

## APPELLATE CIVIL.

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*Before C. C. Ghose and Pantou JJ.*

KARALI CHARAN PAL

v.

ASHUTOSH NANDI.\*

1923

Feb. 21.

*Hindu law—Inheritance, exclusion from—Leprosy, when a disqualification—Disqualification, if it must be at the time the succession opens—Burden of proof of disqualification.*

Leprosy, under the Hindu law, to be a ground of exclusion from inheritance must be of the sanious or ulcerous and not of the anæsthetic type.

*Janardhan Pandurang v. Gopal Pandurang* (1), *Ananta v. Ramabai* (2), *Helan Dasi v. Durga Das Mundal* (3), and *Kayarohana Pathan v. Subbaraya Thevan* (4), followed.

Where it is contended that a person is excluded from inheritance by reason of disease, the strictest proof of the disease as will disqualify him at the time the succession opened will be required.

The burden of proof of disqualification to inherit, in Hindu law, lies on a person who seeks to exclude another who would be an heir should no cause of exclusion be established.

SECOND APPEAL by defendants Nos. 1 and 4.

The appeal arose out of a suit for partition of some lands.

The plaintiff claimed separate possession of four annas' share of the lands on the allegation that they formerly belonged to one Mathur De, who died leaving four sons, one of whom, viz., Jagannath, was the maternal grandfather of the plaintiff. Jagannath

\* Appeal from Appellate Decree, No. 598 of 1920, against the decree of Girish Chunder Sen, District Judge of Bankura, dated Dec. 8, 1919, affirming the decree of Paresnath Ray Chowdhry, Subordinate Judge of that district, dated July 31, 1918.

(1) (1868) 5 Bcm. H. C. R. 145 A. C. (3) (1906) 4 C. L. J. 323.

(2) (1877) I. L. R. 1 Bom. 554. (4) (1913) I. L. R. 38 Mad. 250.

died before his brothers, leaving his widow Bhagabati as his heiress. Bhagabati's only daughter Brinda is dead. The plaintiff is Brinda's son and claims as the reversionary heir. The branch of one of the sons of Mathur, viz., Gopal, is extinct. Defendants Nos. 1 to 4 are the heirs of the other two sons of Mathur.

Defendant No. 1 contended that the plaintiff being a leper did not inherit the properties left by Jagannath, that plaintiff's claim was time-barred, that the suit was bad on its frame and bad for defect of parties, and that all the properties were not joint family properties, but some of them were self-acquired properties of some of the members, and that he was the legal heir of Jagannath. Defendants Nos. 2 and 3 pleaded that the plaintiff had no cause as against them. Defendant No. 4 generally supported the case for the first defendant, but did not turn up at the trial. The other defendants were successors-in-interest of purchasers of some of the properties or mortgagors or tenants in the land. Only some of these defendants contested the suit and some did not appear.

The trial Court found that the lands were joint family properties in which Jagannath had four annas' share, that the said share descended to the plaintiff, that he was not disqualified to inherit on account of his leprosy, that the plaintiff's claim was not time-barred, and that the sale of the lands of schedule No. 7 was binding on the plaintiff. He accordingly decreed the suit in part, declaring plaintiff's title to four annas' share in those lands and for partition of those lands according to certain directions.

The appeal by defendants Nos. 1 and 4 failed. They, thereupon, appealed to the High Court

*Dr. Dwarkanath Mitter* (with him *Babu Manindranath Banerji*), for the appellants contended that

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leprosy of any sort is a disqualification and cited texts. The case-law has materially changed the law as laid down in the texts. He cited cases on the point which all appear in the High Court judgment. The Courts below have not carefully considered what the condition of the plaintiff was at the time the succession opened. It was a very important point and the omission has vitiated the judgment of the lower Appellate Court. Leprosy being a ground of exclusion from inheritance, the leper is to prove circumstances saving him from exclusion. He has done nothing.

*Babu Heramba Chandra Guha*, for the respondent, contended that it is only when leprosy assumes a virulent and aggravated type that it is by Hindu law made a ground for disqualification for inheritance. He cited Mayne's "Hindu Law" and some texts.

*Dr. Dwarkanath Mitter*, in reply.

GHOSE AND PANTON JJ. The facts which have given rise to this appeal have been set out at length in the judgments of the Courts below, and it is, therefore, unnecessary for us to repeat them here. The plaintiff prayed for declaration of title to and separate possession of the lands in schedule 2, for declaration of title to  $\frac{1}{4}$ th share of the lands in schedule 1 and for recovery of that share on partition, and for declaration of title to  $\frac{1}{4}$ th share of the lands in schedules 6 and 7 and for recovery of joint possession of the same and for other reliefs mentioned in the plaint. The defendant No. 1 contended that the plaintiff being a leper did not inherit the properties left by his maternal grandfather, one Jagannath, and that in any event the plaintiff's claim was barred by limitation. The defendants Nos. 2 and 3 pleaded that the plaintiff had no cause of action as against them. The defendant No. 4 supported the defendant No. 1. The Court of first

instance found that the plaintiff was not disqualified to inherit the properties which belonged to Jagannath on account of his leprosy and that the suit was not barred by limitation. The lower Appellate Court, on appeal, found according to the medical evidence which had been adduced in the case that the plaintiff had anaesthetic leprosy of the mildest kind and that it was not of a bad type and was not ulcerous and accordingly held that at the time when the succession opened, he had no leprosy of such a kind as could disqualify him from inheriting the properties which belonged to his maternal grandfather. On the question of limitation, the lower Appellate Court found that inasmuch as Jagannath's widow, Sreemati Bhagabati, was in possession of the joint properties till 1321 B.S. when she died, time began to run as against the plaintiff only from the death of Bhagabati when the succession opened, and therefore the plaintiff's suit was not barred by limitation. The lower Appellate Court accordingly affirmed the decree of the first Court. Against this judgment and decree of the lower Appellate Court the present appeal has been preferred by the defendants Nos. 1 and 4 and on their behalf it has been contended before us that on the findings of the two Courts below it should have been held that the plaintiff was excluded from inheritance, and, secondly, that it had not been shown what the condition of the plaintiff was at the time when the succession opened.

Now, under the Hindu law, the grounds of exclusion from inheritance fall under the following six heads: (i) physical and mental defects, (ii) incurable or agonizing diseases, (iii) degradation from caste by reason of crime or otherwise, (iv) vicious, criminal or irreligious conduct, (v) becoming *naisthika brahmachari* (perpetual student), *vanaprasthasrami* (hermit)

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or *sanyasi* (ascetic). The physical and mental defects expressly mentioned in the text are impotence, dumbness, deafness, lunacy, lameness, blindness and idiocy. Manu has a further vague ground of exclusion *nirindriyatwa*, i.e., absence of limb or sense which includes according to Saraswati Vilasa females as a class. Among the diseases, lunacy has already been referred to. Other diseases expressly mentioned are leprosy (Vishnu) and elephantiasis (Devala). Yajna-  
 valkya has a general ground *achikitsya roga* (incur-  
 able disease) of which consumption is given as an  
 illustration by the Mitakshara and Narada has a  
 similar general ground *deerghateevra roga* obstinate or  
 agonizing disease. There is some difference of opinion  
 as to some of these defects, whether they should be  
 congenital. Sir Thomas Strange distinguishes between  
 infirmities, such as blindness, deafness, dumbness  
 etc., which to disqualify must be coeval with birth,  
 and disqualifying diseases such as leprosy, etc., which  
 the Hindu religion regards as visitations not only for  
 sins committed in a preceding state, but also for sins  
 committed in this life; and therefore such visitations  
 are not necessarily congenital in order to disqualify.

Of the *smriti* writers, the only one who expressly  
 excludes a leper is Devala, whose text runs as  
 follows:—"When the father is dead, an impotent man,  
 a leper, a madman, an idiot, a blind man, an outcaste,  
 the offspring of an outcaste, and a person wearing  
 the token (of religious mendicity) are not competent to  
 share the heritage." Manu excludes one who is a  
*nirindriya* that is devoid of an organ, after expressly  
 mentioning eunuchs and outcastes, one born blind or  
 deaf, an insane, an idiot and a dumb man, but a leper  
 is not referred to by him. See Buhler, Ch. IX, *sloka*  
 201. Apostamba and Vasistha do not exclude him.  
 Narada excludes persons afflicted with a chronic or

acute disease (see Sacred Books of the East, Vol. 33, page 194), or, as otherwise translated, an acute or agonizing distemper. Atrophy or pulmonary consumption is instanced as a chronic and leprosy as an acute disease in the Ratnakara. Yajnavalkya and Vishnu exclude persons suffering from an incurable disease. So far as leprosy is concerned, the later Hindu law books generally lay down that to be a ground of exclusion it must be of the sanious or ulcerous and not of the anæsthetic type: see *Janardhan Pandurang v. Gopal Pandurang* (1), *Ananta v. Rumbai* (2), *Rangayya Chetti v. Thanikachallu Mudali* (3), *Helan Dasi v. Durga Das Mundal* (4), *Bhagaban Ramanuj Das v. Ram Praparna Ramanuj Das* (5), and *Kayarohana Pathan v. Subbaraya Thevan* (6).

The presumption of Hindu law is against disqualification and the burden of proof of disqualification lies on a person who seeks to exclude another who would be an heir, should no cause of exclusion be established. It is also settled that where it is contended that a person is excluded from inheritance by reason of disease, the strictest proof of the disease as will disqualify him at the time the succession opened will be required. On the findings arrived at by the two Courts below and on the authorities referred to, with which we are in agreement, we must hold that the plaintiff was not disqualified from inheriting the properties which belonged to his grandfather after the death of Sreemati Bhagabati Dasi. In this view of the matter, the two contentions advanced on behalf of the appellants fail, and this appeal must be dismissed with costs.

S. M.

*Appeal dismissed.*

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| (1) (1868) 5 Bom. H. C. R. 145  | (4) (1906) 4 C. L. J. 323.         |
| A. C.                           | (5) (1895) I. L. R. 22 Calc. 343 ; |
| (2) (1877) I. L. R. 1 Bom. 554. | L. R. 22 I. A. 94.                 |
| (3) (1895) I. L. R. 19 Mad. 74. | (6) (1913) I. L. R. 38 Mad. 250.   |

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