1900

DAMODAR DAS v. MUHAMMAD HUSAIN.

aside that portion of the decree which dismissed the claim against Muhammad Husain with costs, and we decree the claim against the said defendant with costs here and in the Courts below, and direct the property hypothecated by the said defendant to be sold for the realization of the amount decreed, together with interest at the rate of 6 per cent. per annum up to the date of realization, unless the amount payable under the decree is paid on or before the 15th November, 1900. Our decree will be drawn up in the terms of section 88 of the Transfer of Property Act.

Decree modified.

1900
May 19.

Before Mr. Justice Burkitt and Mr. Justice Aikman.

DEBI SAHAI (DEFENDANT) v. SHEO SHANKER LAL AND ANOTHER (PLAINTIFFS).*

Hindu law—Mitakshara—Stridhan—What constitutes Stridhan—Property inherited from a female—Descent of Stridhan.

Amongst property which becomes *stridhan* according to the law of the Mitakshara is property inherited from a female.

It is not the case that where such *stridhan* has once devolved according to the law of succession which governs the descent of this peculiar species of property it ceases to be ranked as *stridhan* and is ever afterwards governed by the ordinary rules of inheritance. *Thakoor Deyhee* v. *Rai Baluk Ram* (1), *Bhugwandeen Doobey* v. *Myna Baee* (2); *Chotay Lall* v. *Chunno Lall* (3), *Phukar Singh* v. *Ranjit Singh* (4), *and Muttu Vaduganadha Tevar* v. *Dora Singha Tevar* (5), referred to.

THE facts of this case sufficiently appear from the judgment of the Court.

Babu *Jogindro Nath Chaudhri* (for whom Babu *Satya Chandar Mukerji*), for the appellant.

Pandit *Sundar Lal* and Munshi *Haribans Sahai*, for the respondents.

AIKMAN, J. (BURKITT, J., concurring).—This is an appeal brought by the defendant to a suit instituted by the plaintiffs-respondents to recover possession of landed property of considerable value together with mesne profits, and for invalidation

---

*First Appeal No. 46 of 1898, from a decree of Maulvi Saiyid Jafar Husain Khan, Subordinate Judge of Gorakhpur, dated 7th December 1897.

(1) (1866) 11 Moo., I. A., 139.
(2) (1867) 11 Moo., I. A., 487.
(3) (1876) L. R., 6 I. A., 15.
(4) (1878) I. L. R., 1 All., 661.
(5) (1881) I. L. R., 3 Mad., 290.

1900

DEBI SAHAI v. SHEO SHANKER LAL.

of a deed of gift, dated the 8th October 1882, executed in favour of the defendant by one Musammat Dilla Kunwari. According to the plaint Dilla Kunwari had only a life interest in the property. She died on the 25th September 1895, and the plaintiff's case is that with her death any interest which her donee, the defendant, had in the property, determined.

The property in suit at one time belonged to Bhawani Dayal and Basant Lal, two brothers, members of a joint Hindu family. Bhawani Dayal died in 1851, leaving him surviving two widows, Kishen Kunwari and Dilla Kunwari, and a daughter by Kishen Kunwari named Jado Nath Kunwari. On Bhawani Dayal's death the property passed by right of survivorship to his brother Basant Lal, who died in 1859, leaving two widows, but no issue. These widows, who had entered into possession of the estate, both died in 1861. On their death the widows of Bhawani Dayal in some unexplained manner got possession of the estate in equal moieties, although it is admitted the title to it devolved on the nearest reversioners, Hanuman Prasad and Hanwant Prasad. The latter died in 1865, and his rights in the estate passed to his son Debi Prasad. On the 8th September 1866, Debi Prasad and his uncle Hanuman Prasad executed a deed of gift of the whole estate in favour of Musammat Jado Nath Kunwari, daughter of Bhawani Dayal. At that time Jado Nath's mother, Kishen Kunwari and Kishen Kunwari's co-widow Dilla Kunwari, were in possession in equal shares. Jado Nath's mother died in 1869, and Jado Nath then got possession of half of the estate. In 1870, Jado Nath Kunwari brought a suit against Dilla Kunwari and one Ram Manorath Lal, in whose favour Dilla Kunwari had executed a deed of gift to recover possession of the rest of the property. The Court of first instance decreed Jado Nath's claim for possession of all the property save eleven villages. As to these the decree declared that Dilla Kunwari would remain in possession for her lifetime without power of alienation. On appeal this Court reversed the decree of the first Court so far as it decreed to the plaintiff possession of any part of the property, and dismissed the suit, but with the declaration that any transfer or alienation made by Dilla Kunwari to Ram Manorath Lal was not to take effect against the reversioners. The defendant-appellant, in whose favour Dilla Kunwari

executed the second deed of gift which this suit seeks to invalidate, is the son of Ram Manorath Lal abovementioned. Jado Nath Kunwari died in 1879, and it is admitted that on her death her rights in the property in suit passed to her daughter Jagarnath Kunwari, who died on the 13th November 1896. The plaintiffs are the sons of Jagarnath Kunwari, and claim that the right to the property in suit devolved on them on their mother's death.

The lower Court decreed the plaintiff's claim, and against that decree the present appeal has been brought by defendant. For the appellant it is contended, in the first place, that the deed of gift executed by Hanuman Prasad and Debi Sahai in favour of Jado Nath Kunwari, plaintiff's predecessor in title, is bad as being the gift of merely a contingent interest. We are of opinion that there is no force in this plea, as the succession of the donors opened up on the death of Basant Lal's widows, and their interest then ceased to be contingent. It is next contended that Musammat Dilla Kunwari, through whom the appellant claims, had acquired by adverse possession a complete title to the property. We are of opinion that in the face of the judgment of this Court, dated 19th April 1871, a judgment in a suit between the predecessors in title of the parties before us, and of the subsequent judgment of this Court dated 4th July 1883, also a judgment *inter partes*, in which the effect of the decree of 1871 was considered, this is a position which cannot successfully be maintained, it having been clearly held in these judgments that Musammat Dilla Kunwari had only a life-interest in the property.

A third and more formidable objection taken by the defendant is that the plaintiffs are not competent to maintain the suit.

It is admitted that the property in suit, having been conveyed by gift to the plaintiff's grandmother Jado Nath Kunwari, became her *stridhan*, and was inherited by her daughter Jagarnath Kunwari, mother of the plaintiffs. If it was *stridhan*, in the hands of Jagarnath Kunwari it is admitted that the plaintiff's suit cannot succeed, as the property would in that case pass on Jagarnath Kunwari's death, not to the plaintiffs but to the plaintiff's sisters, who, it is admitted, are alive. The question then, which

1900

DEBI SAHAI v. SHEO SHANKER LAL.

we have to consider, is whether the property in suit was Jagarnath's *stridhan*. This question, which is by no means free from difficulty, has been the subject of long and learned argument at the bar.

For the appellant the text of the Mitakshara, Chapter II, section 11 §2, which includes amongst woman's property property which a woman has acquired by inheritance, is relied on.

If the plain meaning which the words bear is to be given to this passage, there is no doubt that the appellant is entitled to succeed.

On the part of the respondents, reliance is placed on a passage in McNaghten's Principles and Precedents of Hindu Law (p. 38, 3rd edition), to the effect that *stridhan* which has once devolved according to the law of succession which governs the descent of this peculiar species of property, ceases to be ranked as such, and is ever afterwards governed by the ordinary rules of inheritance, and on certain decisions of the Calcutta and Madras High Courts in which this view has been adopted and given effect to.

The Mitakshara, however, is the paramount authority which governs such questions in these provinces, and we are unable to find in it any warrant for the opinion expressed by Sir William McNaghten, who does not cite any authority for the view which he expresses. It is true that he says that "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*." But, as Messrs. West and Bühler have demonstrated (Hindu Law, 3rd edition, p. 146, etc.), no such distinction between *stridhan* and what Sir W. McNaghten calls a woman's *peculium*, was present to the mind of the author of the Mitakshara. As to this see also Banerjee's Hindu Law of Marriage and Stridhana, 2nd edition, p. 276.

The doctrine that *stridhan* which has once passed by inheritance ceases to be *stridhan* is apparently derived from the Daya Krama Sangraha of Sri Krishna Tarkalankara. This work is described by Mayne as "very modern, its author having lived in the beginning of the last century." It, like the Daya Bhaga, is of high authority in the Bengal school, but it has

never, so far as we know, been recognized as of any authority in the Benares school.

Mayne, in his "Hindu Law and Usage," considers that the author of the Mitakshara included in the term *stridhanum* property which a woman has acquired in any way whatever. But he is of opinion that the special line of descent of such property set forth in section 11 of the Mitakshara does not apply to property which a woman has inherited from a male, that having already been treated of in earlier sections. He is also of opinion that there is no reason why the author of the Mitakshara should not have included in the property for which in section 11 he prescribes a special line of descent property inherited from a female.

The question whether, according to the Mitakshara, property inherited from a female should be subject to the special rules of descent governing *stridhan* has not formed the subject of judicial consideration, either in the Privy Council or in this Court. But, so far as can be gathered, the views of their Lordships of the Privy Council are quite consistent with the opinion expressed by Mayne. The cases of *Thakoor Deyhee* v. *Rai Baluk Ram* (1) and *Bhugwandeen Doobey* v. *Myna Baee* (2) dealt with property which a woman had inherited from her husband, and the case of *Chotay Lall* v. *Chunno Lall* (3) with property inherited by a daughter from a father. A case in this Court, *Phukar Singh* v. *Ranjit Singh* (4) had to do with property inherited by a grandmother from her grandson. In all these cases it was held that the woman took only a restricted interest, and that on her death the property passed to the heirs of the last male owner.

In the case *Muttu Vaduganadha Tevar* v. *Dora Singha Tevar* (5) it was contended that a zamindari property inherited by a daughter from her father was her *stridhan*, and passed to her heirs on her death; and reliance was placed on what is called the much-discussed passage in the Mitakshara, Chapter II, section 11 §2. As to this their Lordships of the Privy Council remark at p. 301 of the judgment:—"It is not necessary now to state in "any detail how impossible it is, whether with regard to other "commentators or to other passages of the Mitakshara itself, to

(1) (1866) 11 Moo., I. A., 139.
(2) (1867) 11 Moo., I. A., 487.
(3) (1876) L. R., 6 I. A., 15.
(4) (1878) I. L. R., 1 All., 661.
(5) (1881) I. L. R., 3 Mad., 290.

1900

DEBI SAHAI v. SHEO SHANKER LAL.

"construe this passage as conferring upon a woman taking by "inheritance from a male a *stridhan* estate transmissible to her "own heirs." As the text in the Mitakshara refers to acquisitions by inheritance in general, the insertion by their Lordships of the words "from a male" in the passage above cited from their judgment is significant, and, as said above, is an indication that the views of the Privy Council are not inconsistent with the opinion expressed by Mr. Mayne.

In the Bombay Presidency, save in the case of a widow succeeding to her husband, it is held that property which a woman takes by inheritance is her *stridhan*, and passes to her heirs.

In this state of the authorities, and in the absence of any authority to the contrary, which is binding upon us, we arrive at the conclusion that the estate which the mother of the plaintiffs inherited from her mother was *stridhan*, governed by the special rules of devolution applicable to this species of property. The sisters of the plaintiffs therefore and not the plaintiffs are entitled to succeed to it. We accordingly sustain the first ground set forth in the memorandum of appeal, and holding that the plaintiffs are not competent to maintain the suit, set aside the decree of the lower Court and dismiss the suit with costs in both Courts.

Appeal decreed.

1900.
May 21.

Before Mr. Justice Banerji.

THAKUR RAM (DECREE-HOLDER) *v.* KATWARU RAM (JUDGMENT-DEBTOR).*

Execution of decree—Limitation—Act No. XV of 1877*—(Indian Limitation Act), Sch. ii, Art.* 179 (4)*—Application to take some step in aid of execution—Payment of process fee.*

The mere payment of process fee for the issue of notice for the purpose of an inquiry under s. 287 of the Code of Civil Procedure, or the payment of costs for the issue of a proclamation of sale, unaccompanied by any application, will not operate to give a fresh starting point for limitation within the meaning of art. 179 (4) of the second schedule to the Indian Limitation Act, 1877. *Har Sahai* v. *Sham Lal* (1) and *Duarkanath Appaji* v. *Anandrao Ramchandra* (2) followed. *Barmha Nand* v. *Sarbishwara Nand* (3) distinguished. *Radha Prosad Singh* v. *Sundar Lall* (4) dissented from.

*Second Appeal No. 772 of 1899, from a decree of Munshi Achal Behari, Officiating Additional Subordinate Judge of Gházipur, dated the 23rd June 1899, reversing a decree of Chaudhri Saiyid Abdul Husain, Munsif of Gházipur, dated the 11th April 1899.

(1) Weekly Notes, 1900, p. 88.
(2) (1894) I. L. R., 20 Bom., 179.
(3) Weekly Notes, 1883, p. 247.
(4) (1883) I. L. R., 9 Calc., 644.