

(1877) 08 CAL CK 0002

Calcutta High Court

Case No: None

Jugomohan Haldar

APPELLANT

Vs

Sarodamoyee Dossee

RESPONDENT

Date of Decision: Aug. 27, 1877

Citation: (1878) ILR (Cal) 149

Hon'ble Judges: Kennedy, J

Bench: Single Bench

Judgement

Kennedy, J.

In this case it seems that I have omitted to give judgment on a question as to the right of a mother on partition amongst her sons to obtain a share" as representative of a deceased son, as well as a share in her own right. This question was reserved at the conclusion of the judgment, and I thought I had already delivered judgment upon it; but I had certainly considered the question and come clearly to the conclusion that she is so entitled.

2. The Dayabhaga, Chap. III, Section II, para. 31, says--"The equal participation of the mother with the brother takes effect if no separate property has been given to the woman, but if any has boon given she takes half a share." I do not think that the share which a mother takes as representing her deceased son is separate property which has been given to her. The Sanskrit of this text I find in the Vyavastha, 1st edition, page 420, to be which Baboo Shama Churn translates, I presume correctly, on the husband and the rest not giving stridhan." There is, therefore, no exception for property possessed by the wife save in the case of stridhan, and under the Bengal school of law and the Bengal decisions on the Mitakshara, inherited property is not stridhan, whatever controversy there may be under the other schools or in other treatises; see Chotay Lall v. Chunnoo Lall 14 B.L.R. 235 . Even, therefore, if the words have not the precise force of gifts expanded by the Bengali gloss into gifts by the husband and the rest, I think that this could not be looked upon as coming within the exception.