (Panas).--Manu viii, 389.

29. In any case, the Privy Council have given binding legal authority to text No. 1 in the case of Rama Rao v. Rajah of Pittapur (1918) ILR 41 Mad. 778, 785 : L.R. 45 I.A. 148, 154. In that case Lord Dunedin did not expressly refer to this text of Manu quoted in the Mitakshara, but it is obvious that his Lordship was alluding to this text when he observed:

There must also be added another class, equally the subject of special texts. The right of this class to maintenance lies in personal relationship, but is limited to the widow, the parent and the infant child. It does not include the grandson.

30. A considerable amount of argument was addressed to us from the bar as to whether the term includes a grandson, the learned advocate for the Plaintiff-Respondents contending that in the Dayabhaga the grandson is included within it unless excluded by the context and the learned advocate for the Appellant contending that a grandson is not ordinarily included and that wherever Jimutavahana wants to include the grandson within the term he does so by express mention and we were referred to various passages in support of the respective contentions. A further argument was advanced by the learned advocate for the Respondents that the enumeration by Lord Dunedin of the persons legally entitled to maintenance was not exhaustive and that there are other persons who have been held entitled under the law to maintenance. But no text was cited to us which expressly mentions the grandson as a person entitled to maintenance. And if the grandson can only come in as being included within the expression in text no. 1, the passage in Lord Dunedin's judgment which we have underlined is fatal to such a claim. In the face of this observation by the Privy Council, the question whether the Dayabhaga does or does not include a grandson within the expression seems to us to be only an academic one. The pronouncement of the highest judicial authority that a grandson is not included appears to us to be decisive of the matter. So far as this particular text of Manu is concerned, we do not consider that its interpretation would vary according as the Dayabhaga or the Mitakshara is the school of Hindu law prevalent in the territory concerned. We may observe that in Manmahini Dasi v. Balak Chandra Pandit (1871) 8 B.L.R. 22 Bayley and Paul JJ. in affirming the dismissal by the lower appellate court of the minor grandson's suit claiming maintenance against the grand father, remarked:

We are shown no authority against the view taken by the lower appellate court and we therefore dismiss this special appeal with costs.

31. The learned Subordinate Judge notes in his judgment that "in some cases it has been held that the grandson is not entitled "to maintenance from his grandfather," but he distinguishes (sic) present case from them by referring to the circumstance that (sic) in his will had provided that if the adopted son or any in born of his loins died during Anilabala's life-time, the son (sic) the deceased adopted son or natural born son would get the (sic) and interest of his father in absolute right. We are not (sic) that we have been able to follow the line of reasoning (sic) by the learned Judge in this part of his judgment, but (sic) far as we have been able to appreciate it, it seems to be this that as the adopted son during his minority would have a right (sic) maintenance from the estate of his adoptive father, the son (sic) the deceased adopted son would by virtue of this provision in (sic) will be vested with the same rights of maintenance as is deceased father had. We are quite unable to assent to this (sic) of the effect of that provision in the will of Rajendu. (sic) right of maintenance was a personal right which (sic) as not a part of the vested remainder which he got under (sic) will and has not passed under a testamentary disposition (sic) way of a gift over of that remainder.

32. The learned Subordinate Judge also seems to have based the (Plaintiff or rather Somendu's right to maintenance under the (sic) law upon two other grounds, although here again it is difficult to feel sure about what precisely the learned Judge has (sic). The first of these grounds is that Somendu would confer (sic) benefit upon Rajendu and is, therefore, entitled to maintenance. But we do not think that the conferment of (sic) benefit has been accepted by the authorities as the basis (sic) the right to maintenance. This ground has accordingly to be rejected.

33. The other ground is that as the Hindu law has bestowed a right (sic) maintenance on those whom it has excluded from inheritance, (sic) is entitled to maintenance as having been excluded (sic) inheritance by the will of Rajendu. The correct position, (sic) is that the Hindu, law has provided a right to maintenance for those persons whom it has deprived of the right inheritance on account of certain bodily or mental infirmities; (sic) has not provided a right to maintenance for persons who may have been deprived of their inheritance, whether temporarily or (sic) by a valid exercise of the power of testamentary (sic) This ground also must therefore fail.

34. The above discussion disposes of heads (1) and (3) under the (sic) of legal liability under the Hindu law. Our conclusion is (sic) Rajendu was under no legal liability to maintain his (sic) or granddaughter who, we think, can have no higher right than her brother and that Anilabala herself was personally under no such liability to maintain the Plaintiffs, apart from any question of her having come under any such liability as (sic) taken the estate of Rajendu under his will.

35. We may also observe that in the view we have taken that grandchild has no claim to maintenance upon the (sic) it has become unnecessary for us to consider whether, if we (sic) taken the other view, the circumstance that the Plaintiffs were born after Rajendu's death would have made any difference to the legal position so far as Rajendu was concerned.

36. Head No. (2) may now be considered. It is unnecessary (sic) examine in detail the ground upon which one who has taken (sic) estate of a deceased person either by inheritance or under (sic) testamentary disposition has been held to be legally liable (sic) maintain those whom the deceased was under a moral obligation to maintain. It has sometimes been stated to be that the take of the estate should not be permitted to condemn the (sic) to suffering in hell, which would be his portion if those (sic) remain neglected or uncared for and that the law would see the prevention of such condemnation of the deceased by (sic) on the after-taker the duty to maintain those persons as a matter of legal obligation enforceable by legal remedies. But, (sic) the ground upon which it may be put, the obligation itself now firmly established in the Hindu law. There can be no (sic) that if the Plaintiffs had been born during the life-time Rajendu he would have lain under a moral obligation to (sic) them, but the difficulty in the present case arises from the (sic) that the Plaintiffs were born after Rajendu's death. We (sic) it difficult to conceive how a person can be said to be under moral obligation towards a non-existent being and conversely how a person can have any moral claim upon a dead man. may be objected that there may be several grandsons some of who were born during the grandfather's life-time and the rest after his death and that it would be anomalous and unjust if (sic) born during his life-time were held legally entitled to (sic) from his estate after his death and the rest were held not to (sic) so entitled. But such anomalies are not unknown, especially the domain of testamentary law and Section 115 of the (sic) Succession Act may be referred to as affording an illustration in point. In our opinion no question of any moral obligation ripening into a legal obligation can arise in this case.

37. Some argument was addressed to us upon the question whether, assuming that the term includes a grandson, (sic) also includes a granddaughter. We find that has been rendered as "an infant child" even by Sastri Golap Chand Sarkar. We think that no distinction can be made (sic) grandsons and granddaughters and that they would stand (sic) together.

38. The claim for residence must stand on the same footing as (sic) claim for maintenance and as the latter claim has now been (sic) the former must fall with it. Moreover, as the learned (sic) Judge has observed, in the present state of feeling between the parties it would not be in the interest of the minors (sic) them to live in the same house with the Defendant.

39. The result is that this appeal is allowed and the Plaintiffs' it is dismissed but in the circumstances of the case we direct that the parties will bear their own costs in this

Court and in the (sic) court.