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It appears, however, that the defendant No. 4, whose rights and interests were thus sold, was only one of several co-sharers, and we cannot decide in this case, and in the absence of his co-sharers, what that share was. There are, therefore, no sufficient grounds for saying that appellant has even purchased rights in the tenure to the extent of one-half, and it is therefore unnecessary to remand the case for a decision as to the validity of the first defendant's alleged mortgage and decree as against appellant.

We therefore dismiss the appeal with costs.

Appeal dismissed.

Before Mr. Justice Mitter, Offg. Chief Justice, and Mr. Justice Norris.

JULLESSUR KOOER (DEFENDANT) *v.* UGGUR ROY AND OTHERS (PLAINTIFFS.)*

1882 *December* 13.

Hindu Law—Inheritance—Mitakshara—Sister—Male Gotraja Sapindas—Stridhan.

According to the Mitakshara law a sister is not in the line of heirs, and is not entitled to succeed in preference to male gotraja sapindas. Nor does an estate inherited by a female become her stridhan. Such estate on her death goes to the heirs of the last male heir, and not to the heir of her separate property.

Baboo *Mohesh Chunder Chowdhry* and Baboo *Gooru Dass Banerjee* for the appellant.

Baboo *Kali Kissen Sen* and Baboo *Golap Chunder Sircar* for the respondents.

THE facts of this case sufficiently appear from the judgment of the Court (MITTER and NORRIS, JJ.) which was delivered by

MITTER, J.—This suit relates to the estate left by one Sheo Prosad Roy, who died in Assar 1270 (June 1863). It is admitted by the contending parties that on Sheo Prosad's death his estate devolved upon his widow, Sunder Kali Kooer, under the Mitakshara law of inheritance which governs the family. Sunder Kali

* Appeal from Original Decree No. 33 of 1881, against the decree of Baboo Kali Prosono Mukerjee, Subordinate Judge of Sarun, dated the 6th November 1880.

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died in 1271, (1864) and the estate then devolved upon Komla Kooer, the mother of Sheo Prosad Roy. The dispute which led to the institution of this suit arose on the death of Komla Kooer, which took place on the 26th Assin 1286 (11th October 1879). The plaintiffs are the male gotraja sapindas of Sheo Prosad, descended from his great grand-father, and the defendant, who is in possession of the estate in question, is his sister. The plaintiffs' contention is, that under the Mitakshara law the sister is not in the line of heirs at all. If this contention be correct then there cannot be any question that the decree of the lower Court in favor of the plaintiffs is correct.

It has been urged before us that a sister is a sapinda; and that as all sapindas inherit in order of propinquity, the defendant's claim is superior to that of the plaintiffs'. As to the question of propinquity it is unquestionable that the defendant is nearer of kin than the plaintiffs. Therefore the question for decision is whether under the Mitakshara law all sapindas (including females) are entitled to inherit. This question arose in the case of *Ananda Bibee* v. *Nownit Lall* (1).

For the reasons given at some length there, the conclusion to which I came was, that of the female sapindas only those that are specified by name are heirs according to the Inheritance Law as administered in Behar. It is unnecessary to repeat those reasons again here. I shall consider here the arguments which are peculiarly applicable to the case of a sister.

Then let us see how the question stands upon the Mitakshara itself. The heirship of the sister was sought to be established on the authority of that treatise of Hindu Law in two ways: 1*stly*, it was contended upon an annotation of Balambhatta and Nanda Pundit that in para. 1, s. 4, chap. II, the word "brethren" includes brothers and sisters in the same manner in which "parents" have been explained to include father and mother in para. 2, s. 3, chap. II. With reference to this interpretation all the other commentators and writers of *Nibandhus*, who are followers of the Mitakshara, differ from this opinion. For example even Nilkantha, the author of Vyavaharmayakha,

(1) *Ante*, p. 315.

who upholds the sister's heirship upon another ground, controverts this opinion. Moreover, if we are to adopt this interpretation as correct, we must give effect to it to its full logical consequences; we must then hold that the sisters and brothers would succeed simultaneously as joint heirs to the estate of a deceased brother; but such a conclusion as this would be contrary to a well established rule of Hindu law that has obtained in the province of Behar for a long series of years. The observations of the Judicial Committee of the Privy Council made with reference to an argument based upon this contention may well be cited here: "Again," their Lordships observe, "were the arguments in favour of the construction which Mr. Piffard would put upon the Mitakshara far stronger than they really are, their Lordships would nevertheless have an insuperable objection, by a decision founded on a new construction of the words of that treatise, to run counter to that which appears to them to be the current of modern authority. To alter the law of succession as established by a uniform course of decisions, or even by the dicta of received treatises, by some novel interpretation of the vague and often conflicting texts of Hindu commentators would be most dangerous, inasmuch as it would unsettle existing titles"—*Thakoorani Sahiba* v. *Mohun Lall* (1). The same contention was pressed in *Mussamut Guman Kumari* v. *Srikant Neogi* (2), and the Court overruled it in the following words: "That recognition" (*viz.*, the recognition of the sister as heir) "is due to the commentators (*i.e.*, Balambhatta and Nanda Pundit)," and it is clear from the notes that all "other commentators were not of this opinion." This contention must therefore fail.

The other argument in favour of the sister's succession is based upon the following passage of the Mitakshara: "If there be not even brother's sons, gotrajas share the estate," para. 1, s. 5, chap. II. Then in para. 3 it is laid down: "On failure of the paternal grand-mother, saman-gotraja sapindas, *viz.*, the paternal grand-father and the rest inherit the estate." It has been contended that a sister is a gotraja-sapinda, and is therefore entitled to inherit under the text set forth above; but it is clear

(1) 11 Moore's I. A., 386 at p. 403. (2) 2 Sev., 460.

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from these two texts that the author of the Mitakshara intended to designate the same class of persons by the two expressions, *viz.*, "gotraja-sapindas" and "saman gotraja-sapindas" used in paras. 1 and 3 respectively. Therefore the author of the Mitakshara used the word "gotraja-sapindas" not in the sense "of born in the same gotra," but in that of "belonging to the same gotra." A sister after marriage leaves the gotra of her father and consequently of her brother, and acquires that of her husband. Therefore a married sister does not come *within the class designated by the* expression "gotraja-sapindas" as used in the Mitakshara. This view of these passages of the Mitakshara is also taken by West and Bühler in their treatise on the Hindu law of inheritance and partition at page 180. They say: "The substitution of 'saman-gotraja' for 'gotraja' as well as the employment of 'bhinna-gotra' to designate the opposite of the term, both show that Vijnaneśvara took 'gotraja' in the sense of 'belonging to the same family.'" If the term has this meaning it would follow that no married *daughters* of ascendants, descendants or collaterals, can inherit under the text which prescribes the succession of the gotrajas. For the daughters by their marriage pass into another family or, as the Hindu lawyers say in their expressive language, are born again in the family of their husbands. But it seems improbable that even unmarried daughters of gotraja-sapindas can inherit under the text mentioned (*a*). For, though they belong to their father's gotra up to the time of marriage, they *must* leave it, under the Hindu law, before the age of puberty, and consequently by their succeeding to the estate of sapindas belonging to their fathers' families, the object of the law, in placing sagotra-sapindas before the bhinna-gotra-sapindas, *viz.*, the protection of the family property, would be defeated, since such property, through them, would pass into their husbands' families. It seems therefore more in harmony with the principles on which the doctrines of the Mitakshara are based to exclude even unmarried daughters of gotrajas.

For these reasons it seems to me clear that the sister is not in the line of heirs according to the Mitakshara law.

The learned pleader for the appellant further relied upon a passage to be found in the Virmitrodaya at p. 216; but it has

nothing to do with the general question of the right of inheritance of the sister. The passage in question relates only to the subject of succession to reunited property. The author of Virmitrodaya, as already shewn in the case referred to before, is of opinion that of the female sapindas only those that are specified by name are heirs. I am, therefore, of opinion that both these contentions are unsound.

It has been urged in the next place that, supposing the defendant is not entitled to succeed as the heiress of her brother, still there is not the slightest doubt that she is entitled to inherit to the stridhan left by her mother; that according to the Mitakshara law the estate of Sheo Prosad became the stridhan of his mother, because she acquired it by right of inheritance. It has been further urged that according to the Mitakshara law an estate acquired by a female, through the right of inheritance, becomes her stridhan. It is true that there is some foundation for this contention, but the question has been set at rest by the Privy Council decision in *Chotay Lall* v. *Chunnoo Lall* (1). This decision is based upon a uniform current of decided cases, some of which are noted below: *Keerut Singh* v. *Koolahul Singh* (2); *Collector of Masulipatam* v. *Cavaly Venkata Narain Apah* (3); *Mussamut Thakoor Deyhee* v. *Rai Baluk Ram* (4); *Bhugwandeen Doobey* v. *Myna Baee* (5); *Mussamut Bijya Dibeh* v. *Mussamut Unnopoorna Dibeh* (6); *Rughobur Suhaee* v. *Tulashee Kowur* (7); *Punchanund Ojhah* v. *Lalshan Misser* (8); *Narsappa Lingappa* v. *Sakharam Krishna* (9); *P. Bachiraju* v. *Venkatappadu* (10); *Sengalamathammal* v. *Valaynda Mudali* (11); and *Kattama Nachiar* v. *Dora Singa Tevar* (12).

According to these cases an estate inherited by a female does not become her stridhan, and on her death goes to the heir of the last male heir and not to the heirs of her separate property. This appeal therefore fails on all points. We accordingly dismiss it with costs.

Appeal dismissed.

(1) I. L. R., 4 Calc., 744: 3 C. L. R., 465.
(2) 2 Moore's I A, 331.
(3) 8 Moore's I. A., 529.
(4) 11 Moore's I. A., 139.
(5) Id, 487.
(6) 1 Sel. Rep., 162.
(7) S. D. A., 1847, p. 87.
(8) 3 W. R., 140.
(9) 6 Bom. H. C., A.C., 215.
(10) 2 Mad. H. C., 402.
(11) 3 Mad. H. C., 312.
(12) 6 Mad. H. C., 310.

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March 14.

Before Mr. Justice McDonell and Mr. Justice Tottenham.

TOREE MAHOMED (JUDGMENT-DEBTOR) *v.* MAHOMED MABOOD BUX AND OTHERS (DECREE-HOLDERS.)*

Limitation Act (XV of 1877), s. 19, and Sch. II, Art. 179—Execution of Decree, Application for—Acknowledgment in writing.

The mere payment of a Court-fee in connection with execution proceedings, with a view to obtain leave to bid for property then up for sale in execution of a decree, does not constitute "the taking of some step in aid of execution" within the meaning of Art. 179, Sch. II of the Limitation Act (Act XV of 1877), so as to prevent the execution of the decree being barred within three years from the date of such payment.

An application for the execution of a decree is an application in respect of a "right" within the meaning of s. 19, Act XV of 1877, and a petition made by a judgment-debtor, and signed by his vakeel, praying for additional time for payment of the amount of a decree, constitutes an "acknowledgment of liability" within the meaning of that section, and a new period of limitation should be computed from the date of such petition in order to ascertain whether the execution of the decree is barred or not under the provisions of Art. 179, Sch. II of the Limitation Act.

Ramhit Rai v. *Satgur Rai* (1); and *Ram Coomar Kur* v. *Jakur Ali* (2) followed.

THE sole question in this case was, whether the execution of a decree, dated the 26th August 1878, was barred by limitation or not. The application for execution, out of which this appeal arose, was dated the 26th January 1882, and the judgment-debtor contended that it was barred by limitation, as having been made more than three years after any previous application to the Court to take some step in aid of execution of the decree within the meaning of Art. 179, Sch. II of the Limitation Act (Act XV of 1877).

The facts, as admitted by both sides, were as follows:—

The first application for execution was filed on the 7th November 1878, and on the 22nd February 1879 the decree-holders paid a fee of Rs. 2 into Court, in connection with those execution proceedings, with a view to obtain leave to bid for some property then up for sale.

* Appeal from Original Order No. 321 of 1882 against the order of Colonel B. W. D. Morton, B.S.C., Subordinate Judge of Julpigoree, dated 29th August 1882.

(1) I. L. R., 3 All., 247. (2) I. L. R., 8 Calc., 716.

In the lower Court the decree-holders relied on that proceeding as sufficient to withdraw the case from the operation of Art. 179 of the Limitation Act, and the Court adopted that view and disallowed the judgment-debtor's objection.

The latter accordingly appealed, and at the hearing of the appeal the decree-holders contended, in addition, that, inasmuch as a petition was filed by the judgment-debtor on the 21st February 1879, and signed by his vakeel, praying for additional time to be granted him in which to pay the amount of the decree, under s. 19 of the Limitation Act, a fresh period commenced to run from that date, and consequently that they were entitled to the order for execution asked for.

Moonshi *Serajul Islam* appeared on behalf of the appellant.

Baboo *Gooroo Dass Banerjea* for the respondents.

The judgment of the Court (MODONELL and TOTTENHAM, JJ.) was delivered by

TOTTENHAM, J.—The question for decision in this appeal is, whether an application made on the 26th of January 1882 for the execution of a decree, dated the 26th of August 1878, is barred by limitation. The judgment-debtor, appellant, contends that it is barred, as having been made more than three years after any previous application to the Court to take some step in aid of execution of the decree within the meaning of Art. 179 of the Schedule to the Limitation Act.

It appears that execution proceedings were going on in February 1879, and the decree-holders on the 22nd of that month paid a Court-fee of Rs. 2 into Court, in connection with those proceedings. The lower Court has held that this act of the decree-holders was practically such an application as comes within the meaning of Art. 179, and that thus the decree is saved from limitation.

We think that this opinion is not sustainable, for it seems to us clear that the decree-holders did not on that occasion ask the Court to take any step in aid of the execution. It is said that their object was to obtain leave to bid for some property then up

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for sale, but such an application would not, in our opinion, give a fresh starting point. We are aware that very liberal constructions in favor of decree-holders have been put upon Art. 179 by other High Courts in India, but we cannot in this case adopt the interpretation of the Subordinate Judge.

Yet we think that we may upon other grounds support his decision that the decree is not barred. Last of all the several points laid before us by the respondent's vakeel was one which is supported by the authority both of law and precedent. Section 19 of the Limitation Act provides for a new period of li mitation from the date of signing any written acknowledgment in respect of a right claimed against the party signing.

A Division Bench of this Court has held, in the case of *Ram Coomar Kur* v. *Jakur Ali* (1), that a petition made by a judgment-debtor, and signed by his vakeel, praying for additional time for payment of the amount of a decree, does constitute such an acknowledgment as is mentioned in s. 19; and that an application for execution of a decree is an application in respect of "a right" within the meaning of that section.

There is a decision of the Full Bench of the High Court of Allahabad to the same effect: see *Ramkit Rai* v. *Satgur Rai* (2). In the present case we find that there was a petition of this kind filed by the judgment-debtor on the 21st February 1879, and signed by his vakeel. Following the precedents above cited, we hold that the present application, made within three years of that one, is in time.

We accordingly dismiss the appeal, but under the circumstances we make no order as to costs.

Appeal dismissed.

(1) I. L. R., 8 Calc., 716.
(2) I. L. R., 3 All., 247.