APPELLATE CIVIL.

Before Greaves and Mukerji JJ.

SAMBHU CHANDRA DEY

v.

KARTICK CHANDRA DEY*

1926

May 18.

—Hindu Law—Inheritance—Maternal great-great-grandfather's daughter's son's son—Dayabhaga—Mitakshara.

The maternal great-great-grandfather's daughter's son's son is not an heir under the Dayabhaga School of Hindu Law.

Sarvadikari's observations distinguished as referring to the daughter's son's son and such other kinsmen of the propositus who belong to the same *kula* and not kinsmen *ex parte materna*.

A daughter's son cannot be taken as including a daughter's son's son.

Buddhu Singh v. *Lallu Singh* (1) distinguished as referring to Mitakshara.

The scheme of Dayabhaga is radically distinct from and to some extent incompatible with the scheme of Mitakshara, and the one cannot be made to supplement the other so far as the law of inheritance is concerned.

Dina Nath Mohunto v. *Chundi Koch*(2) followed.

SECOND APPEAL by Sambhu Chandra Dey, the plaintiff.

The plaintiff brought a suit against his nephew, one Kartic Chandra Dey, for a declaration that plaintiff was entitled to patni rent to the extent of eight annas with respect to the mahal bearing Touzi No. 3952 from defendant. (The High Court judgment contains a genealogical table of this family.) Plaintiff alleged

*Appeal from Appellate Decree, No. 189 of 1924, against the decree of Atul Chandra Banerjee, Additional Subordinate Judge of Howrah, dated Sep. 6, 1923, modifying the decree of Natabehary Ghose, Munsif of that Court, dated March 2, 1922.

(1) (1915) I. L. R. 37 All. 604. (2) (1889) 16 C. L. J. 14.

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that Kritarthamoyee had eight annas interest in the mahal and that plaintiff had inherited the same, that the original owner of the mahal was Rashbehary, whose daughter's son's son plaintiff was; that after Rashbehary's death his sons, Sadananda and Bankubehary, inherited the interest in equal shares; that after Sadananda's death his two sons, Nimai and Badan, inherited his eight annas share in two equal shares of four annas each; that Nimai died without issue and his widow, Pearimonee, inherited his four annas share, and that Badan left only two daughters, Nityamoyee and Kritarthamoyee, each of whom inherited a two annas interest in the property; that on the death of Pearymonee her four annas interest was inherited by Haridas, and on Nityamoyee's death Kritarthamoyee inherited that two annas interest; that Kritarthamoyee and Haridas leased the patni right to Shib Chandra Dey, father of Kartic, the defendant; that on the death of Haridas his widow, Kiran Dasi, inherited his interest, and on the death of Kiran Dasi Kritarthamoyee inherited the same interest; that thus Kritarthamoyee got the eight annas interest in the mahal, and on her death the plaintiff had inherited her interest and so was entitled to rent with respect to the eight annas patni mahal from defendant. The defendant denied plaintiff's right to inherit or to get rent. The trial Court decreed plaintiff's suit in full, but on appeal his claim to the four annas share inherited absolutely by Haridas was dismissed. Thereupon the plaintiff preferred this second appeal to the High Court.

Mr. Jogendra Chandra Ghose (with him *Babu Promode Kumar Ghose* and *Babu Indu Prakash Chatterjee*), for the appellant. The lower Appellate Court has dismissed the plaintiff's suit with regard to

four annas share of Haridas on a total misconception of the law. The facts alleged in the plaint are quite sufficient to base a claim from Haridas. The defendant has not pleaded that there is any nearer heir in existence. He himself is more remote than the plaintiff, being his nephew. If the facts are to be investigated at all, the case should be sent back. The defendant has not preferred any cross-objection in respect of the other four annas share for which the plaintiff has obtained a decree.

Dr. Bijan Kumar Mukherji, for the respondent. I submit that the plaintiff is not an heir of Haridas at all under the Bengal School of Hindu Law, and hence his suit must be dismissed even if no nearer heir is in existence. Plaintiff is Haridas's maternal great-great-grandfather's daughter's son's son. Heirship in Bengal is to be tested by the principle of spiritual benefit [*Gooroo Gobind Shaha* v. *Anund Lall Ghose* (1), and *Digumber Roy Chowdhry* v. *Moti Lal Bundopadhya* (2)]. The plaintiff is admittedly not a *Sapinda*. He is not a *Sakulya*, who are all agnates. (Dayabhaga, chapter XI, section 6, verses 15, and 21). He cannot be a *Samanodaka* even if the extended interpretation put upon the expression by Mr. Rajkumar Sarvadhikary be accepted. (See Sarvadhikary, 2nd edition, page 719.) A daughter's son's son cannot confer any spiritual benefit. [*Nepaldas Mukherji* v. *Probhas Chandra Mukherji*(3).] Mitakshara *Bandhus* cannot inherit under the Bengal School of Hindu Law. [*Dina Nath Mohunto* v. *Chundi Koch* (4).]

Mr. Jogendra Chandra Ghose, in reply. The plaintiff is not a *Sakulya* or *Samanodaka* but a *Bandhu*, and a *Bandhu* can inherit according to the

(1) (1870) 13 W. R., F. B. 49.
(2) (1883) I. L. R. 9 Calc. 563.
(3) (1925) 30 C. W. N. 357.
(4) (1889) 16 C. L. J. 14.

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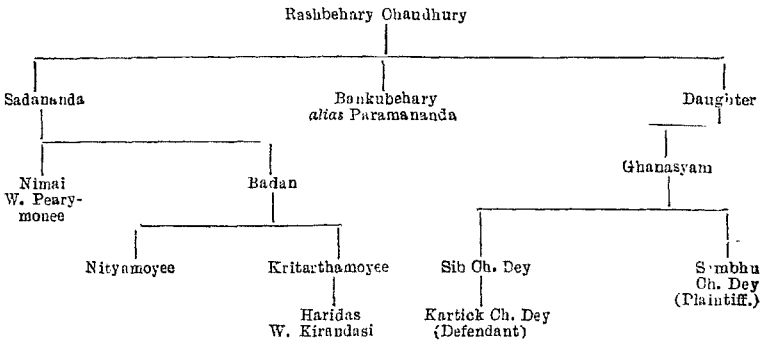
Bengal School. *Vide* Raghunandhan's Dayatatwa 425. The Mitakshara can be referred to in Bengal wherever the Dayabhaga is silent. [*Moniram Kolita* v. *Keri Kolitani* (1) and *Akshay Chandra Bhattacharya* v. *Hari Das Goswami* (2).] A daughter's son's son can confer spiritual benefit. *Vide* Vishnu Purana and the dictum of the Judicial Committee of the Privy Council in *Buddha Singh* v. *Lallu Singh* (3).

MUKERJI J. The pedigree of the parties is set out below:—



The plaintiff sued for a declaration that he is entitled to receive the rent of a patni to the extent of eight annas from the defendant. The facts are not disputed. The patni mahal belonged to Rashbehary Chaudhury, and on his death was inherited by his sons, Sadananda and Bankubehary, in equal shares. Sadananda's eight annas share was inherited by his sons, Nimai and Badan, each having four annas share. Badan's four annas share was inherited, on his death, by his daughters, Nityamoyee and Kritarthamoyee, and on the death of the former her interest passed on to the latter. Nimai's four annas share passed, on his death, to his widow, Pearymonee, and on the latter's death to

(1) (1879) I. L. R. 5 Calc. 776. (2) (1908) I. L. R. 35 Calc. 724.
(3) (1915) I. L. R. 37 All. 604.

Haridas, son of Kritarthamoyee. Kritarthamoyee and Haridas leased the eight annas patni right to the defendant. Haridas died leaving a widow, Kirandasi, who is also dead, and Kritarthamoyee died after her. The plaintiff's case is that on the death of Kritarthamoyee he has inherited the said eight annas interest.

The Munsif decreed the suit. The Subordinate Judge, on appeal, has given the plaintiff a decree for the four annas share which Kritarthamoyee had inherited from Badan, and has disallowed the plaintiff's claim to the four annas share which Haridas had inherited from Nimai. The plaintiff has preferred this appeal which relates to the four annas share so disallowed. There is no cross-appeal on behalf of the defendant, and we are no longer concerned with the other four annas share.

The Subordinate Judge has observed in his judgment that so far as Nimai's four annas share is concerned, Haridas got it absolutely and Haridas was the last male owner through whom the plaintiff should have claimed, but instead of that the plaintiff had rested his claim as heir of Badan and the claim therefore was misconceived. He has observed that the plaintiff had not alleged that there was no person in the paternal family of Haridas who was competent to take as heir or that the plaintiff himself was such a person. On these grounds he dismissed the plaintiff's claim to the said four annas share. There is, however, very little substance in these grounds, for the necessary facts are all alleged in the plaint, while it is not alleged on behalf of the defendant that there was any person in Haridas's paternal family competent to take as his heir. To justify the dismissal of the claim a positive finding as to the existence of such a person would be necessary, provided, of course, that the plaintiff is competent to inherit at all under the Bengal School of Hindu Law.

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Now, what is the plaintiff's position in relation to Haridas? He is Haridas's maternal great-great-grandfather's daughter's son's son. The right of the daughter's son's son to inherit under the Bengal School of Law has been discussed in two recent decisions of this Court. In the case of *Radharaman Chowdhuri* v. *Gopal Chandra Chakravarti* (1) all the more important arguments that may be advanced *pro* and *con* were noticed, but the question was not decided. In the case of *Nepaldas Mukherjee* v. *Probhas Chandra Mukherjee* (2) it has been held that a daughter's son's son is not an heir. In the arguments before us the theory that the principle of spiritual benefit governs the law of inheritance in the Dayabhaga has been attacked, and it has been urged that spiritual benefit is no test or at any rate is not the only test of heirship in that school, and that the cases of *Gooroo Gobind Shaha* v. *Anund Lal Ghose* (3) and *Digumber Roy Chaudhury* v. *Moti Lal Bundopadhya* (4) should be reconsidered; and an attempt has been made to reopen the question on lines similar to those that have been discouraged in the cases of *Dina Nath Mohunto* v. *Chundi Koch* (5), *Kedar Nath* v. *Amritalal* (6), *Kailash Chundra Adhikari* v. *Karuna Chaudhury* (7), *Radharaman Chowdhuri* v. *Gopal Chandra Chakravarty* (8). The arguments that are noticed in the last mentioned case as being in support of the appellant's contention have been repeated before us. Reliance has also been placed on the text of Vishnu Purana cited at page 79 of Mr. J. C. Ghose's Principles of Hindu Law, 2nd edition.

(1) (1919) 31 C. L. J. 81.
(2) (1925) 30 C. W. N. 357.
(3) (1870) 13 W. R. F. B. 49.
(4) (1883) I. L. R. 9 Calc. 563.
(5) (1889) 16 C. L. J. 14.
(6) (1912) 16 C. L. J. 342.
(7) (1913) 18 C. W. N. 477.
(8) (1919) 31 C. L. J. 81.

A further argument has also been advanced which, if I have appreciated it correctly, is that a daughter's son should be taken as including a daughter's son's son in view of the decision of the Judicial Committee in the case of *Buddha Singh* v. *Lallu Singh* (1) in which their Lordships interpreting Mitakshara, chapter II. section 5, verse 4, held that the word *putra*, which, when used in relation to the last owner, signifies and includes sons, grandsons and great-grandsons, thus including three degrees in direct line of descent, is not to be construed in a literal and restricted sense, when used in connection with collateral relations such as brother, uncle or granduncle. The interpretation given by Mr. Raj Kumar Sarvadhikari to the terms *Sakulya* and *Samanodaka* has been pressed upon us, and we have been asked to adopt it and remove what is said to be a reproach on the Bengal School.

Assuming that the appellant has succeeded in establishing the right of a daughter's son's son to inherit, all his difficulties are not over. Even according to the view propounded by Mr. Raj Kumar Sarvadhikari at page 718 though every person is competent to present libation of water to every other "the law of "inheritance has given a limited signification to the "term *Samanodaka*." "It is not every person" says he, "who is competent to present 'the water' that must "be considered an heir," and "among the *Samano-*"*dakas* those alone are entitled to the inheritance who "are also *Sakulyas* or allied by the family with the "deceased. That *Samanodaka* alone is competent to "inherit who belongs to the same *kula* or family of "the deceased." The text of Dayabhaga, chapter XI. section 6, verse 19, makes it perfectly clear that Jimutabahana while not confining the term *Kula* to the

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agnatic family but including within its significance the male descendants of the daughters of the family has excluded the kinsmen *ex parte materna* from the connotation of the word. The plaintiff does not profess to be a member of the agnatic family of Haridas and is not a descendant of a daughter of Haridas's family but of the family of Haridas's maternal grandfather. He is, therefore, competent to inherit only if the Mitakshara succession of *Bandhus ex parte materna* applies and not otherwise.

The appellant's cause has also been advocated from this point of view. Reliance has been placed in this behalf upon the opinion of Jagannatha, and reference has been made to a passage in the judgment of Mitra J. in the case of *Akshay Chandra Bhattacharya* v. *Hari Das Goswami* (1) for the proposition that "in all "cases of absence of any express texts or precedents "under the Dayabhaga law" the Courts should "have "recourse to the theory of propinquity and natural "love and affinity, as adopted by Vijnaneswara and "the commentators of the more ancient and orthodox "Schools of Hindu Law," and a strong appeal has been made to us to rise above provincialism and to declare that the Hindu Law is one and the same all over. For this extreme position, however, there is no authority, and, as pointed out by Banerjee J. in *Dina Nath Mohunto* v. *Chundi Koch* (2), "the scheme of Daya- "bhaga is radically distinct from and to some extent "incompatible with the scheme of Mitakshara and the "one cannot be made to supplement the other so far as "the law of inheritance is concerned, and although the "Dayabhaga may be silent so far as express enumera- "tion goes it is not silent so far as the indication of

(1) (1908) I. L. R. 35 Calc. 721. (2) (1889) 16 C. L. J. 14.

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"the general principle according to which heirship is "determined is concerned".

The plaintiff, in my opinion, is no heir to Haridas and his claim to the four annas share has been rightly dismissed.

The appeal fails and is dismissed with costs.

GREAVES, J. I agree.

G. S. *Appeal dismissed.*

APPELLATE CIVIL.

Before B. B. Ghose and Cammiade JJ.

1926

July 8

BHUBAN MOHAN SINHA

v.

RAM GOBINDA GOSWAMI.*

Limitation—Who is a "person liable to pay the debt"—Effect of payment by purchaser of equity of redemption—Limitation Act (IX of 1908), section 20.

The expression "person liable to pay the debt" in the first paragraph of sub-section (1) of section 20 of the Limitation Act comprehends not only the mortgagor and his personal representatives upon whom the contract is personally binding, but includes the purchaser of the equity of redemption also. Therefore, payment of interest and part payment of principal by the purchaser of the equity of redemption extends the period of limitation under section 20 of the Limitation Act.

Askaram Sowkar v. *Venkataswami Naidu* (1) and *Chinnery* v. *Evans* (2) followed.

* Appeal from Appellate Decree, No. 1015 of 1924, against the decree of Iradat Ulla, District Judge of Bankura, dated Feb. 11, 1924, affirming the decree of Nalini Mohan Banerjee, Subordinate Judge of Bankura, dated April 30, 1923.

(1) (1920) I. L. R. 44 Mad. 544. (2) (1864) 11 H. L. C. 115, 135.