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precedent if in any future instance fuller evidence regarding the alleged custom should be forthcoming.

But with regard to the relative rights of the parties to the present case, who have had full opportunity of producing whatever evidence they desired to produce, the case was properly dealt with by the High Court upon the evidence before it. And their Lordships are not prepared to dissent from the finding of the learned Judges of the High Court that the evidence in the case supported the custom.

Their Lordships will humbly advise His Majesty that this appeal should be dismissed. The appellants will pay the costs.

Appeal dismissed.

Solicitors for the appellant :—*Ranken Ford, Ford, & Chester.*

Solicitors for the respondent :—*Barrow, Rogers & Nevill.*

J. V. W.

APPELLATE CIVIL.

1909.
December 20.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Banerji.

DEBI MANGAL PRASAD SINGH (PLAINTIFF) *v.* MAHADEO PRASAD SINGH AND OTHERS (DEFENDANTS).*

Hindu law—Mitakshara—Joint Hindu family—Mother's share on partition—Stridhan—Succession.

Held that, according to the Mitakshara, the share which the mother in a joint Hindu family obtains after the death of the father, on partition of the joint family property between the mother and the sons, becomes the mother's *stridhan*, which devolves on her death upon her own heirs and not upon the heirs of her husband. *Chhiddu* v. *Naubat* (1) and *Gambhir Singh* v. *Makraddhaj* (2) followed. *Sheo Shankar* v. *Debi Sahai* (3) distinguished.

THE facts of this case were as follows :—

One Gaya Prasad Singh died leaving him surviving Sahibzad Kunwari, his widow, and three sons, namely Sheo Prasad Singh, Mahadeo Singh, and Sitla Bakhsh Singh. Sheo Prasad Singh then died leaving him surviving his widow, Dharamraj Kunwari, and a minor son, Debi Mangal Prasad Singh.

On the 4th of January, 1893, Debi Mangal Prasad under the guardianship of his mother, Dharamraj Kunwari, sued his

* First Appeal No. 49 of 1908 from a decree of Gokul Prasad, Subordinate Judge of Gorakhpur, dated the 14th of December 1907.

(1) (1901) I. L. R., 24 All., 67. (2) (1907) 4 A. L. J., 673.
(3) (1903) I. L. R., 25 All., 468.

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uncles for partition of Gaya Prasad Singh's estate. In that suit Sahibzad Kunwari was, upon her own application, made a party defendant under section 32 of Act XIV of 1882, and by the decree of the High Court, made on the 12th June, 1895, the joint family property was divided into four equal shares, of which one was allotted to the plaintiff, one to Sahibzad Kunwari, and one each to the two sons of Gaya Prasad Singh.

Musammat Sahibzad Kunwari died on the 9th November, 1900, and thereupon the plaintiff, Debi Mangal Prasad, again brought a suit claiming to be entitled to a third share of the fourth share of the family property which had in the previous suit been allotted to Sahibzad Kunwari. The defendants, Mahadeo Singh and Sitla Bakhsh Singh, resisted the suit on the ground that the share allotted on partition to Sahibzad Kunwari was her *stridhan* which according to the *Mitakshara* passed to them as her heirs. The court below sustained this plea and dismissed the suit. The plaintiff appealed to the High Court.

The Hon'ble Pandit *Sundar Lal*, for the appellant:—The share taken by a Hindu mother under the Mitakshara school on partition among her sons is not what is technically known to the law as *stridhan*. In considering the definition of *stridhan* in the Mitakshara (II, 11, 2) we have to bear in mind that Vijnaneshvara uses that term in a non-technical sense and that his definition has been found to be too wide. The Privy Council in several instances have, as is well known, qualified this definition by excepting "inherited property" from the category of *stridhan*. The Mitakshara definition not having been accepted by the Privy Council, it would be proper to restrict the term *stridhan* to the few specific kinds of property mentioned in the text. The learned advocate then cited and discussed the case of *Chhiddu* v. *Naubat* (1). The point directly arose in the case of *Bhupal Singh* v. *Mohan Singh* (2), where the question was whether the Hindu widow could be considered as a "proprietor", and it was held that, in accordance with the earlier rulings of this Hon'ble Court, she had only a qualified interest, as she got the share in lieu of her maintenance. In the case of *Bhupal Singh* v. *Mohan*

(1) (1901) I. L. R., 24 All., 67. (2) (1897) I. L. R., 19 All., 324, 326.

Singh their Lordships refer to the case of *Phopi Rani* v. *Rukmin Kuar* (1) with approval. There seems to be a conflict of authorities on this point in this Hon'ble Court. At least the earlier rulings would support the appellants' contention; and their Lordships in the case of *Chhiddu* v. *Naubat* (2) pronounce their judgments with considerable hesitation.

Mr. *B. E. O'Conor* (with him Babu *Jogindro Nath Chaudhri* and the Hon'ble Pandit *Moti Lal Nehru*, for whom Babu *Durga Charan Banerji*) for the respondents:—

So far as the case now stands there is absolute *consensus* of opinion amongst the learned judges who have dealt with this point. The point will be found fully discussed by AIKMAN, J., in *Chhiddu* v. *Naubat* (2). For the purpose of this case I may well adopt the argument on behalf of the appellants in the case of *Sri Pal Rai* v. *Surajbali* (3). This point again arose in *Gambhir Singh* v. *Makraddhuj* (4) and in *Mathura Prasad* v. *Ganga Ram* (5) and was decided in favour of the view for which I contend. A learned Hindu lawyer and author has upheld this view: see Golap Chandra Sarkar Shastri, *Hindu Law* (3rd edition, p. 385). The Privy Council have in no case expressed any opinion directly on this point.

The Hon'ble Pandit *Sundar Lal*, in reply:—If there is a conflict of authorities on this point, as I have shown there is, the case should be referred to a larger Bench to settle the difference so far as this Court is concerned. The case of *Bhupal Singh* v. *Mohan Singh* (6) establishes the contrary proposition, and the earliest ruling in these provinces in support of the appellant's contention will be found in *Buldeo Singh* v. *Mahabeer Singh* (7). The interpretation of the *Mitakshara* has been going up to the Privy Council, where it has been consistently held that the view expressed therein is wrong. The latest pronouncement of their Lordships will be found in *Sheo Shankar* v. *Debi Sahai* (8), where their Lordships say that they are not prepared to accept the wider definition.

STANLEY, C. J., and BANERJI, J.—The question raised in this appeal appears to us to be concluded by the decision in the case

(1) Weekly Notes, 1895 p. 84.
(2) (1901) I. L. R., 24 All., 67.
(3) (1901) I. L. R., 24 All., 82.
(4) (1907) 4 A. L. J. 673.
(5) (1910) 7 A. L. J., 69.
(6) (1897) I. L. R., 19 All., 324.
(7) (1866) N. W. P., H. C., Rep., 155.
(8) (1903) I. L. R., 25 All., 468.

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of *Chhiddu* v. *Naubat* (1). The facts are these:—On the 4th of January, 1893, the plaintiff, who was then a minor, instituted a suit by his mother Musammat Dharamraj Kunwari as guardian for partition of the estate to which he and the defendants were jointly entitled. In that case Musammat Sahibzad Kunwari, the grandmother of the plaintiff, applied under section 32 of the Code of Civil Procedure and was made a defendant in the suit. According to the allegation contained in paragraph 6 of the plaint in this case, the entire family property was, by a decree of the 22nd of January, 1894, which was upheld by the High Court on the 12th of June, 1895, divided into four equal shares, of which one share was allotted to the plaintiff, one share to Sahibzad Kunwari, and one share each to Mahadeo Singh and Sitla Bakhsh Singh. The plaintiff is the grandson of Gaya Prasad Singh, whose widow was Sahibzad Kunwari. Gaya Prasad Singh left three sons, namely, Sheo Prasad Singh, the father of the plaintiff, Debi Mangal Prasad Singh, and two other sons, namely, the before-named Mahadeo Prasad Singh and Sitla Bakhsh Singh.

The suit out of which this appeal has risen is concerned with the one-fourth share which in the earlier suit was apportioned to Sahibzad Kunwari, she having died on the 9th of November, 1900. The plaintiff claims to be entitled to one-third of that share. The defendants Mahadeo Singh and Sitla Bakhsh Singh resisted the suit on the ground that the share to which Sahibzad Kunwari was entitled was her *stridhan* and according to the rules of the Mitakshara they as her nearest relatives were entitled to it. The court below decided in favour of the defendants and dismissed the plaintiff's claim.

The present appeal has been preferred and the contention of the learned advocate for the plaintiff appellant is that under a recent ruling of the Privy Council we must hold that the decision in the case of *Chhiddu* v. *Naubat* to which we have referred must be treated as overruled. This was a decision of a Bench of this Court, to which one of us was a party. It was to the effect that according to the Mitakshara the share which the mother in a joint Hindu family obtains after the death of the father, on partition of the joint family property between the mother and the

(1) (1901) I. L. R., 24 All., 67.

sons, becomes the mother's *stridhan*, which devolves on her death upon her own heirs and not upon the heirs of her husband. The question in the case appears to have been carefully considered, and the ruling has been followed in several later cases including the case of *Gambhir Singh* v. *Makraddhuj* (1). In this last mentioned case it was contended that having regard to the ruling of the Privy Council in *Sheo Shankar Lal* v. *Debi Sahai* (2) the rulings of this Court must be deemed to be of no authority. The ruling in question is not a ruling upon the point which is now before the Court. What their Lordships in that case held was that under the Hindu Law of the Benares School property which a woman has obtained by inheritance from a female is not her *stridhan* in such a sense that on her death it passes to her *stridhan* heirs in the female line to the exclusion of males. This is not the question which is before us. Some of the considerations which arise in that case may have a bearing upon the point before us. The question is by no means free from difficulty, as has been pointed out in the case of *Chhiddu* v. *Naubat*. We think that we ought to abide by that decision, unless and until it is reversed by their Lordships of the Privy Council. We do not think that we ought to go behind it, and we therefore dismiss this appeal with costs.

Appeal dismissed.

Before Mr. Justice Sir George Knox and Mr. Justice Piggott.

1910.
January 19.

CHOTE SINGH (DECREE-HOLDER) *v.* ISHWARI AND OTHERS (JUDGMENT-DEBTORS).*

Execution of decree—Limitation—Act No. XV of 1877 (*Indian Limitation Act*), *schedule II, article* 179(4)—*Step in aid of execution—Civil Procedure Code* (1882), *sections* 257*A*, 258—*Application to certify payment made out of court.*

Although a decree under section 88 of the Transfer of Property Act, 1882, may not be capable of adjustment under section 257A of the Code of Civil Procedure, 1882, yet where the parties had professed to make such an adjustment, and, the judgment-debtor having paid certain instalments of the decretal money, the decree-holder had applied to the court to have such payments certified under section 258 of the Code, it was *held* that such applications operated to keep the decree alive, although at the time there might have been no application

* Second Appeal No. 518 of 1909, from a decree of H. J. Bell, District Judge of Aligarh, dated the 10th of March, 1909, confirming a decree of Muhammad Shafi, Subordinate Judge of Aligarh, dated the 6th of July, 1908.

(1) (1907) 4 A. L. J., 673. (2) (1903) I. L. R., 25 All., 468.