

ORIGINAL CIVIL.

*Before Mr. Justice Wilson.*1879
June 14.PRANKISSEN LAHA *v.* SREEMUTTY NOYANMONEY DASSEE.*Hindu Will—Stridhan—Interest of Hindu Daughter in Mother's Property.*

A, a Hindu widow, died intestate leaving her surviving sons of her husband's elder brothers, a sister, and the husband and children of a deceased sister. At the time of her death *A* was possessed of certain articles of jewellery given to her on her marriage, and of certain other articles of jewellery, and of Government paper standing in her name, which she had purchased herself. She was also possessed of a share of a house and some Government paper, which had been left to her by the will of her mother. The provisions of the will in question being obscure, the parties interested under it had referred their difficulties to arbitration, and by the award the arbitrators allotted to *A* the share of the house of which she had died possessed "to be held by her in severalty as a Hindu daughter in the manner prescribed by the Hindu law as prevalent in Bengal;" and allotted the Government paper to her, "to be taken and enjoyed by her absolutely."

In a suit by the sons of *A*'s husband's elder brothers claiming the whole of her property as her *stridhan*,—*held*, that, as far as the source was concerned, all the gifts under the will might well be *A*'s *stridhan*, and that as the award gave her an absolute interest in the Government notes, they were her *stridhan* and passed to the plaintiffs together with all the jewellery and the Government notes purchased by her; but that, as the award gave her only the interest of a Hindu daughter in the house, and that as what a daughter inherits from her mother does not become her *stridhan*, the plaintiffs had no claim to the share of the house.

THE facts of this case sufficiently appear from the judgment

Messrs. *Jackson* and *Bonnerjee* for the plaintiffs.

Messrs. *Phillips* and *T. A. Apar* for the defendant.

WILSON, J.—The plaintiffs in this suit claim to be entitled to succeed to the property of Soromoney Dassee, deceased.

She died a widow on the 7th of January in this year, leaving her surviving the plaintiffs, who are sons of her husband's elder brothers; one sister, the defendant Noyanmoney; the defendant Kallykissen, who was the husband of a deceased sister; and the remaining defendants, who are sons of the same sister.

The plaintiffs claim the whole of Soromoney's property as

her *stridhan*, and it is not disputed that they are the heirs to whatever constituted her *stridhan*.

There is no doubt as to what the property consisted of. An iron safe belonging to Soromoney was found after her death, and all parties concerned very properly abstained from meddling with it. It was opened in Court. In it were certain ornaments and articles of jewellery.

It was proved that they belonged to Soromoney, and that, in part, they were the ornaments given her on her marriage, re-manufactured, and in part, were purchased by herself. The safe also contained Government notes for Rs. 500 and Rs. 100 respectively in favor of the deceased. These, it was shown, she purchased in her lifetime, presnably out of her savings. As to all this property there can, I think, be no doubt that it was *stridhan* of the deceased.

The rest of the property consisted of a separate portion of a house, No. 52, Babooram Ghose's Lane, and two Government notes for Rs. 600 and Rs. 800 respectively [which notes were also found in the safe referred to]. The mode in which this share of the house and these notes were acquired was as follows:—

Soromoney's mother was one Benomoney. Benomoney was the wife of Roop Chund Sen. Roop Chund, by his will, gave all his property to his wife Benomoney, who survived him. Benomoney died having first made her will, the material parts of which are as follows:—

“I give and bequeath all my movable estate, *stridhan*, as well as what I have obtained from my late husband under his will, after satisfying the said legacies, to my three daughters, Sreemutty Khettermoney Dasse, Sreemutty Noyanmoney Dasse, and Sreemutty Soromoney Dasse, and their male issues, to be equally divided amongst them absolutely; the son or sons of any deceased daughter being entitled to the share of his or their mother upon her death; on the demise of any one or more of my said three daughters without leaving any male issue, the share of such deceased daughter or daughters shall go to the surviving daughter or daughters, or in case there shall be no daughter or daughters living at the time, to all or any of my grandsons by my said daughters, or any of them, to be divided

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amongst them in equal proportion. I give, devise, and bequeath my share of the dwelling-house at Babooram Ghose's Lane in the said Town of Calcutta, and my share of the tenanted house at Chattawallah Gully in Calcutta, aforesaid, to my said three daughters, Sreemutty Khettermoney Dassee, Sreemutty Noyanmoney Dassee, and Sreemutty Soromoney Dassee, in equal shares and proportions, for and during their respective natural lives, and from and after their death, to my grandsons now or hereafter to be born by my said three daughters *per stirpes* and not *per capita*, the sons of my deceased daughter being entitled to take their mother's shares upon her death."

These provisions of the will obviously gave rise to difficulty, and the rights of those interested under them might have been very uncertain.

Accordingly all those concerned took the prudent course of referring their difficulties to arbitration; all the parties to this suit, or those through whom they claim, being also parties to the arbitration. An award was duly made, and the facts of the award, material to the present purpose, are these:—

"That we allot unto Sreemutty Soromoney Dassee, the southern-most portion of the said premises, No. 52, Babooram Ghose's Lane, which is delineated in the accompanying plan colored blue, and marked as lot No. 3, and the said Chattawallah Gully property, valuing the same at Rs. 1,357, to be held by her in severalty as a Hindu daughter in the manner prescribed by the Hindu law as prevalent in Bengal.

"That we allot unto Sreemutty Soromoney Dassee the Government security Nos. 073604 of 04125804, 1st May 1865, for Rs. 600; 093662 of 041258, 1st May 1865, for Rs. 800, valued

at par	...	...	...	...	Rs.	1,400	0	0
Interest due thereon	...	...	...	...	,,	19	2	8
Cash	...	...	...	...	,,	126	5	0
					Total	Rs.	1,545	7 8

to be taken, held, and enjoyed by her absolutely."

To determine whether these properties became Soromoney's *stridhan*, it is necessary to consider, *first*, the source from which they came, and *secondly*, the nature of the interest taken by

her. The source was the will; the interest taken was defined by the award. A gift by will is for this purpose equivalent to a gift *inter vivos*,—see *Judonath Sircar v. Bussunt Coomar Roy Chowdry* (1); and according to all authorities property given by a mother to a daughter is *stridhan*; therefore, so far as the source is concerned, both the house and the Government notes might well be *stridhan*. As to the notes, the interest taken, as defined by the award, was an absolute interest. It follows that they were Soromoney's *stridhan*. As to the house, her interest is quite differently defined. It was "to be held by her in severalty as a Hindu daughter in the manner prescribed by the Hindu law as prevalent in Bengal." Two meanings have been proposed for these words: one is, that they are intended to describe the qualified estate of a daughter, in the ordinary case, where she takes by inheritance from her father. If this be the true meaning, it is clear that the plaintiffs have no claim to the house. The other suggestion is, that the words apply to the estate which Soromoney would have had if she had taken by inheritance from her mother. As to this, the law is not quite so well settled. The only authority that I am aware of upon the law in Bengal on the point, is to the effect that a daughter who takes by inheritance from her mother takes a qualified estate, and that on the daughter's death the heir of the mother succeeds—*Frankishen Sing v. Mussamut Bhagwutee* (2). One thing, at any rate, is well settled, that when a daughter inherits from a mother, what she takes does not become her *stridhan*, and nothing short of the house descending as Soromoney's *stridhan* could give any title to the plaintiffs.

The result is, that, in my opinion, the plaintiffs are entitled to the jewellery and ornaments, to the Government notes for Rs. 500 and Rs. 100 purchased by Soromoney, and to the notes for Rs. 600 and Rs. 800 taken by her under the will and award, but that they have no claim to the share of the house.

Attorney for the plaintiffs: *G. C. Chunder.*

Attornies for the defendant: *Swinhoe, Law, & Co.*

(1) 11 B. L. R., 286.

(2) 1 Sel. Dec., 3.