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The evidence does not show that anything had occurred in the week that had elapsed between the expiry of the term of the previous bond and the institution of these proceedings. This being so, I do not think the order of the Court below can be allowed to stand. As was said in the case of *Emperor* v. *Husain Ahmad Khan* (1) "it is not fair to run a man in as a *badmash* before he has had an opportunity of showing that he is willing to adopt an honest livelihood." In my opinion the evidence relating to the period prior to the 13th of June, 1905, was inadmissible. For the above reasons I quash the order of the Court below passed under sub-section (3), section 123, of the Code of Criminal Procedure. If a bond or sureties have been furnished the bond and sureties are discharged. If the applicant is in jail under the Sessions Judge's order he must be forthwith released.

APPELLATE CIVIL.

1905
December 22.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir William Burkitt.

JAGAN NATH (DEFENDANT) *v.* CHAMPA (PLAINTIFF) AND KISHEN DEI (DEFENDANT).*

Hindu law—Succession—Mitakshara—Right of females to inherit.

In the case of Hindus governed by the Mitakshara law no females except those expressly named in the Mitakshara as heirs can inherit. A granddaughter, therefore, cannot succeed to the estate of her grandfather. *Gauri Sahai* v. *Rukko* (2), *Jagat Narain* v. *Shee Das* (3), *Nanki* v. *Gauri Shankar* (4), and *Koomud Chunder Roy* v. *Seeta Kanth Roy* (5), followed. *Bansidhar* v. *Ganesh* (6), *Nallamma* v. *Ponnal* (7), and *Ramappa Udayan* v. *Arumagath Udayan* (8), dissented from.

THIS was a suit for recovery of possession of a house in Cawnpore. The plaintiff claimed as granddaughter (daughter's daughter) of one Ramji Mal, alleging that the succession had

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* Second Appeal No. 426 of 1904 from a decree of Babu Nil Madhab Rai, Small Cause Court Judge of Cawnpore, invested with the powers of a Subordinate Judge, dated the 28th of April, 1904, reversing a decree of Pandit Bishambar Nath, Munsif of Cawnpore, dated the 11th of September, 1903.

(1) Weekly Notes, 1905, p 34.
(2) (1880) I. L. R., 3 All., 45.
(3) (1883) I. L. R., 5 All., 311.
(4) Weekly Notes, 1905, p. 242.
(5) (1863) W. R., Sp. No. F. B., 75.
(6) (1900) I. L. R., 22 All., 338.
(7) (1890) I. L. R., 14 Mad., 149.
(8) (1893) I. L. R., 17 Mad., 182.

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opened upon the death of Ramji Mal's widow, Parbati, in October, 1902, in favour of herself and Musammat Kishen Dei, but that the defendant, Jagan Nath, had taken possession of the house on the 19th of February, 1903. The female defendant was impleaded *pro formâ* as she declined to join in the suit. The principal defendant, Jagan Nath, pleaded, amongst other defences, that the plaintiff had no right under the Hindu law to succeed. He himself claimed to be the son of the maternal uncle of Ramji Mal. The Court of first instance (Munsif of Cawnpore) dismissed the suit, holding, as a question of Hindu law, that the plaintiff had no right to succeed as against the defendant, Jagan Nath. On appeal the lower appellate Court (Small Cause Court Judge with powers of a Subordinate Judge) reversed the Munsif's decision and decreed the plaintiff's claim. The defendant, Jagan Nath, appealed to the High Court.

Babu *Parbati Charan Chatterji* and Pandit *Mohan Lal Nehru*, for the appellant.

Dr. *Satish Chandra Banerji*, for the respondent (plaintiff).

STANLEY, C.J. and BURKITT, J.—In view of the authorities in this Court this appeal must be allowed. The plaintiff claimed to be entitled to the property of one Ramji, deceased, as his heir. She is a granddaughter of Ramji, being his daughter's daughter. The defendant-appellant, Jagan Nath, is the son of a maternal uncle of Ramji. The parties are governed by the law of the Mitakshara. The Court of first instance held that Jagan Nath had a preferential claim to the property, but on appeal this decision was reversed, the learned Judge of the Small Cause Court holding that a daughter's daughter is entited to inherit in preference to a maternal uncle's son. He relied upon the decision of this Court in the case of *Bansidhar* v. *Ganesh* (1). The only question in this appeal is which of the decisions of the Courts below is correct.

In the case of *Koonud Chunder Roy* v. *Seeta Kanth Roy* (2) it was held by a Full Bench of the Calcutta High Court that according to the Mitakshara law a granddaughter does not inherit. The claimant in that case was a granddaughter claiming her grandfather's estate. In the course of its judgment

(1) (1900) I. L. R., 22 All., 338. (2) (1863) W. R., Sp. No. F. B., 75.

the Court held that as the female claimant was "governed by the rules of the Mitakshara law, the claimant, who is the granddaughter of Issur Chunder Roy, cannot inherit any share of the estate, and she is, as ruled by the principal Sadar Amin, entitled to maintenance and to nothing further."

In the case of *Gauri Sahai* v. *Rukko* (1) a Bench of this Court, consisting of Pearson and Oldfield, JJ., held that according to the Mitakshara law none but females expressly named among the heirs can inherit. This decision was approved of by a Full Bench of the Court in the case of *Jagat Narain* v. *Sheo Das* (2). In that case it was held that the sister of a deceased Hindu not being expressly named was not entitled to succeed to an estate. The full Bench treated the point raised as settled law and as having been correctly determined in *Gauri Sahai* v. *Rukko* (1).

In the case, however, of *Bansidhar* v. *Ganesh* (3), a Bench of this Court held that in the absence of preferential male heirs, a daughter's daughter is heir to her maternal grandfather. In that case it does not appear that the earlier decisions, to which we have referred, were brought to the notice of the Court. In fact it was admitted by the learned vakil for the appellant that the plaintiffs, who were daughter's daughters, were heirs to their maternal grandfather in the absence of preferential male heirs. It is possible that the rulings which were cited in that case were rulings of the Madras High Court supporting the view that a son's daughter and a daughter's daughter do succeed as *bandhus*. These are the cases of *Nallanna* v. *Ponnal* (4), and *Ramappa Udayan* v. *Arumaghat Udayan* (5). These rulings are inconsistent with the current of authority in these Provinces, and cannot be here regarded as authoritative.

In the case of *Nanhi* v. *Gauri Shankar* (6) our brothers Banerji and Richards upheld the authority of the decision of the Full Bench of this Court in *Jagat Narain* v. *Sheo Das* (2) and questioned the propriety of the decision in *Bansidhar* v. *Ganesh* (3). We are bound by the decision of the Full Bench

(1) (1880) I. L. R., 3 All., 45.
(2) (1883) I. L. R., 5 All., 311.
(3) (1900) I. L. R., 22 All., 338.
(4) (1890) I. L. R., 14 Mad., 149.
(5) (1893) I. L. R., 17 Mad., 182.
(6) Weekly Notes., 1905, p. 242.

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and, therefore, must hold that the plaintiff-respondent, Musammat Champa, not being expressly named as an heir, was not entitled to maintain the suit.

We allow the appeal, set aside the decree of the lower appellate Court, and restore the decree of the Court of first instance dismissing the plaintiff's claim with costs in all Courts.

Appeal decreed.

1905
December 22.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir William Burkitt.

RAM TAHAL SINGH (DEFENDANT) *v.* DUBRI RAI (PLAINTIFF).*

Act No. VII of 1870 (*Court Fees Act*), *section* 28—*Civil Procedure Code, section* 54—*Suit filed on last day of limitation on an insufficient court fee—Limitation.*

When by a mistake of the plaintiff, and not of the Court or of any officer of the Court, a plaint was filed upon an insufficient court fee and this was not discovered until after the period of limitation for the suit had expired it was held that the suit was barred. *Munro* v. *The Cawnpore Municipal Board* (1), *Muhammad Ahmad* v. *Muhammad Siraj-ud-din* (2), *Balkaran Rai* v. *Gobind Nath Tiwari* (3), and *Jagram* v. *Chatarpal* (4), followed. *Valambal Ammal* v. *Vythilinga Mudaliar* (5), dissented from.

A SUIT for pre-emption was instituted on the last day allowed by limitation on an insufficient stamp, the insufficiency of the stamp being due to a mistake on the part of the plaintiff himself. The insufficiency of the stamp was not discovered in the Court of first instance (Munsif of Muhammadabad Gohna, Azamgarh), and the plaintiff's claim was decreed.

The lower appellate Court (District Judge of Azamgarh) directed the plaintiff to make good the deficiency (which was done), but eventually came to the conclusion that the suit was barred by limitation as there was no valid plaint within the time allowed by limitation. In second appeal to the High Court the Judgment of the District Judge was reversed on the ground that, in view of section 23 of the Court Fees Act of 1870, any defect due to insufficiency of stamp had been cured. Hence this appeal.

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* Appeal No. 41 of 1905 under section 10 of the Letters Patent.

(1) (1889) I. L. R., 12 All., 57.
(2) (1901) I. L. R., 23 All., 423.
(3) (1890) I. L.R., 12 All., 129.
(4) Weekly Notes, 1904, 133.
(5) (1900) I. L. R., 24 Mad., 331.