1884

JOYTARA v. RAMHARI SIRDAR.

The plaintiff, Joytara, appealed to the High Court.

Moulvi *Serajul Islam* for the appellant contended that the lower Court was wrong in holding that the effect of the Will was to exclude the widow from maintenance; and that the maintenance allowed to the daughter was too small.

Baboo *Grish Chunder Chowdhry* for the respondent.

Judgment of the High Court was delivered by

FIELD, J.—We think this appeal must succeed with respect to the claim for the widow's maintenance. The Subordinate Judge argues that, because there is no express provision for maintenance in the Will, the widow is not entitled thereto; and he considers further that, as she was allowed to retain certain clothes and ornaments, it was unnecessary to give her any maintenance in addition We think that a gift of *stridhan* is not equivalent to a provision for maintenance; and the right to maintenance being one which the widow has under the Hindu law, that right cannot be taken away unless by express language to this effect. We therefore set aside the decree of the Subordinate Judge and restore that of the Munsiff, making an allowance of Rs. 3 a month to the widow as maintenance.

As to the daughter's allowance, we see no reason to interfere. The appeal will be decreed with costs to the appellant in proportion to the amount as to which she succeeds.

Appeal allowed.

Before Mr. Justice McDonell and Mr. Justice Field.

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April 24.

WOOMA PERSHAD ROY AND OTHERS (DEFENDANTS) *v.* GRISH CHUNDER PROCHUNDO (PLAINTIFF).*

Hindu Law—Inheritance—Insanity.

In order to exclude a person from inheritance under the Hindu law, on the ground of insanity, it is sufficient to prove insanity at the time when succession to the property opens out.

THIS was a suit to obtain possession of 1 anna 15 gundas share in taluq Kismut Durgapur by right of inheritance, and to

* Appeal from Appellate Decree No. 2119 of 1882, against the decree of Baboo Gonesh Chunder Chowdhry, Subordinate Judge of Rajshahye, dated 24th July 1882, affirming the decree of Baboo Probode Chunder Dut, Munsiff of Natore, dated the 31st of August 1881.

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WOOMA PERSHAD ROY v. GRISH CHUNDER PROCHUNDO.

set aside a putni pottah. One Rama Nath Sidhanto was the original owner of the share. After his death, his two daughters, Gourmoni and Kalimoyee, came into possession of the property in the ordinary course of succession. Kalimoyee died leaving a son, Sossi Saran. Subsequently, on the death of Gourmoni, who left no issue, the plaintiff, as the grandson of the original owner's brother, claimed the property from the heirs of an alleged putnidar of Gourmoni, alleging, among other things, that Kalimoyee's son, Sossi Saran, being insane at the time of Gourmoni's death, was incapable of inheriting. The defendants alleged that Gourmoni had granted to their father a putni of these lands, and that since their father's death and the death of Gourmoni they had been in possession, and had paid rent first to Sossi Saran and afterwards (on his disappearance) to his wife as the mother and guardian of his infant sons; that Sossi Saran was not insane.

The Munsiff found that Gourmoni had no power to alienate beyond her life time, and that Sossi Saran was insane at the time of Gourmoni's death, and was therefore incapable of succeeding to the property of Rama Nath; he, therefore, gave a decree in favor of the plaintiff.

The defendants appealed to the Sudordinate Judge, who dismissed the appeal, holding that Sossi Saran was insane at the time of Gourmoni's death; adding "that he may not have been a perfect idiot, but I think there can be little doubt that his mind was deranged, and that he was unfit for the ordinary intercourse of life, and as such was incapable of inheritance."

Baboo *Sreenath Das* and Baboo *Mohesh Chunder Chowdhry* for the appellants.

Mr. *Evans*, Baboo *Mohini Mohun Roy* and Baboo *Kishori Mohun Roy* for the respondents.

The judgment of the High Court was delivered by

FIELD, J.—The first point raised in this appeal is, that insanity at the time when the inheritance falls in is not, according to the Hindu law, a disqualification for inheriting, but that according to that law it must be shown that the person who is sought to be disqualified was insane from his birth. We find

that this question has been concluded by authority. See the case of *Dwarka Nath Bysak* v. *Mahendra Nath Bysak* (1). It was then decided on appeal from the Original Side, that insanity at the time when the succession opens out is sufficient to disqualify. We find that the same point had been previously decided by two learned Judges of this Court in the case of *Braja Bhukan Lal Ahusti* v. *Bichan Dobi* (2). It was held the other day by a Division Bench of this Court in the case of *Ram Sahye Bhukkut* v. *Lala Laljee Sahye* (3), that under the Mitakshara law a person who is at the time insane is not entitled to share upon a partition in a joint family. This case, though not a direct authority, supports the view taken in the two previous cases already referred to. We must, therefore, decide against the appellant upon the first point.

Then it is contended that there is no sufficient finding to support the judgment of the Court below. It is said that the Subordinate Judge has not found that degree or that kind of mental derangement which would be sufficient to create disability. The Subordinate Judge proposes to himself as the second issue to be tried whether, at the time of the death of Rama Nath's daughter, Gourmoni, her sister's son, Sossi Saran, was insane, and he answers this by saying in his judgment: "It appears to be clearly and satisfactorily proved that Sossi Saran was insane at the time of Gourmoni's death." He then goes on to add a few remarks and finishes up by saying: "I think there can be little doubt that his mind was deranged, and that he was unfit for the ordinary intercourse of life." It is said that his being unfit for the ordinary intercourse of life is not evidence of insanity. We think the Subordinate Judge did not mean to say that it was. The observation that he was unfit for the ordinary intercourse of life was added on to the finding that his mind was deranged, and might well be meant to imply that this was the consequence of mental derangement. We think there are no grounds for this appeal, which must therefore be dismissed with costs.

Appeal dismissed.

(1) 9 B. L. R., 198.
(2) 9 B. L. R., 204, (note).
(3) I. L. R., 8 Calc., 149; 9 C. L. R., 457.