

(1868) 12 CAL CK 0023

Calcutta High Court

Case No: Regular Appeals Nos. 8 and 15

Sarbamangala Debi

APPELLANT

Vs

Srinath Gangopadhy and
Others

RESPONDENT

Date of Decision: Dec. 22, 1868

Judgement

E. Jackson, J.

Both these appeals are from the decision of the Principal Sudder Ameen of Rungpore in a suit brought by Sarbamangala Debi against Srinath Gangopadhy and others. Sarbamangala Debi sued to recover possession of ten different properties, alleging that these were stridhan, belonging to her mother Durgamani Debi, and that she, as heiress of her mother, was entitled to them in preference to her brothers, the defendants. She alleged that since the death of her mother Durgamani, she had lived in commensality with her brothers as a joint Hindu family, and that in the month of Baisakh 1273 (April 1866) a dispute had arisen between her and her brothers regarding a sum of money which she wanted out of the profits of the estate, and which they refused to give, and on this account a quarrel had arisen; the plaintiff had been dispossessed, and preferred this suit. The defendants allege that the plaintiff had no right or title whatever in any one of these properties.

2. The Principal Sudder Ameen of Rungpore has given a very careful decision in the case; his conclusion is that the plaintiff is entitled to a portion of her claim, but not to the remainder. From his decision these two appeals have been preferred, and they, in fact, open out the whole case. The plaintiff appeals against that portion of her claim which has been rejected; the defendants appeal against that portion of the claim which has been decreed, and they urge against both that limitation bars the claim, and that they are entitled to the property upon the merits.

3. The first property, No. 1, which is at issue, was a certain estate which, it appears to be admitted, was given by Sadasib Roy, the father of Durgamani, by a verbal will, which was carried into effect by his widow after his death, and under which the

estate was made over as stridhan to Durgamani.

4. As regards this property, the Principal Sudder Ameen has dismissed the plaintiff's suit, on the ground that in the deed which made over this property it was distinctly stated that it was given to Durgamani, and after her to her sons and grandsons. We are of opinion that the grounds given by the Principal Sudder Ameen are good; we think that the deed is the best evidence of the intention of the donor. It is a very old document, and one which has been acted upon for a great many years.

5. As regards properties Nos. 2 and 3, these seem to have been made over to Durgamani, the plaintiff's mother, as stridhan, in consequence of the adoption of a son by her mother, Bimala Debi; it was agreed on that occasion that a certain amount of property should be set aside for Durgamani, and a certain income should be secured to her, and these properties were purchased to secure that income. The question as regards these properties turns partly on a question of fact, and partly on a question of law. First, what are the facts as regards the state of the family on the death of Durgamani. The plaintiff states that on the death of her mother she was the sole maiden daughter surviving. The defendants allege that she was not at that time a maiden daughter, but a betrothed daughter; that Durgamani died very shortly after having given birth to another girl, who was the sole maiden daughter who survived her mother, and who appears to have survived her but for a few days.

6. Upon these questions of fact, after hearing the evidence, we are inclined to agree with the Principal Sudder Ameen that Durgamani did die very shortly after having given birth to a daughter, who lived for some days. Upon this point the plaintiff's witnesses and her own statement are contradictory: in one place stating that no child was born at all; in another place some of the witnesses admitting that she was born and lived a few days, but adding that she died before her mother.

7. On the second point, as to whether the plaintiff was betrothed at the time of the death of Durgamani, there is very conflicting evidence, but we are not prepared to differ from the decision passed by the Principal Sudder Ameen, holding that she was then a betrothed girl.

8. The question then arises whether, under the Hindu law, the plaintiff, as a betrothed daughter, was entitled to a share in this property with her brothers. In turning to the Dayabhaga, Chapter IV, Section II, on the succession of a woman's children to her separate property in the third sloka, the law is thus laid down:--"A woman's property goes to her children, and the daughter is a sharer with them, provided she be unaffianced; but if married, she shall not receive the maternal wealth." In the next paragraph the commentator interprets the meaning of the above sentence by saying "here the word "children" intends sons, and they share their mother's goods with unearthed daughters." The Principal Sudder Ameen has decided that the betrothed or unearthed daughter inherits her mother's property with sons. We think that the quotation which we have above made from the

Dayabhaga distinctly shows that under the Hindu law the unearthed daughter alone inherits with sons. Taking therefore the evidence as showing that the plaintiff was a betrothed daughter, we are of opinion that she is not entitled to inherit. In paragraphs 4 and 6 of the same section the law is laid down on this point by other commentators, but it is not equally distinct. The words are "that the brothers are entitled to succeed with unmarried daughters." It may be a question whether "unmarried" is used as distinguished from "unbetrothed."

9. The Sanskrit word, which is used on both these occasions, is the word "kumari", which is the word used generally for an unearthed daughter, and that the word "unmarried" does here mean unearthed is clear from what precedes it, which we have already quoted.

10. The remaining properties all come under the same head as these Nos. 1, 2, and 3. If the plaintiff had obtained a decree for Nos. 1, 2 and 3, she might possibly be entitled to some share in the remaining property; but if the plaintiff fails in these, she is not entitled to any share in the other properties.

11. We are of opinion that, as a betrothed daughter, the plaintiff was not at the time of her mother's death entitled to any share in her mother's "stridhan." An attempt has been made to show that even if the maiden daughter inherited, the plaintiff is entitled to inherit on the death of the maiden daughter, but the Hindu law on this point is undoubted, namely, that when stridhan has once devolved as stridhan upon an heir, it does not continue to devolve as stridhan, but afterwards devolves according to the ordinary rules of Hindu law.

12. Looking, then, to the facts found in this case, the plaintiff being at the time of her mother's death a betrothed daughter, we consider that she is not entitled to any share of the properties which she now claims; and, further, we think it necessary to state that, in our opinion, her claim is wholly barred by the law of limitation, and on this point we differ from the decision passed by the Principal Sudder Ameen.

13. The plaintiff may have lived in commensality with the defendants in the same house; but it is quite evident from the depositions, more especially of her married sister, and also of other witnesses, that she has never been in possession of any share of the property as a member of a joint Hindu family. Holding this view of the case, we decree the appeal No. 8 of 1868, and dismiss the appeal No. 15 of 1868, dismissing the plaintiff's suit with all costs.