

1910  
 DURGA DAT  
 JOSHI  
 v.  
 GANESH DAT  
 JOSHI.

of an ordinary elementary education could not be regarded as the gains of science acquired at the expense of ancestral wealth.

In view of the fact that no portion of the joint family property, be it principal or interest, was spent upon the plaintiff's education, and that he lived separate and apart from the family and acquired his skill in astrology by his own unaided efforts, we are of opinion that his earnings cannot properly be regarded as belonging to the joint family. The joint estate suffered no detriment by the education given to the plaintiff by his father, and it would, we think, be unduly extending the rule laid down by Hindu law-givers if we were to hold that the earnings of the plaintiff as an astrologer under the circumstances of this case are partible amongst the members of the family. We think that the view of the court below upon this question is correct and we dismiss the appeal with costs.

*Appeal dismissed.*

1910.  
 February 4.

*Before Mr. Justice Richards and Mr. Justice Tubball.*

DULARI (PLAINTIFF) v. MUL CHAND AND OTHERS (DEFENDANTS).  
*Act (Local) No. II of 1901 (Agra Tenancy Act), section 22—Occupancy holding—Succession—Hindu law.*

An occupancy tenant died before the coming into operation of the Agra Tenancy Act leaving two daughters, one indigent and the other rich, and was succeeded by the former. After the Tenancy Act came into operation the indigent daughter died. *Held* that the rich daughter was entitled to inherit the holding upon the death of her sister in preference to the latter's son; her right, which had accrued on the death of her father, having been merely postponed during the lifetime of the indigent daughter.

THE facts of this case were as follows:—

One Thakuri, an occupancy tenant, died twenty-five years before this suit leaving two daughters, named Musammat Shibbo and Musammat Dulari. Musammat Shibbo the indigent daughter succeeded according to the Hindu Law. Musammat Shibbo died in 1906. Musammat Dulari, her sister, brought this suit against the defendants, the sons of Musammat Shibbo. The defence was that section 22 of the new Agra Tenancy Act applied. The court of first instance decreed the suit in part. The lower appellate

\*Second Appeal No. 951 of 1908 from a decree of Muhammad Mubarak Husain, Subordinate Judge of Shahjahanpur, dated the 10th of July 1908, reversing a decree of Kanhaya Lal, Munsif of Shahjahanpur, dated the 14th of January 1908.

court reversed the decree and dismissed the suit. The plaintiff appealed to the High Court and on the case coming on for hearing before Richards, J., his lordship referred the case to a Bench of two Judges on the 1st of June 1909. The case then came up for hearing before a Division Bench.

Munshi *Gulzari Lal*, for the appellant, submitted that Musammat Shibbo got only a daughter's estate, and so, as she had not succeeded to the full occupancy rights according to the Hindu Law, section 22 of the new Agra Tenancy Act did not apply.

Babu *Benode Behari*, for the respondents, submitted that the Agra Tenancy Act laid down a specific rule of succession. The person succeeding gets an absolute estate. Musammat Shibbo consequently got an absolute estate.

Munshi *Gulzari Lal*, in reply, cited Mayne's Hindu Law, pages 760 to 762 and page 822, and *Dowlut Kooer v. Burmadeo* (1).

RICHARDS and TUDBALL, JJ. :—The question involved in this appeal is a right of succession to an occupancy holding. One Thakuri died some twenty-five years ago without male issue leaving him surviving two daughters, Musammat Shibbo and Musammat Dulari. Musammat Shibbo was indigent while Musammat Dulari was affluent. Musammat Shibbo succeeded to the holding, and it has been held by the court below that her succession to the holding was under the provisions of the Hindu Law, that the indigent sister takes in priority to the affluent sister. Musammat Shibbo's succession was prior to the coming into force of the present Agra Tenancy Act. Musammat Shibbo lived until 1906, when she died, leaving her surviving her sons, the defendants, and her sister, Musammat Dulari, the plaintiff. Section 22 of the Tenancy Act purports to provide for the devolution of an occupancy holding, and if the estate of Musammat Shibbo was that of a full occupancy tenant within the meaning of the section, then there is no doubt that the holding would devolve upon her death on her sons. Musammat Dulari, the plaintiff, however, contends that Musammat Shibbo had only a daughter's estate, that is, a restricted life estate in the holding, which came to an

1910

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 DULARI.  
 v.  
 MUL CHAND.

1910

DULARI  
v.  
MOL CHAND.

end with her death. It has been practically admitted that if the property in question were ordinary zamindari property which had descended to an indigent sister in priority to an affluent one, the estate would devolve on the death of the poor sister on the rich sister in priority to the poor sister's sons. It seems to us that Musammat Dulari's rights were acquired on the death of her father, that is to say, prior to the passing of the present Tenancy Act, and that these rights were merely postponed during the lifetime of Musammat Shibbo. The present Tenancy Act does not purport in any way to take away the rights which had already been acquired. For these reasons we think that both the courts below were wrong, the court of first instance in not giving the plaintiff a decree for the entire holding and the lower appellate court in dismissing the suit altogether. We allow the appeal, set aside the decree of the lower appellate court and modify the decree of the court of first instance by awarding the plaintiff a decree for her claim in full. The plaintiff will have her costs in all courts.

*Appeal decreed.*

1910.  
February 4.

*Before Mr. Justice Sir George Know and Mr. Justice Karamat Husain.*  
KESHO RAM SINGH AND ANOTHER (DEFENDANTS) v. RAM K JAR AND  
ANOTHER (PLAINTIFFS).\*

*Act No. I of 1877 (Specific Relief Act) section 42—Suit for declaration of abstract right—Cause of action—Act No. VII of 1889—(Succession Certificate Act) section 8.*

A Hindu widow applied for a succession certificate to enable her to collect the debts of her deceased husband consisting mainly of a sum of Rs. 4,000 odd on fixed deposit with a bank. Objections being raised by the next reversioners, an order was passed enabling the applicant only to draw the interest accruing due from time to time on this deposit. The applicant then brought a suit for a declaration that she was entitled to the whole sum of money. *Held* that the suit was maintainable, the limitation upon her power to get in the money having been imposed at the instance of the reversioners.

THE facts of this case were as follows :—

The plaintiff Musammat Ram Kuar, widow of one Ram Bharose Singh, applied to the District Judge of Allahabad, for a succession certificate in order to enable her to realize a sum of Rs. 4,000 odd, held in fixed deposit by the Allahabad Bank to

\* Second Appeal No. 1191 of 1908 from a decree of C. Rustomjee, District Judge of Allahabad, dated, the 25th of May, 1908, confirming a decree of Prag Das, Subordinate Judge of Allahabad, dated the 12th of December, 1907.