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Another ground, however, has been pressed before us, and that is that no question of proprietary title was raised before the Assistant Collector, and that, therefore, the Civil Court had no jurisdiction to decide the appeal which was preferred to it. In the first place we may point out that the appellants were responsible for the appeal to the Civil Court. This, however, would perhaps be no answer to the appeal, inasmuch as consent will not confer jurisdiction. There is, however, another answer, namely, that a question of proprietary right is raised in the objection which was filed before the Assistant Collector. The objectors, though admitting the proprietary title of the opposite parties, alleged that they are not entitled to the enjoyment of one of the rights of proprietors, namely, the right of partition. They seek to cut down their full proprietary right by enforcement of the clause in the agreement of 1875 to which we have referred before. The objection, therefore, it appears to us, does raise a question of proprietary right within the meaning of section 113 of the Land Revenue Act, No. XIX of 1873.

For these reasons the appeal fails and is dismissed with costs.

Let the record be immediately returned to the Court of the Assistant Collector.

Appeal dismissed.

Before Mr. Justice Banerji and Mr. Justice Richards.

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August 14.

NANHI (DEFENDANT) *v.* GAURI SHANKAR AND OTHERS (PLAINTIFFS).*

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

Under the Hindu law of the Benares School females not expressly named in the Mitakshara as heirs do not inherit.

The son's daughter, not being so named, is therefore not an heir to her grandfather. *Gauri Sahai* v. *Rukko* (1), *Jagat Narain* v. *Sheo Das* (2), *Ramanand* v. *Surgiani* (3) and *Koomud Chunder Roy* v. *Seetakanth Roy* (4) followed. *Gridhari Lall Roy* v. *The Bengal Government* (5), *Lakshmanammal* v.

* Second Appeal No. 970 of 1903, from a decree of T. C. Piggott, Esq., District Judge of Moradabad, dated the 7th August 1903, confirming a decree of Lala Mata Prasad, Subordinate Judge of Moradabad, dated 22nd of December 1902.

(1) (1880) I. L. R., 3 All., 45.
(2) (1883) I. L. R., 5 All., 311.
(3) (1894) I. L. R., 16 All., 221.
(4) (1863) W. R., Sp. number, F. B. Rulings, p. 75.
(5) (1868) 12 Moo., I. A., 445.

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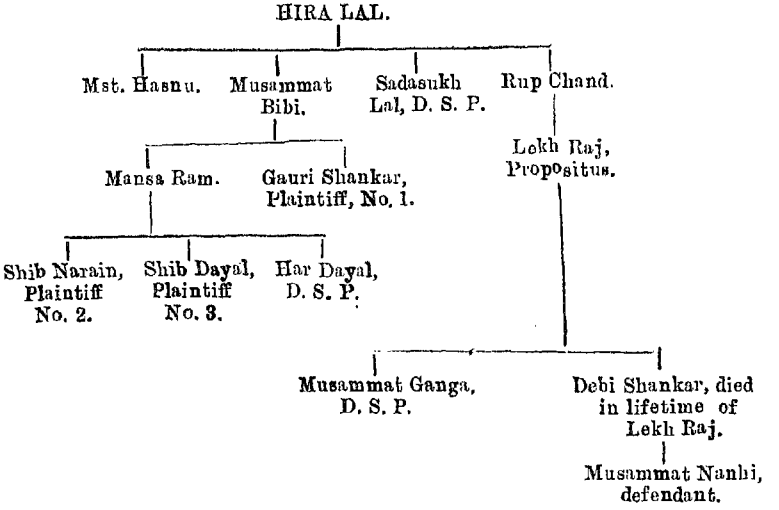
Tiruvengada (1), *Narasimma* v. *Mangammal* (2) and *Ananda Bibee* v. *Nownit Lal* (3) referred to. *Bansidhar* v. *Ganeshi* (4), *Nallanna* v. *Ponnal* (5) and *Ramappa Udayan* v. *Arumagath Udayan* (6) dissented from.

THIS was a suit to recover possession of certain property, both movable and immovable, by right of inheritance under the Hindu law. The following table will explain the relationship between the parties:—



The sole question raised by the suit was whether, according to the law of the Mitakshara, to which the parties were subject, the defendant, as the granddaughter of the propositus, had a title superior to that of the plaintiffs, who claimed as descendants of the sister of Rup Chand, the father of the propositus, or whether indeed the defendants had any title at all to inherit the estate left by her grandfather. The Court of first instance (Subordinate Judge of Moradabad) decreed the plaintiffs' suit except as to the movable property claimed by them. The lower appellate Court (District Judge of Moradabad) confirmed this decree on the defendant's appeal. The defendant accordingly appealed to the High Court.

Munshi *Ratan Chand*, for the appellant.

Babu *Jogindro Nath Chaudhri* and Babu *Sarat Chandra Chaudhri*, for the respondents.

(1) (1882) I. L. R., 5 Mad., 241.
(2) (1889) I. L. R., 13 Mad., 10.
(3) (1882) I. L. R., 9 Calc., 315.
(4) (1900) I. L. R., 22 All., 338.
(5) (1890) I. L. R., 14 Mad., 149.
(6) (1893) I. L. R., 17 Mad., 182.

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BANERJI and RICHARDS, JJ.—The suit which has given rise to this appeal relates to the estate of one Lekhraj, a Hindu governed by the Mitakshara law. The appellant has been found by the Court below to be the daughter of a predeceased son of Lekhraj. The first respondent, Gauri Shankar, is the son of Lekhraj's father's sister: the other respondents are her grandsons, being the sons of another son now deceased. These persons are admittedly *bandhus* of Lekhraj and claimed his estate as such. The Courts below have decreed their claim. The only question raised in this appeal is whether the respondents have a right to the estate of Lekhraj preferential to that of the appellant, the daughter of his son.

The father's sister's son is enumerated in the Mitakshara, chap. II, s. vi, as the first among the nine descriptions of *bandhus* mentioned in it. As the first plaintiff, Gauri Shankar and Mansa Ram, the father of the other plaintiffs, survived Lekhraj, they were entitled to succeed to him as *bandhus*, in the absence of preferential heirs. It is claimed on behalf of the appellant that she is a preferential heir. Being the daughter of the son of Lekhraj, she is the daughter of a *gotraja sapinda* of the deceased in the sense in which that term is understood in the Mitakshara. As, however, she is married and has thus passed into another *gotra*, she would be a *bhinna gotra sapinda*, and therefore, a *bandhu*. It is contended that as she is nearer in propinquity to the deceased she, as a *bandhu*, has a superior claim to his estate, according to the text of Manu "to the nearest *sapinda* the inheritance next belongs." The question of the order of succession among *bandhus* of each class is not free from difficulty. But we are not called upon to decide that question in this case, inasmuch as, according to the view of the law on the subject of succession by females as held in Upper India none but females expressly named in the Mitakshara can inherit. The question was fully considered by this Court in *Gauri Sahai* v. *Rukko* (1). The learned Judges, after referring to almost all the authorities on the subject, came to the conclusion that, "looking to the received interpretation of the law and the customary law prevalent in this part of India, none but females

(1) (1880) I. L. R., 3 All., 46.

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expressly named as heirs can inherit." They accordingly held that the widow of the paternal uncle of a deceased Hindu, not being expressly named, is not entitled to succeed to his estate. This decision was approved by a Full Bench of the whole Court in *Jagat Narain* v. *Sheo Das* (1), which held that the sister of a deceased Hindu, not being expressly named in the Mitakshara, is not his heir. Following these rulings it was held by Edge, C.J. and Burkitt, J., in *Ramanand* v. *Surgiani* (2) that a step-mother cannot, for the same reason, inherit from her deceased step-son. The Calcutta High Court also in *Ananda Bibee* v. *Nownit Lal* (3), expressed the opinion that women are not entitled to inherit under the Benares School unless specially mentioned as heirs, and held that a daughter-in-law, not being so mentioned, is not the heir to her father-in-law. The only case in Upper India in which a female not expressly mentioned in the Mitakshara was declared to have the right to inherit is, as far as we are aware, the case of *Bansidhar* v. *Ganeshi* (4), in which Burkitt and Henderson, JJ., held that a daughter's daughter is heir to her maternal grandfather. The learned Judges say in their judgment:—"We think it is clear on the authorities which have been quoted before us, and the learned vakil for the appellant at the end of the argument on the other side was forced to admit, that in the absence of preferential male heirs the plaintiff, Ganeshi, is heir to her maternal grandfather." It does not appear from the report what the authorities were which were cited before the learned Judges, but it is manifest that their attention was not drawn to the decisions of this Court to which we have referred. Probably the rulings of the Madras High Court, to which we shall presently refer, were the authorities cited before them.

The Mitakshara itself is silent as to the right of inheritance of females not expressly mentioned in it, but the Viramitrodaya by Mitra Misra, which is an authority of great weight in the Benares School, and which, as held by their Lordships of the Privy Council in *Gridhari Lall Roy* v. *The Bengal Government* (5), "is properly receivable as an exposition of what may have

(1) (1883) I. L. R., 5 All., 311.
(2) (1894) I. L. R., 16 All., 221.
(3) (1882) I. L. R., 9 Calc., 315.
(4) (1900) I. L. R., 22 All., 338.
(5) (1868) 12 Moo., I. A. 448, at p. 466.

been left doubtful by the Mitakshara, and declaratory of the law of the Benares School," negatives in clear terms the right of inheritance of such females. The learned author says:—"As for the text of Sruti, namely, 'Therefore women are devoid of the senses *(anindryas)* and incompetent to inherit,' and for the text of Manu based upon it, namely, 'Indeed the rule is that women are always devoid of the senses and incompetent to inherit;' these are both to be interpreted to refer to those women whose right of inheritance has not been expressly declared. Hardatta also has explained (these texts) in this very way in his commentary on the institutes of Gautama called Mitakshara. But some (commentators) say that the term 'incompetent to inherit' implies censure only by reason of its association with the term 'devoid of the senses.' This is not tenable, because it cannot but be admitted that the portion, namely, 'incompetent to inherit' is prohibitory and not condemnatory" (Golap Chandra Sarkar's translation, p. 174). The same is the view of the author of the Smriti Chandrika and other Hindu commentators and of such European text-writers as Sir Thomas Strange, the two Macnaghtens and Mr. Mayne. The only Hindu commentator who supports the right of inheritance of the daughters of all male *sapindas* and of the daughter's daughter and sister's daughter is Balam Bhatta (see Sarvadhikari's Tagore Law Lectures, p. 663); but as the learned writer was herself a woman (her real name being Lakshmi Devi), it is but natural that she would advocate the right of all women. The reason she advances for her view, namely, that the male gender everywhere includes the female gender, has long been discarded. Apart, however, from the authority of text-writers, we feel ourselves bound by the decision of the Full Bench of this Court in *Jagat Narain* v. *Sheo Das* (1) and must hold in accordance with that decision that females not expressly named in the Mitakshara do not inherit, and as the son's daughter is not so named she is not the heir to her grandfather. This was expressly ruled by a Full Bench of the Calcutta High Court in *Koomud Chunder Roy* v. *Seetakanth Roy* (2), where it was held that according to the

(1) (1883) I. L. R., 5 All., 311. (2) (1863) W. R., Sp. number F. B. Rulings, p. 75.

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Mitakshara law a daughter's daughter or a son's daughter does not inherit. In the face of these Full Bench rulings and for the reasons already stated we do not feel ourselves justified in enlarging the list of female heirs as was done in *Bansidhar* v. *Ganeshi* (1).

The Madras High Court held in *Nallanna* v. *Ponnal* (2) that a son's daughter is entitled to inherit to her grandfather as a *bandhu* in the absence of preferential male heirs, and this decision was arrived at on the ground that a sister had been held by that Court to be an heir as *bandhu*. Following this ruling it was held by the same Court in *Ramappa Udayan* v. *Arumagath Udayan* (3) that a daughter's daughter succeeds as a *bandhu*. This Court has, however, held in the Full Bench case to which we have already referred that the sister is not an heir under the Mitakshara law. The basis of the decision of the Madras Court in the cases mentioned being therefore an untenable basis so far as these Provinces are concerned, those cases cannot be regarded as authorities in support of the appellant's claim. Further, even if it be conceded that the son's daughter is an heir as *bandhu*, the appellant in this case would, according to the rulings of the Madras Court itself, be excluded by the plaintiffs who are male *bandhus* (see *Lakshmanammal* v. *Tiruvengada* (4) and *Narasimma* v. *Mangammal* (5). In the case last mentioned Shephard, J., expressed the opinion that "the enumeration of *bandhus*, although not exhaustive, includes no females," and the same appears to have been the view of Mitter, J., in *Ananda Bibee* v. *Nownit Lal* (6). Holding the view that we do, we do not deem it necessary to decide this question.

For the reasons stated above the appellant has no title superior to that of the respondents, and her appeal must fail. We accordingly dismiss it with costs.

Appeal dismissed.

(1) (1900) I. L. R., 22 All, 338.
(2) (1890) I. L. R., 14 Mad., 149.
(3) (1893) I. L. R., 17 Mad., 182.
(4) (1882) I. L. R., 5 Mad, 241.
(5) (1889) I. L. R., 13 Mad., 10.
(6) (1882) I. L. R., 9 Calc., 315, at p. 321.