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carried into effect was recognized. For these reasons I am of opinion that the appeal must be dismissed with costs.

SANKARAN NAIR, J.—I agree.

APPELLATE CIVIL.

Before Mr. Justice Wallis and Mr. Justice Sankaran Nair.

1907. December 2, 3, 12.

VEDAMMAL (DEFENDANT), APPELLANT,

v.

VEDANAYAGA MUDALIAR (PLAINTIFF), RESPONDENT.*

Hindu Law—Mother party to murder of her son cannot succeed as heir to such son—Unchastity of mother of no bar to her succeeding as heir to her son—degradation does not involve loss of proprietary rights.

A mother who has been a party to the murder of her son, cannot succeed by inheritance to the property of such son.

Under the Mitakshara Law, female heirs other than the widow are not precluded from inheriting by reason of unchastity.

Kojiyadu v. *Lakshmi*, (I. L. R., 5 Mad., 149), followed

Degradation, without exclusion from caste does not involve loss of proprietary rights; neither has aggravated unchastity that effect.

Per WALLIS, J.—The unchastity of the widow is expressly laid down as a ground of exclusion in numerous texts, but there is no such authority in favour of excluding other females.

Degradation does not affect proprietary right of the degraded person since the passing of Act XXI of 1850.

Per SANKARAN NAIR, J.—The mother's claim to succession rests on consanguinity and not on religious merit, and incapacity to inherit due to inability to perform sacrifices cannot therefore be presumed.

Texts of Hindu Law considered.

SUIT for a perpetual injunction to restrain the defendant from interfering with the plaintiff's possession and enjoyment of the plaint properties.

The last full-owner of the properties was the late Sankaramurthi Mudaliar. The defendant was his mother and the plaintiff was his father's sisters' son.

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* Appeal No, 298 of 1905, presented against the revised decree of M.R.Ry. T. V. Anantan Nayar, Subordinate Judge of Tinnevelly, dated the 21st September 1905, in Original Suit No. 28 of 1904.

The plaintiff brought this suit for a perpetual injunction against the defendant to restrain her from interfering with the deceased's estate on the grounds that she has forfeited her right to succeed to the estate because she had been guilty of an illicit intercourse with one Sheik Abdul Khadir Rowther and had consequently lost her caste, and because she had abetted the murder of her son.

The further facts necessary for this report are stated in the judgment of the High Court.

The Subordinate Judge held that the defendant having been acquitted of the charge of murder by a competent Court, no evidence was receivable to prove her guilt, and he accordingly dismissed the suit.

On appeal the High Court remanded the suit to be disposed of after taking evidence on the issues raised.

The Subordinate Judge found that the defendant was guilty of complicity in the murder of her son and that she was living on terms of criminal intimacy with Sheik Abdul Khadir Rowther. He held that the defendant was debarred from the inheritance on the former but not on the latter ground and passed a decree in favour of the plaintiff.

The defendant appealed to the High Court

Mr. T. Richmond, Mr. E R. Osborne, T. R. Ramachandra Ayyar, T. V. Seshagiri Ayyar and *T. V. Vydyanatha Ayyar* for appellant.

Sir *V. Bhashyam Ayyangar*, the Hon. Mr. *V. Krishnaswami Ayyar* and *A. K. Sundaram Ayyar* for respondent.

JUDGMENT (WALLIS, J.).—It has been decided by this Court that, if the defendant was a party to the murder of her son, she must be excluded from the inheritance and that the plaintiff, as next reversioner, is entitled to succeed It is also clear that the fact that the defendant has been acquitted of the charge of murder is no answer to the present suit. But, in order to entitle the plaintiff to succeed, it is of course necessary that he should establish the complicity of the defendant by clear and satisfactory evidence, and it is not enough to raise a case of suspicion against her. In the present case there can be no doubt that the connection formed by the defendant with the Muhammadan, Sheik Abdul Khader, who has been convicted of the muder of her minor son, was the original cause of trouble; and it may be that the attitude of the minor in regard to his mother's conduct was such as to give

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her as well as the Muhammadan a motive for desiring to get rid of him. But in order to enable the plaintiff to succeed, it is necessary that he should connect her by satisfactory evidence with the murder, and this, I think, he has failed to do. [The learned Judge after discussing the evidence continued.] Under these circumstances, I think, it would be very unsafe to draw inferences against her from her unwillingness to obey the Tahsildar's summons, or the other conduct spoken to by the witnesses for the plaintiff. The judgment of the Subordinate Judge, in my opinion, proceeds too much on grounds of mere suspicion, and accepts, and acts, on the evidence of the approver, plaintiff's witness No. 7, which, in my opinion, is not sufficiently corroborated. I am therefore unable to agree with his finding on the second issue as to the defendant's complicity in the murder.

It is, however, further argued for the respondent that the defendant is debarred from succeeding to her son by reason of her unchastity which, we agree with the lower Court, has been established by the evidence in the case. The Subordinate Judge overruled this contention on the authority of *Kojiyadu* v. *Lākshmi*(1), which is directly in point; but in this Court it has been argued that the learned Judges who decided the case *Kojiyadu* v. *Lakshmi*(1); erred in following *Ajvyapa* v. *Rudrava*(2) as that case merely lays down the law applicable in Western India, and a different rule prevails in Southern India. Although the Mitakshara says nothing expressly about women other than widows being debarred from succession by unchastity, it is contended that it must ber ead with the Smriti Chandrika which is applicable to Southern India, and that, according to this authority, unchastity is a bar. I am unable to accept this contention. It is true that in Chapter XI, section 2, *pl.* 26, p. 190 of Krishnasami's translation, the Smriti incorporates the text of Vrihaspati as to the qualifications of a daughter to succeed, one of which is that she is to be "virtuous and devoted to obedience," but in Chapter V, *pl.* 15, the same authority adopts a text of Vrihaspati excluding sons destitute of virtue from inheritance. It cannot now be argued that a son could be excluded on the ground that he was destitute of virtue, and I fail to see why a different rule should be applied to daughters. The unchastity

(1) I. L. R., Mad., 149. (2) I. L. R., 4 Bom., 10.

of the widow is expressly laid down as a ground of exclusion in numerous texts, but there is no such clear authority in favour of excluding other females, and in the absence of clear authority such exclusion ought not, in my opinion, to be enforced. For these reasons, and for the reasons given by my learned brother whose judgment I have had the advantage of reading, I see no grounds for refusing to follow the decision [*Kojiyadu* v. *Lakshmi*(1)]. It was further argued that illicit intercourse with a person not belonging to an equal or superior caste *ipso facto* produces degradation without any formal exclusion from caste, but, even if this be so, degradation does not affect merely proprietary rights of the degraded person since the passing of Act XXI of 1850 [*Subbaraya Pillai* v. *Ramasami Pillai*(2)], and there is no authority for the contention that aggravated unchastity has that effect. In the result, I think, the appeal must be allowed and the plaintiff's suit dismissed with costs throughout.

SANKARAN NAIR, J.—This is an appeal from the decision of the Subordinate Judge, declaring that the plaintiff is entitled, as the nearest reversioner, to the properties of Sankaramurthi Mudali in preference to his mother, the defendant, who, it is contended, has forfeited her rights on account of her having been a party to the murder of her son Sankaramurthi "and owing also to her unchastity and loss of caste."

It has been already decided by the High Court that the defendant would not be entitled to any beneficial interest in inheritance, if she is proved to have been a party to the murder as alleged by the plaintiff. That question, therefore, is not open to us for consideration. We have only to see whether the facts proved justify the conclusion of the lower Court.

Sankaramurthi Mudali's father died in 1887, leaving a valuable estate to his only son, who was then only two years old. The latter lived with his mother, the defendant, till 1897 when she appointed a Muhammadan, Sheik Abdul Kadir Saheb, as an agent under a general power of attorney. This agent lived with the defendant in her house; Sankaramurthi objected to it, and went to live with his mother's sister's son Sankaralinga Modali at Thiruppudaimaruthur, while the defendant, his mother, continued to live with her Muhammadan agent in his house at Vikremasingapuram.

(1) I. L. R., 5 Mad., 149. (2) I. L. R., 23 Mad., 171.

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Sankaralinga early in 1897 applied to the District Court for the removal of the defendant from the guardianship of her son, the deceased, and the appointment of another guardian (exhibit S). The Court appointed the defendant's brother as guardian (exhibit U). The High Court on appeal by the defendant ordered that the defendant should be joint guardian with her brother (exhibit BB). Subsequently, the brother refused to act as a guardian and the defendant then prayed for the appointment of another joint guardian. The District Judge, finding that there was no proper person to be appointed as guardian, ordered the appointment of a Receiver to the estate. The High Court on appeal held (exhibit NN) that the District Judge had exceeded his powers and called for a finding. Among the witnesses examined by the Judge was the deceased who deposed that he had to leave his house as the Muhammadan agent was living with his mother in that house (exhibit P). This was on the 14th July 1900. On the 18th July the District Judge submitted his finding to the High Court in which he recommended that the defendant might be appointed sole guardian.

On the night of the 25th August, the deceased left the house of Sankaralinga Mudali and disappeared. On the morning of the 27th his body was found lying partly in the water in the river at Athalanallur, just south of the village in which he was living. It was buried by order of the Village Magistrate. But on Sankaralingam's complaint setting out his suspicions against the defendant and her agent, Sheik Abdul Khader, the body was exhumed on the 2nd September in the presence of the Magistrate, the Station House Officer, and the Medical Officer. The *post mortem* showed that the deceased met his death by strangulation. Sheik Abdul Khader, his brother Kuppai Rowther, one Manikam, and the defendant were tried, the first three for murder and the last for abetment thereof. The defendant was acquitted and the others convicted and sentenced to transportation for life.

It is also in evidence that there was a proposal, shortly before his alleged murder, to marry the deceased to a girl of an influential family in the locality. [The Judge discussed the evidence at length and continued.] For these reasons I am unable to hold that the defendant has been proved to have been a party to the murder of her son.

It is then argued that as the defendant has been proved to have been unchaste before the death of her son, she is not entitled to succeed to him under the Hindu Law. This question has been decided by this High Court in favour of the appellant, defendant, in *Kojiyadu* v. *Lakshmi*(1), which has been approved in *Angammal* v. *Venkata Reddy*(2). This Court followed a decision of the Bombay High Court [*Advyapa* v. *Rudrava*(3)]. In Allahabad, though the point did not arise directly for decision the only opinion that has been expressed on the point is in favour of that view [*Musammat Ganga Jati* v. *Ghasita* (4)]. In Calcutta a different view has been taken in *Ramnath Tolapattro* v. *Durga Sundari Devi*(5); *Ramananda* v. *Raikishori Barmani*(6); *Sundari Letani* v. *Pitambari Letani*(7). These cases refer to the daughters claim. But that does not make any material difference. The learned Judges refused to follow the Madras and Bombay decisions as 'they are all under Schools of Hindu Law other than the Bengal School and were decided with reference to authorities different from those that are specially followed in the district with which we have now to deal" [*Ramananda* v. *Raikishori Barmani*(6)]. These decisions therefore form no ground for a review of the decision of this Court. In my opinion we are therefore concluded by authority.

But as the question has been argued at great length before us, I proceed to give my opinion. After giving full weight to the arguments advanced, I see no reason to differ from the conclusion arrived at by the learned Judges of this Court, that unchastity is not a ground for excluding any female heir except a widow from succession. Mr. Mayne is of opinion that the causes entailing civil disability are reduced to those originally stated by Manu with the addition of lunacy and idiocy and any incurable disease which is now limited to the worst form of leprosy—§ 592. Neither Manu nor Yagnavalkya refers to 'unchastity' as a disability. 'Vice' is stated to be a ground of exclusion of heirs by Narada and this is made applicable by Vignaneswara to females also in *pl.* 8, section X, Chapter II of the Mitakshara. But the High Courts in India have refused to treat it as such and it is

(1) I.L.R., 5 Mad., 149. (2) I.L.R., 26 Mad., 509.
(3) I.L.R., 4 Bom., 104. (4) I.L.R., I All., 46.
(5) I.L.R., 4 Calc., 550. (6) I.L.R., 22 Calc., 347 at p. 354.
(7) I.L.R., 32 Calc., 871.

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only relied upon before us to support the probability of unchastity being regarded as a legal disqualification by the Hindu Law-givers.

'Unchastity' is not mentioned as a bar to succession in the Mitakshara, and the full discussion of several grounds of exclusion including some which are not now recognized as such in Chapter X, section II, without any reference to unchastity, and the express reference to it as a preliminary condition to succession in the case of a widow in *pl.* 6 and *pl.* 18, section I, Chapter II, strongly support the view that, in the case of other heirs, like the daughter and the mother, no such disqualification exists.

That unchastity by itself is not a disqualifying cause has been decided also by the Calcutta High Court in *Nagendra Nandini Dassi* v. *Binoy Krishna Deb*(1), in which it was held that a woman is not thereby disqualified from inheriting *stridhan*, as in that case inheritance depends on consanguinity.

The rule of exclusion is deduced from the theory of Hindu Law that the heir takes the inheritance for the performance of the ceremonies essential to the spiritual welfare of the deceased and his incapacity therefore to perform his obligations excludes him from succession. Now what are the grounds on which the mother's right of inheritance is based?

In the digest the following old texts are cited:—

"A mother surpasses a thousand fathers, for she bears and nourishes the child in her womb: therefore is a mother most venerable."

Vyasa—"Ten months a mother bore her infant in her womb suffering extreme anguish; fainting with travail and other pangs she brought forth her child." "Loving her sons more than her life, the tender mother is justly revered: who could recite all her merits, even though he spoke a hundred years?"

Other texts are also cited showing the superiority of one parent to the other.

Coming now to the commentaries, the author of the Mitakshara after declaring the right of the parents to succeed to the property of a deceased son in the absence of nearer heirs, in sloka(1) which run thus:—"On failure of those heirs, the two parents, meaning the mother and the father, are successors to the property"

(1) I.L.R., 30 Calc., 521.

proceeds to discuss the question of preference of the mother over the father. He draws an inference in favour of the mother from the compound term *Matapitarau* which has been reduced to '*Pitarau*' and then proceeds thus:

Chapter II, section 3:—(3) "Besides, the father is a common parent to other sons, but the mother is not so: and since her propinquity is consequently greatest, it is fit that she should take the estate in the first instance conformably with the text "To the nearest *Sapinda* the inheritance next belongs."

(5) "Therefore since the mother is the nearest of the two parents, it is most fit that she should take the estate. But on failure of her, the father is successor to the property."

The author defines *sapindaship* to arise "between two people through their being connected by particles of the one body" without any reference to the capacity to offer religious oblations. Thus the mother's right of succession is not made to depend upon her capacity to perform any ceremonies, or on the ground she may have a son to offer oblations as a condition precedent to succession. There is no reference to her chastity. It is based on the ground of her having borne and nourished the son in the womb. The author of the Mitakshara bases her right to take her place before the father upon her nearer relationship to the deceased. The Smriti Chandrika also has no reference to the capacity of the mother to confer spiritual benefits on the son.

This view of Vigneswara that the mother's claim to inherit is based on consanguinity is in harmony with his doctrine which prefers family relationship to efficacy of religious offerings as pointed out by Mr. Mayne § 512, pp 692 and 510, 511, 512, 513 and § 521 at p. 708, and also in various decisions of this Court.

Jimutavahana, no doubt, introduces the religious element· Dayabhaga, Chapter XI, section IV, sl. 2, contains the following reasons of her succession:

"It is necessary to make a grateful return to her for benefits which she has personally conferred by bearing the child in her womb and nurturing him during his infancy, and also because she confers benefits on him by the birth of other sons who may offer funeral oblations in which he will participate." The additional ground here given would not apply to the widowed mother of an only son, who is nevertheless acknowledged to be an heir, or, as Mr. Mayne observes, "to the mother of an only son or of a son

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whose brothers had died before him without leaving issue." The birth of other sons is clearly not indispensable for a recognition of the right, and religious efficacy is not the main cause even according to the Dayabhaga. In fact, Jimutavahana was only trying to justify by spiritual considerations in accordance with his principle that the test of heirship is religious merit, a right of succession already well established. This will also appear from the principle of succession with reference to daughters laid down in the Dayabhaga.

If we now compare the case of the daughter with that of the mother, it will be found as in the case of the mother that while the Mitakshara, Chapter II, section 2, section 2 bases such right on the simple ground of consanguinity, the Bengal lawyers put it on the ground that she produced sons who could present oblations, and Jimutavahana accordingly, unlike Vignaneswara, lays down that no daughter could inherit unless she had or was capable of having male issue with the result that daughters who are widows or barren or who appeared to have an incapacity for bringing any but daughters into the world were excluded—Dayabhaga, Chapter XI, section 2, § 1. The failure of Jimutavahana to push to its natural and logical conclusion his theory in the case of the mother by similarly excluding widowed mothers and those who only had the capacity for bringing daughters into this world, is remarkable, and shows that in his opinion it is only, as pointed out already, an additional argument advanced in support of the mother's claim. The Smriti Chandrika follows this doctrine of religious efficacy in this respect and similarly excludes barren daughters, and insists upon the daughter being "virtuous and devoted to obedience." This is only a moral precept. Further, this Court has, after a full consideration, rejected the authority of the Smriti Chandrika with reference to the principles on which the daughter's right of succession is based, and has held, subsequent to the decision in *Advyapu* v. *Rudrava*(1) that, consanguinity alone is the cause of her succession [*Sinmani Ammal* v. *Muttammal*(2).] This comparison with the daughter's right of succession shows very strongly that the mother's claim rests on consanguinity and not on religious merit, and incapacity to inherit, due to inability to perform sacrifices cannot therefore be presumed.

(1) I.L.R., 4 Bom., 104. (2) I.L.R., 3 Mad., 265 at p. 269.

This view receives confirmation from the texts relating to the widow's right of succession.

The texts which are relied upon to exclude the unchaste widow are the following :—

Mitakshara, Chapter II, section I, *pl.* 18 and 6.

Dayabhaga, Chapter XI, section 7.

Vridha Manu—"The widow of a childless man, keeping unsullied her husband's bed, and persevering in religious observances, shall present his funeral oblation and obtain his entire share."

Katyayana—"Let the childless widow, keeping unsullied the bed of her lord and abiding with her venerable protector, enjoy with moderation the property until her death."

It will be observed that chastity is made a preliminary condition in the case of the widow while it is not referred to in the texts relating to the mother. Further, it seems to be also clear that they are not intended to apply to the mother succeeding to her son. Accepting the view that prevailed in Bengal that an unchaste mother or daughter is excluded, their Lordships of the Judicial Committee of the Privy Council say "It seems clear that such exclusion is not by virtue of either the abovementioned texts of Vridha Manu or that of Katyayana. These texts have reference to the deceased owner of the estate. The words 'his funeral oblation' and 'his share' and the 'property' have reference to the oblation, the share and the property of the lord, or husband mentioned in the preceding parts of the texts, whose estate is to be inherited, and not to the husband or lord whose estate is not to be inherited, such as the husband or lord of the daughter or the mother, as the case may be, of the deceased owner, who in default of a widow may be next in succession to inherit an estate."

These verses, though not applicable to the succession of the mother in so far as they impose the condition of chastity, it is contended, are extended to the succession of females generally by verses 30 and 31 of Chapter XI, section II, of the Dayabhaga. But the Privy Council have held that they so extend only the rule applicable to a wife that a gift, sale, or mortgage of the estate is not to be made and that after her death the heirs of the deceased owner are to take, and not that part of the rule, which

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is included in the words "keeping unsullied the bed of her lord" (*Moniram Kolita* v. *Keri Kolitani*(1)).

The theory of religious efficacy is thus only extended to other female owners to restrict their powers of alienation and to make their succession only an interposition to pass the estate to the next heir of the last male owner. It is not so extended by these texts as to impose the obligation of chastity as a condition precedent to succession. This is admitted by the Calcutta High Court, but they hold that it is the commentary of Raghunandana, "a high authority in the Bengal School" according to that High Court, read with the other texts that leads to the exclusion of the unchaste mother and daughter.

When the texts and the Dayabhaga according to their Lordships of the Privy Council do not lead to that conclusion, their extension by a recent commentator—for Raghunandana is believed to have lived in Bengal in the sixteenth century—cannot be followed unless he has been accepted as an authority in this Presidency. He wrote for a different state of society under Muhammadan rule or influence, while Southern India was under Hindu rule and I am not aware that his sole authority has been accepted on any questions in this Presidency. I see therefore no reason to differ from *Kojiyadu* v. *Lakshmi*(2).

The only other ground of exclusion alleged in the plaint is loss of caste. That the defendant is expelled from caste is not found by the lower Court, nor is it proved by any evidence in this case.

It was then argued that though adultery with a person of the same or higher caste might not cause degradation, yet in its aggravated form, that is, with a person of a lower caste or with one not a Hindu, it makes the person 'degraded' according to the Hindu Law and is therefore a legal disqualification.

For this proposition no authority has been cited. It was not apparently raised in the lower Court and no evidence adduced to show that the defendant has been treated as one 'degraded' by her caste on account of her unchastity; and evidence of 'degradation,' if true, should have been forthcoming, as her son appears to have left his house in 1897 on account of her criminal intimacy

(1) I. L. R., 6 Calc., 776 at p. 787. (2) I. L. R., 5 Mad., 149.

with Sheik Abdul Khader, which seems from the plaintiff's evidence to have been open and notorious.

Further, when this case came before this Court for decision on the preliminary questions, it was held that the rules regarding loss of proprietary rights as incident to degradation cannot now be treated as otherwise than obsolete. I agree in that view and in the reasoning that led to it.

I would therefore reverse the decree of the lower Court and dismiss the suit with costs throughout.

APPELLATE CIVIL.

Before Mr. Justice Miller and Mr. Justice Munro.

THE CHAIRMAN, MUNICIPAL COUNCIL OF RAJAHMUNDRY (PLAINTIFF), APPELLANT,

v.

SUSURLA VENKATESWARLU *alias* VENKATAKRISHNA BRAHMA SASTRULU AND ANOTHER (DEFENDANTS), RESPONDENTS.*

1907. November 29. December 10.

District Municipalities Act (Madras)—Act IV of 1884, s. 26—Power of Municipality conferred by the section wider than that conferred by Regulation VII of 1817 on Revenue Board—Municipality has under s. 26 of Act powers of actual management and can maintain suit on bonds in the name of the superseded trustee without obtaining an assignment.

The powers conferred on a Municipality in respect of charitable endowments when action is taken under section 26 of the District Municipalities Act are wider than those conferred on the Board of Revenue by Regulation VII of 1817. Under the Regulation, the Board has only powers of superintendence but Municipalities have, under the Act, powers of actual management in addition to the power of superintendence vested by the Regulations in the Board of Revenue. It is competent to a Municipality which has taken action under section 26 in respect of a charitable endowment to maintain a suit on a bond standing in the name of the superseded trustee without obtaining an assignment of such bond.

THIS was a suit brought by the Chairman of the Rajahmundry Municipal Council to recover the amount due under a mortgage bond executed by the mother and guardian of first defendant in

* Second Appeal No 716 of 1905, presented against the decree of J. H. Munro, Esq., District Judge of Kistna at Musalipatam, in Appeal Suit No. 531 of 1901, presented against the decree of M. R. Ry. S. Ramaswami Ayyar District Munsif of Masulipatam, in Original Suit No. 414 of 1899.