

THE MITACSHARA ON INHERITANCE.

ANALYSIS.

[N.B.—The numbers within brackets are references to paragraphs of the text in the foregoing translation.]

CHAPTER I.

SECTION I.

1. The subject of the Partition of Heritage is introduced (1.) HERITAGE is defined to be property to which the right of a person accrues by reason of his relationship to the owner (2.) It is of two sorts: *unobstructed*, or *liable to obstruction*. Property, of which male descendants become co-heirs by birth is unobstructed heritage; heritage to which right arises on the death of the owner and in default of male issue is called liable to obstruction, the existence of the owner and of his male issue forming the obstruction contemplated (3.) PARTITION is the adjustment of divers rights extending over the whole estate, to specific portions of the same (4.) A text of Narada is cited in support of this view (5.)

2. Many points on the subject of partition of heritage are referred to, only one of which is dealt with now, namely, what is that, of which partition is made? (6.) The same thing is otherwise expressed, namely: Does partition give rise to proprietary right? or does partition take place of that to which proprietary right has already accrued? A further question is incidentally proposed, viz. Is the institution of property a matter based upon Sastras or divine authority alone, or upon profane authority such as human reason, perception and so forth? (7.) The first alternative is set forth as the opinion of the adversary: in support of this opinion are cited a text of Gautama laying down the means of acquisition, and a text of Manu ordaining punishment for Brahmanas acquiring wealth in a certain manner; an argument is also noticed. (8.)

The above view is refuted (9—15). Reasons are assigned for maintaining that property is deduced from profane authority. (9.) A passage of the Mimansa is cited containing an argument establishing this position. (10.) An objection is noticed and oviated. (11.) The object of the texts of Gautama and Manu cited in (8) is explained to be spiritual (12.) The text of Gautama is commented on (13.) The sacred texts relating to inheritance are explained to have been ordained for guarding the unthinking from falling into error. (14.) The argument in para. 8 is refuted (15.) The object of entering into the discussion about the institution of property is explained. (16.)

3. The question now to be dealt with is repeated, namely, Does proprietary right arise from partition ? or is partition made of that in which proprietary right has already arisen ? (17.)

The first position that property arises from partition, as well as arguments in support of the position are stated as the adverse view (18—22) ; the position, however, is slightly varied thus : Property is not acquired by birth but by partition or by the demise of the owner (22). The arguments are refuted and the second of the above positions is concluded to be correct (23—27.)

4. The father's power of disposing of joint property is discussed. His power to deal with moveable property is recognized but he is declared to be subject to the control of sons, in regard to immoveables whether ancestral or self acquired. (27.) An exception to the latter rule during the minority is stated. (28, 29) A text laying down that a single co-sharer whether joint or separated has no power of alienating immoveable property is cited and explained. (30.) Another text ordaining the formalities for the transfer of land is cited in support of the explanation and explained (31, 32.)

SECTION II.

1. The points next considered are, the time when, the person by whom, and the mode in which, partition may be made. (1.) The father may distribute his self acquired property amongst his sons in two modes, namely either by allotting equal shares to all the sons without distinction, or by assigning specific deduction to the eldest and so forth (1-6.)

2. There are four periods of partition, one after the father's demise and three during his life-time : of the latter three, one is by the father's choice as mentioned above, another by the choice

of sons when the father is indifferent to wealth and the mother is past childbearing, the third when the father is addicted to vice or afflicted with a lasting disease. (7.)

3. Father's wives entitled to shares on partition made by him—the amount of share. (8-10.)

4. One that is not desirous of taking any share may be separated by giving him a trifle. (11-12.)

5. No other mode of unequal distribution should be adopted than those mentioned above. (1.)

SECTION III.

1. The sons making a partition after the father's decease, shall divide the assets and debts in equal shares. (1 and 2.) Although an unequal distribution is noticed in the Smritis, still what is abhorred by the world should not be practised. (3-8.)

2. The daughters succeed in preference to sons, to the residue of the mother's estate after payment of her debts. But the sons are to pay off the debts out of her estate. (9-10.)

The daughters take in this order (1) unmarried, (2) married unprovided, (3) married provided. Then the sons. (11-13.)

SECTION IV.

1. Whatever is acquired by a member of a joint family without detriment to joint property, is not liable to partition. (1-2.)

But if a member recovers ancestral immoveable property lost to the family he is entitled to a fourth part of such property and the rest is divisible. (3-4.)

Gains through science are not divisible.

2. Controversy as to the true construction of the text of Yajñavalkya in para. 1. (6-15.)

3. Certain descriptions of joint property are declared to be impartible. These are either things personally used by the members severally, or things that cannot conveniently be divided. (16-27.)

4. The acquirer is entitled to a double share of property acquired by his exertion but with the aid of joint funds.

5. But a member looking after a family concern such as agriculture or trade, is not entitled to any special consideration on that account.

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1. Grandfather's property is to be divided *per stirpes*. (1—3.)
2. Partition of the grandfather's estate may take place at the desire of sons, and against the will of the father; and the father is not entitled to a greater share than that of a son. (3—8.)
3. The right of father and son in grandfather's property is co-equal, a son has the right of prohibiting an alienation by father of such property. But the son's right to father's separate property is but imperfect, the father may deal with it contrary to the wishes of sons. (9—10.)

SECTION VI.

1. A son born after separation of the father from other sons, is entitled to take the father's share and subsequent acquisitions; and the mother's share should there be no daughters. But son by a female of a lower tribe gets only his proper share out of the father's portion. Should there be a son reunited with the father, the after-born son shall share with him. (1—7.)
2. A posthumous son born after partition is entitled to take a share by re-opening partition. (8—11.)
3. If the pregnancy of a female is known, who may give birth to a son entitled to a share, partition should be postponed till delivery.
4. Gifts by the parents to a separated son cannot be claimed by a son born after partition. So also gifts by parents to a son before partition belongs exclusively to him. (13—16.)

SECTION VII.

1. On a partition after the father's decease his wives are entitled to shares. (1—2.)
 2. Initiatory ceremonies for initiated brothers should be performed at the expense of joint funds. (3—4.)
 3. So the marriage of maiden daughters is a charge upon the estate. The maiden daughters are also entitled to a quarter share. (5—13.)
- When partition is made during the father's life-time, she is not entitled to any share, but gets only what the father gives. (14.)

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SECTION VIII.

1. Partition amongst sons by mothers of different castes is to be made thus, son by a Brahmani wife shall take four shares ; son by a Kshatriya, three shares ; son by a Vaisya, two ; and son by Sudra woman, one share. (1-6.)

A Sudra can have a wife of a same class, so his sons participate in the ordinary way. (7.)

2. But land acquired by a Brahmana through acceptance of gift, cannot be taken by his sons of inferior tribes (8.) So a son by a Sudra wife cannot take a share of land of his twice-born father (9.) He participates in case he has got no affectionate gift from his father. (10.)

SECTION IX.

1. Effects concealed by a coparcener at the time of partition, is liable to be divided when discovered. (1-3.)

2. This appropriation of joint property, by a co-sharer is an offence. (4-12.)

SECTION X.

1. Dwyamushyayana or son of two fathers is described and declared to be heir to both fathers. (1-3.)

A Kshatriya son begotten by a person having issue does not become Dwyamushyayana. (4-7.)

2. Appointment to raise issue is relative to a damsel whose intended husband dies after betrothal ; married women should not be authorized to raise issue (8-9.)

3. Appointment to raise issue explained.

SECTION XI.

1. Text of Yajnavalkya describing the real and subsidiary sons, in all twelve in number (1.)

Aurasa is a son begotten on a lawfully wedded wife by her husband, (2.)

Putrika-putra is son of a daughter appointed to raise issue, or the daughter herself so appointed. (3.)

Kshetraja is a son begotten on the wife of a person by another person appointed to raise issue (5.)

Gudhaja is a son secretly begotten on the wife by an unknown person of the same tribe. (6.)

Kanina is a son of a maiden, he is the son of his mother's father. (7.)

Paunarbhava is a son by a twice-married woman. (8.)

Dattaka is a son given by his parents, (9—15.)

Krita is a son sold by his parents. (16.)

Kritrima is an orphan adopted by a person himself adopted as his son. (17.)

Swayandatta is one that offers himself to be accepted as a son, and is so accepted. (18.)

Sahodhaja is a son conceived by a damsel before marriage, he becomes son of the bridegroom. (19.)

Apavidhha is a son deserted by his parents and taken for adoption (20.)

2. The order of succession amongst these different descriptions of sons (21—22) ; and their relative rights. (23—29.)

3. Division of the sons into two sets of six, one set entitled to inherit from the father alone ; and the other from the father's relation (30—35.) A text of Manu explained (36.)

4. The relative rights of the sons refer to those equal by class. (37—39.)

5. A son by a wife of an inferior class holds the position of an *Aurasa* son. (40.)

6. But a son by a *Sudra* wife is entitled to a tenth of the estate, (41—42,) but a son by a *Kshatriya* or a *Vaisya* wife entitled to the whole in default of a son by a wife of the same class.

SECTION XII.

1. A son of a *Sudra* by a female slave gets whatever the father gives on partition during his life. After the father's death he is entitled to half a share should there be a son by a wedded wife, or (a wedded wife) or a daughter by a wedded wife or a daughter's son. In their default he takes the whole. (1—2.)

2. But a son of a twice-born man by a female slave is entitled to simple maintenance, if he be docile. (3.)
