
(1872) 04 CAL CK 0004

Calcutta High Court

Case No: None

Dwarkanath Bysak and
Other

APPELLANT

Vs

MahenIranath Bysak

RESPONDENT

Date of Decision: April 5, 1872

Final Decision: Allowed

Judgement

Richard Couch K.T., C.J.

(His Lordship, after stating the nature of the appellant's claim, and reading the portions of the judgment of (sic), J., from the words. "The question arises as to the defendants Mahendranath Bysak" to "whether, at the time of (sic) Chandra's death in October 1869, he was incurably (sic) Ante, p.201. and the words "I am not prepared to find as a fact that Mahendranath Bysak was in 1869, absolutely incurably (sic) within the meaning of the Hindu law, so as to be incapable of inheriting," continued)--Now the question is whether the proposition there put forward, and upon which the judgment is founded, that a party must be absolutely incurably (sic) in order to be incapable of inheriting, is in accordance with Hindu law. Most of the texts upon the subject are to be found in the Dayabhaga, Ch. V--the chapter as to exclusion from inheritance. The first is from Menu, which says:--"Impotent persons and (sic) are excluded from a share of the heritage; and (sic) are persons born blind and deaf; as well as madmen, idiots the dumb, and those who have lost a sense (or a limb)." Another text is from Yajnyavalkya, which says--"An (sic) and his issue, an impotent person, one lame, a madman, an idiots, a blind man, a person afflicted with an incurable disease (as well as others similarly disqualified) must be maintained, excluding them however from participation; one who cannot walk is lame." And in the next clause there is a text of Devala:--"When the father is dead (as well as in his life time), an impotent man, a leper, a madman, an idiot, a blind man, an outcast, the offspring of an outcast, and a person wearing the token (of religious mendacity), are not competent to share the heritage." The same text is in other books of authority as the Dayakrama Sangraha, were it is given thus:--"An outcast, his offspring, and impotent person, one lame, insane, or an idiot, a blind man, one inflicted with an incurable disease,

should be supported, since they are excluded from the inheritance" Ch. III., sl. 7.. The words of the Mitakshara in Ch. II, s. 10, sl. 8, on exclusion from inheritance are:--

The author states an exception to what has been said by him respecting the succession of the son, the widow, and other heirs, as well as the remitted parcener, "an impotent person or outcast and his issue, one (sic), a madman, and idiot, a (sic) and person afflicted with an incurable disease as well as other similarly disqualified) must be maintained, excluding them however from participation," being the same text as in the (sic). I may also notice that, in (sic) on Inheritance, s. 151, it is said:--" As succession takes place in consideration of the benefit conferred on the deceased by the funeral offerings, those who cannot, either for a general or special cause, or those who will not perform the ceremonies, are necessarily excluded from becoming heirs;" and he refers to s. 189, where it is said:-- "The being impotent, or born blind and deaf, or having lost a sense or a limb, or being a madman, an idiot, or dumb, because these defects are considered as a punishment for crimes committed in a former state." The texts speak of incurable disease, but madness is a separate head of disqualification to which incurability is not attached. They do not support the proposition that a person must, as Macpherson, J., says, be absolutely incurably insane. That goes beyond what the texts warrant.

The evidence in the case with regard to the state of mind of Mahendranath Bysak was the deposition of Dr. Payne, who said:-- (his Lordship read Dr. Payne's evidence and pro-(sic). It appears to me that this evidence shows a state of madness for a long period of times, and certainly, if not without an absolute possibility of cure, without a probability of it. It is not necessary to show by clear and positive evidence the absolute impossibility of a cure. There is no authority for that either in the texts or decisions. According to Dr. Payne's evidence, this person might well be described as a madman; and in 1869, when the succession fell in, he was certainly a madman, and was not at that time in a condition to offer the funeral oblations, which is given as the reason why such a person should be excluded from inheritance. For that reason we think the decree of the learned Judge cannot stand, and that part of it which relates to the share of Mahendranath Bysak must be set aside. The texts which exclude a madman from inheritance declare that he is entitled to have maintenance; and this was not questioned in the argument before us. It must therefore be referred to one of the Judges of (sic) Court (sic) the parties can agree on it, which they will (sic) (sic) when is a proper (sic) to be allowed for Mahendranath Bysak (sic) from his share of the property. The parties will respectively (sic) their (sic) of this appeal to be taxed as between (sic) and (sic) on (sic).