

But whatever may be the course proper to be taken for the purpose of assessing the sir-land or Sultan Singh's share of it with rent, we are not prepared to admit that, because such course had not been taken, the plaintiff is debarred from claiming and obtaining his fair share in the profits of the sir-holding. To this he seems entitled in reason and equity, and we decree the appeal with costs, reversing the lower appellate Court's decree and restoring that of the Court of first instance.

*Appeal allowed.*

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## APPELLATE CIVIL.

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*Before Mr. Justice Pearson and Mr. Justice Olipheld.*

PHUKAR SINGH AND OTHERS (PLAINTIFFS) v. RANJIT SINGH AND OTHERS (DEFENDANTS),\*

*Hindu Law—Mitakshara—Inheritance—Stridhan.*

Immoveable property inherited by the paternal grandmother from the grandson does not rank as *stridhan* and on her death devolve as such on her heirs, but devolves on her death on the heirs of the grandson.

THIS was a suit for the possession of certain immoveable property, being the estate of one Sardar Singh, who died on the 25th October, 1861, without leaving any issue. His paternal grandmother, Muna Kuar, succeeded to his estate in the absence of nearer heirs. She died on the 30th September, 1873. This suit was instituted on the 14th July, 1876, in which the plaintiffs claimed as heirs of Sardar Singh. The lower appellate Court reversed the decree which the Court of first instance gave the plaintiffs and dismissed the suit, on the ground that it was barred by limitation. The plaintiffs appealed against the decree of the lower appellate Court to the High Court. The remaining facts of the case are sufficiently stated for the purposes of this report in the judgment of the High Court.

Mr. *Chatterji* and Pandits *Bishambhar Nath* and *Ajudhia Nath*, for the appellants.

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\* Second Appeal, No. 151 of 1878, from a decree of J. H. Peinsep, Esq., Judge of Cawnpore, dated the 26th January, 1878, reversing a decree of Babu Ram Kali Chaudhri, Subordinate Judge of Cawnpore, dated the 19th April, 1877.

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MUHAMMAD  
ALI  
v.  
KALIAN  
SINGH.

1878  
April 9.

1873

PHUKAR  
SINGH  
v  
RANJIT  
SINGH.

The *Senior Government Pleader* (Lala Juala Prasad), the *Junior Government Pleader* (Babu Dwarka Nath Banarji), and *Munshi Sukh Ram*, for the respondents.

The judgment of the Court was delivered by

OLDFIELD, J.—The property in suit belonged to Sardar Singh, and at his death he was succeeded in 1861 by his paternal grandmother, Muna Kuar, in the absence of nearer heirs. She died in 1873, leaving a daughter, Phul Kuar, still living. Some of the defendants are her sons, and the defendant Ranjit Singh is a son of a sister of Sardar Singh also living. The plaintiffs are grandsons of the full brother of Mohabbat Singh, great-grandfather of Sardar Singh, and they claim the estate as heirs of Sardar Singh. Another plaintiff, Ganjan Singh, has purchased part of their rights and interests. The Judge has dismissed the suit and reversed the decree of the first Court. The plaintiffs have preferred a special appeal. It is clear that Muna Kuar succeeded Sardar Singh in the ordinary course of succession, and her possession has not been adverse to the plaintiffs, to whom the succession only opened out at her death. There is therefore no bar by limitation, as the Judge appears to think; but it has been contended before us that the Judge's decree should be maintained on the ground that Muna Kuar succeeded to the property as *stridhan*, and that the plaintiffs would not be her heirs, but her daughter Phul Kuar, for whom the defendants hold.

The question we have to determine is whether property inherited by the paternal grandmother from the grandson will rank as *stridhan* and devolve as such; and to support the affirmative *Mitakshara*, ch. ii, s. xi, v. 2, is referred to, where property which a woman has acquired by inheritance is included in the category of "woman's property;" and Sir T. Strange has included this sort of property in the several kinds of *stridhan*—Strange's *Hindu Law*, 4th ed., p. 28. But on this subject Sir W. Macnaghten observes: "In the *Mitakshara*, whatever a woman may have acquired, whether by inheritance, purchase, partition, seizure, or finding, is denominated woman's property, but it does not constitute her *peculium*"—Macnaghten's *Hindu Law*, 3rd ed., p. 38; and this distinction between woman's property generally and *stridhan* proper, which alone de-

volves on her relations, was noticed by the Privy Council in *Thakoor Deyhee v Baluk Ram* (1), at the time that they decided that one class of inherited property, viz., that inherited by a widow from her husband, does not rank as *stridhan* devolving on her heirs. The enumeration in Manu of woman's property has been held not to be exhaustive, and it is unnecessary for us in this suit to give an opinion as to what extent property acquired by inheritance will be *stridhan*. The question was discussed by the Privy Council in *Brij Indar Bahadur Singh v. Ranee Janki Koer* (2) and left undetermined, but we are disposed to hold that property inherited by the paternal grandmother from her grandson is not *stridhan*. It may be gathered from the text-books on the Hindu Law that property must be held unconditionally, and subject to no restrictions, to constitute *stridhan* devolving on a woman's heirs. "That alone is her peculiar property which she has power to give, will, or use independently of her husband's control"—Dayabhaga, ch. iv, s. i, v. 18. The property inherited by the grandmother from the grandson will not bear this test, since it is, like property inherited by the mother from the son, subject to the same restrictions as to its disposal as that inherited by the wife from her husband. It has been held that the rules concerning property devolving on the widow equally affect property devolving on a mother from her son—note to *Bijya Dibeh v. Unpoorna Dibeh* (3)—and it has already been decided by the Privy Council—*Thakoor Deyhee v. Baluk Ram* (1) and *Bhugwandeen Doobey v. Myna Bae* (4)—that property inherited from the husband by the widow will not rank as *stridhan*, and the ground on which that decision rests appears to us to apply equally to the case before us. This is the view of the law of succession taken by Sir T. Strange and Sir W. Macnaghten.—"Had the property been the mother's, in the Hindu sense of 'woman's property,' it would descend on her death to her daughters, but having been inherited by her from her son it passes according to the law as practised in Bengal, not to her heirs, but to his,"—Strange's Hindu Law, 4th ed., p. 144. "On her death (*i.e.*, mother's) the property devolves on the heirs of the son, and not on her heirs,"—Macnaghten's Hindu Law, 3rd ed., p. 26; and the rulings of the Courts ac-

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 PRUKAR  
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(1) 11 Moore's Ind. App. 139.

(2) L. R. 5 Ind. App. 1.

(3) S. D. A. Rep. vol. i, 164.

(4) 11 Moore's Ind. App. 487.

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cord with this view (1), though there appears some conflict of decisions in the Bombay High Court. We decree the appeal with costs, and reverse the decree of the lower appellate Court, and restore that of the Court of first instance.

*Appeal allowed.*

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May 6.

## APPELLATE CRIMINAL.

*Before Mr. Justice Turner, Officiating Chief Justice.*

EMPRESS OF INDIA v. BHAWANI AND ANOTHER.

*Confession made by one of several persons being tried jointly for the same offence—Act I of 1872 (Evidence Act), s. 30—Conviction on uncorroborated confession.*

A conviction of a person who is being tried together with other persons for the same offence cannot proceed merely on an uncorroborated statement in the confession of one of such other persons (2).

CERTAIN persons were tried by Mr. J. S. Porter, Deputy Commissioner of Jhansi, on a charge of dakaiti. Eleven of these persons were residents of the same village. Certain of these eleven persons including persons named severally Baij Nath, Damru, and Gandharp, who had made confessions, pleaded guilty to the charge. The remainder, of whom two were named respectively Bhawani and Pheran, pleaded not guilty. The Deputy Commissioner, on the 18th January, 1878, convicted Pheran and Bhawani on the confessions of Baij Nath, Damru, and Gandharp; the portion of his judgment

(1) See *P. Bachirajee v. V. Venkattappadu*, 2 Mad. H. C. Rep. 402; *Vinayak Anandray v. Lakshmi Bai*, 1 Bom. H. C. Rep. 117; *Pranjivandas Tulsidas v. Devkuvarbar*, 1 Bom. H. C. Rep. 130; and *Narsappa Lingappa v. Sahharam Krishna*, 6 Bom. H. C. Rep. A. C. J. 215.

(2) As to the necessity of corroboration, see *Queen v. Chunder Bhattacharjee*, 24 W. R., Cr. 42; *Queen v. Naga*, 23 W. R., Cr. 24; *Queen v. Sadhu Mundul*, 21 W. R., Cr. 69; *Queen v. Jaffir Ali*, 19 W. R., Cr. 57; *I. L. R.* 1 Mad 163.

The Calcutta High Court appear to have decided, under a series of rulings, that the statement of a person being tried jointly with other persons cannot be used in evidence against such other persons, unless such statement implicates himself as well as such other persons and to the same extent. See *Queen v. Baijoo Chowdhree*, 25 W. R.,

Cr. 43; *Queen v. Keshub Bhoonia*, 25 W. R., Cr. 8; *Queen v. Belai Ali*, 10 B. L. R., 453, S. C., 19 W. R. 67; *Queen v. Mohesh Biswas*, 10 B. L. R. 455, note, S. C., 19 W. R. 16. See also *Reg. v. Amrita Govinda*, 10 Bom. H. C. Rep. 497.

It has also been ruled that such statement cannot be used as corroborating the evidence of an accomplice—*Queen v. Jaffir Ali*, 19 W. R., Cr. 57; *Reg. v. Malapabin Kapana*, 11 Bom. H. C. Rep. 196. Also that such a statement cannot be used in evidence, where one party is being tried for the abetment of the offence for which the other is on his trial—*Queen v. Jaffir Ali*, 19 W. R., Cr. 57. See also *Reg. v. Amrita Govinda*, 10 Bom. H. C. Rep. 497.

Also that such a statement cannot be used in evidence after the person making it has been convicted and sentenced—*Reg. v. Kalu Patil*, 11 Bom. H. C. Rep. 146.