APPELLATE CIVIL.

Before Mr. Justice Prinsep and Mr. Justice O'Kinealy.

BHOLA NATH ROY (DEFENDANT) *v.* RAKHAL DASS MUKHERJI (PLAINTIFF.)*

1884 *March* 18.

Hindu law, Bengal—Succession to Estate of deceased brother—Half blood and whole blood—Sons of sisters.

Under the Bengal School of Hindu law sons of sisters of the half blood are entitled to succeed equally with sons of sisters of the whole blood to the property of a deceased brother.

THIS was a suit by the plaintiff, claiming, as one of the reversionary heirs of one Obhoy Churn Banerji, deceased, possession of a moiety of certain properties in the possession of the defendant. The relationship of the parties was not disputed. Obhoy Churn died in 1848, leaving a wife who died in 1850, whereupon his mother Debi Sundari succeeded to the property and died in 1874. The plaintiff and the defendant are grandsons of Kalinath (Obhoy Churn's father) by two daughters of two wives. The mother of the defendant was the sister of Obhoy Churn, and the mother of the plaintiff was his step-sister. The defendant contended that under the Hindu law he was entitled to succeed on the death of Debi Sundari to the entirety of the property left by Obhoy Churn, and that the plaintiff was not entitled to inherit.

The plaintiff obtained a decree in the Court of first instance which was confirmed on appeal. The defendant appealed to the High Court.

Baboo *Guru Das Banerji* (with him Baboo *Golap Chunder Shastri*) for the appellant.

(1.) The half sister's son does not confer the same amount of spiritual benefit as the full sister's son, inasmuch as the latter offers oblations to the mother of the deceased which the former does not. (See *Dayabhaga, chap. XI, s. VI, paragraphs* 2 and 3. *Roghunandan—Sradh-Tattwa*).

*Appeal from Appellate Decree No. 1485 of 1882, against the decree of P. Dickens, Esq., Judge of Nuddea, dated 11th May 1882, affirming the decree of Baboo Bhagwan Chunder Chatterji, Munsiff of that District, dated 25th November 1880.

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(2.) Heirs of the full blood are preferred to those of the half blood. (See *Dyabhaga, ib.*)

(3.) *Colebrooke's* Translation of *Srikrishna's* Synopsis of chapter XI of the *Dyabhaga* is not correct. It does not agree with the original text as given in any edition of the *Dgabhaga* current in Bengal. The text, as given in the edition of 1829, published under the authority of the General Committee of Public Instruction, runs thus: "In default of him, the father's daughter's son. He is the uterine sister's son; in default of him, the half sister's son as well." The text, as given in the edition of 1829, published by the late Pundit *Bhurut Chunder Seromoney* and the text, as given in the edition, published by the late Baboo *Prosonno Coomar Tagore* under the superintendence of the same learned Pundit, both support our contention.

(4.) The only original authority that goes against the appellant's contention is the opinion of *Chudamoney*, cited by *Srikrishna* in his *Dyakrama-Sanghraha* with which *Srikrishna* can be said to agree by implication only.

Baboo *Rash Behari Ghose* for the respondent.

The following judgments were delivered:—

PRINSEP, J.—The point in issue in this appeal is, whether sons of sisters of the whole or half blood are entitled to succeed equally to the estate of a deceased brother. The lower Courts have held that they inherit equally.

As an authority for this proposition there is a translation of *Dyakrama-Sanghraha of Srikrishna Tarkalankara* by Mr. *Wynch*, chap. I, s. 10, cl. 1, in which as an authority the opinion of *Acharrya Chudamoney* is given. That this was *Srikrishna's* opinion is confirmed by a reference made to it in a commentary by *Jagannatha Tarkapanchanana* (see book V, chap. 8, s. 1), or in the edition of 1874, published by Higginbotham & Co., vol. 2, p. 566. From this we learn that some fifty years after *Shrikrishna Tarkalankara, Jagannatha Tarkapanchanana*, who was a great authority in all matters connected with Hindu law, and probably may have been a contemporary of *Srikrishna*, distinctly states *Srikrishna's* opinion to the same effect as has been presented in the translation by Mr. *Wynch*. In 1829, Mr. *Macnaghten*, in his well-known book on the principles

Hindu law, evidently having in his mind these authorities, expresses his opinion that according to the most approved authorities, there should be no distinction between the sisters' son of the whole and half blood. *See* page 28 of the edition published by Higginbotham & Co. in 1874.

In 1859 Baboo *Shama Charan Sircar*, who is generally accepted as an authority on Hindu law, in his *Vyavastha Darpana*, 2nd ed., page 265, refers to this opinion as being that of authors respected and followed, but at the same time he gives his own opinion to the contrary, and gives reasons for the same. The reasons for the contrary opinion are that superior spiritual benefits by oblations are conferred by the sons of the sister of the full blood. But, we find, that in the opinion of *Srikirshna* quoted by *Jagannatha*, it is laid down that this is not so—that is, the sons of both sisters, whether they be sisters of the whole or full blood, offer the same oblations, and therefore rank equally in their rights of succession to inheritance. The opinion is thus expressed, "but no distinction is taken in the case of daughter's sons, because the maternal grandmother does not share the funeral cake offered by her daughter's son."

It is, however, pressed on us that the translation of the commentary by Mr. *Colebrooke* is not altogether correct, and more recent editions, the first of which bears date 1829, are laid before us as reproducing the correct version. Now, as I have already stated, all the previous authorities are unanimous to the contrary. In the edition of 1829 there is no reference made to the previous mistake, and looking to the context there seems reason to believe that the word (তদভাবে) introduced there would give a different meaning and is an interpolation.

The only other direct authority on this point is the *Vyavastha*, published by Mr. *Macnaghten* in his book; it is to be found at page 86 of the second volume, in which the Pundit, to whom the point we are now called upon to decide was pointedly referred in 1826, declares that there is no difference between sons of sisters of the whole and half blood.

Under such circumstances, I am unable to come to any other

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conclusion than that arrived at by the lower Courts. The appeal must, therefore, be dismissed with costs.

O'KINEALY, J.—I concur in the decision arrived at by my learned brother. In this case we have to determine what is the law of inheritance which prevails in Bengal, in regard to father's, daughter's sons, and whether there is any distinction between, the son of a sister of the whole blood and the son of a sister of the half blood.

The contention raised on behalf of the appellant is that according to *Srikrishna Tarkalankara* sister's sons of the whole blood took before sister's sons of the half blood. He bases his contention on three grounds : *first*, spiritual benefit ; and *second* that in the edition of 1829 of *Srikrishna's* recapitulation of the line of inheritance, there the word *tadwava* (তদ্ভাবে) between these two classes, which shows that they did not take together but that one was postponed to the other. *Thirdly*, that in two subsequent editions of 1850 and 1860, both of which were edited by the same gentleman, the word *tadwava* (তদ্ভাবে) appears in a subsequent part of the recapitulation which refers to the succession of paternal grandfather's daughter's sons. Consequently there can be no doubt that the word (তদ্ভাবে) in the edition of 1829 must be considered to be correct.

Putting aside for the moment any discussion as to the law which as actually prevailed in Bengal up to the present time, we find that *Colebrooke*, on a comparison of those copies of the recapitulation, declared that sister's sons of the whole blood and of the half blood take together ; that in 1829, the word *tadwava* was interpolated by persons whom we do not know, or on what authority we do not know, and that in 1853 and 1860, the word *tadwava* (তদ্ভাবে) was inserted in another place for reasons equally unknown. It seems to me that even in this state of circumstances, it would be difficult to conclude that *Colebrooke's* translation is incorrect. The difficulty becomes insuperable when we refer to the other authorities. In the *Dyakrama-Sangraha*, chap. I, s. 10, para. 1, *Srikrishna* states as follows : "According to *Acharrya Chudamoney*, the son of the proprietor's own sister, and the son of his half sister, have an equal right of inheritance." So

that if we hold that *Colebrooke's* translation is incorrect, we must start with the proposition that *Srikrishna* has in one book said one thing, and in another something directly contradictory. This, though possible, is very improbable. But I think that all doubt on that point is set at rest by referring to the commentary by the learned lawyer of about the time of *Sir William Jones*. I refer to the commentary of *Jagannatha Tarkapanchanana*. In book V, chapter 8, s 1, it is stated as follows: "In the succession of brother's sons, a distinction between the whole and half blood must be understood, not in the case of daughter's sons. But some lawyers consider it as the opinion of *Jimutavahana* that, in the succession of the sons of the father's daughters and so forth, a distinction is taken between uterine and half-sisters. Herein *Srikrishna Tarkalankara* does not acquiesce, because no law is found *expressly* declaring the participation of a maternal grand-mother in the funeral cake offered to the maternal grandfather." We have, therefore, not only the opinion of *Srikrishna* himself, but of another very eminent lawyer, stating that this is *Srikrishna's* opinion. I think that this must put an end to any doubt that may be entertained as to the correctness of *Colebrooke's* translation. From the time of *Srikrishna* to 1809, *Colebrooke's* time, this was the recognized law. In 1829, *Sir William Macnaghten* said: "There is a difference of opinion among different writers of the Bengal school as to the whole and half blood; some maintaining that an uterine sister's son excludes the son of a sister of the half blood: but according to the most approved authorities there should be no distinction. A sister's daughter is nowhere enumerated in the order of heirs." This opinion he supports by the opinion of a Pundit of the Zillah Court in the Jungle Mehal, dated 1826.

Next in succession is the opinion of *Shama Charan Sircar*, a gentleman well known for his knowledge of Hindu law. At page 265 of the second edition of his book, written about the year 1860, he says, referring to the right of sister's son to inherit: "Although the opinion of the aforesaid authors is *respected and followed*, yet it must be admitted that the distinction made in the commentaries above alluded to is neither unreasonable nor inconsistent, based as it is not only in preference to the whole

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blood, but also on consideration of the sons of the sister, paternal aunt and grandfather's sister of the whole blood, conferring comparatively more benefit than the sons of those of half blood."

Therefore it appears to me that an unbroken series of authority from the time of *Srikrishna* to the year 1860, show that the law prevailing in Bengal makes no distinction between the sons of sisters. Nor does it appear, even discussing the question on the ground of spiritual benefit, that the appellant should succeed. In the reference, which I have already made to *Srikrishna's* opinion, it is stated that, as far as spiritual benefit is concerned, there is no difference, and there can be no difference between that which is derived from the sons offering oblation to a maternal grandfather, because in those oblations the maternal grandmother obtains no part. Whether, therefore, we look at the law prevailing in Bengal, or at the doctrine of spiritual benefit, the result is the same, and the conclusion that we have arrived at is, that no distinction is made between the sister's sons of the whole and half blood. The appeal is dismissed with costs.

Appeal dismissed.

Before Mr. Justice Prinsep and Mr. Justice Macpherson.

TRIPURA SUNDARI AND OTHERS (OBJECTORS) APPELLANTS *v.* DURGA CHURN PAL AND OTHERS (AUCTION-PURCHASERS) RESPONDENTS.*

1884 September 13.

Sale proclamation, Irregularity in service of—Execution sale of groups of property under one decree—Irregularity and damage, their necessary relation—Code of Civil Procedure (Act XIV of 1882), ss. 289 and 311

The words "on the spot where the property is attached" in s. 289 of the Civil Procedure Code refer to each property attached, and not to a group of separate properties attached under one proceeding or order in one execution case, and therefore when distinct properties are proclaimed for sale in one execution the omission to affix a copy of the proclamation in each of such properties amounts to an irregularity in the publication of the sale.

Held, also, that where there is no evidence to connect the two elements of irregularity and injury under s. 311, it must appear, before a Court can set aside an execution sale, that the injury complained of is the reasonable and natural consequence of the irregularity, and attributable to it alone.

* Appeals from Original Orders Nos. 336 and 373 of 1883, against the orders of Baboo Krishna Chunder Chatterji, First Subordinate Judge of Backergunj, dated the 13th of August 1883.