

1911  
May 26.

Before the Hon'ble Mr. H. G. Richards, Chief Justice, and Mr. Justice  
Banerji.

BALDEO SINGH (PLAINTIFF) v. MATHURA KUNWAR (DEFENDANT).\*

*Hindu Law—Mitakshara—Succession—Unchastity of mother no bar to her  
inheriting son's estate.*

Held, that unchastity does not preclude a Hindi mother from succeeding to her son's property. *Musammal Ganga Jati v. Ghasita* (1), *Dal Singh v. Musammal Dini* (2) and *Vedammal v. Vedanayaga Mudaliar* (3) followed.

THE facts of this case were as follows :—

One Akbar Singh died in 1901, leaving him surviving his widow, Musammal Mathura Kunwar, and Shib Singh, his son. Shib Singh succeeded to the property, but he also died in 1907. Mathura Kunwar entered into possession as heir of Shib Singh. The plaintiff, Baldeo Singh, who was the brother of Akbar Singh, came into court on the allegation that Mathura Kunwar was not entitled to inherit her son's property as she had become unchaste during his life-time. The first court did not go into the question of unchastity, holding it to be entirely immaterial, and dismissed the suit of the plaintiff. The plaintiff appealed. The suit was remanded to the first court for a finding whether Mathura Kunwar had become unchaste at all. The finding was that she had given birth to a son about two years before the death of Shib Singh and some four years after the death of her husband, but that she was chaste during the life of her husband.

Babu *Sital Prasad Ghose* (with him Babu *Surendra Nath Sen*), for the appellant :—

The question was whether Mathura Kunwar, having become unchaste in the life-time of Shib Singh, could retain possession of his property as against his uncle the plaintiff. In *Dal Singh v. Musammal Dini* (2) there was an admission made by the vakil for the appellant that the lady in question could not be a *patita* woman. Here she was a *patita* woman. *Ramnath Tolapattro v. Durga Sundari Debi* (4) was also cited.

\* First Appeal No. 443 of 1909 from a decree of Pirthi Nath, Subordinate Judge of Muzpuri, dated the 22nd of September 1909.

(1) (1875) L. L. R., 1 All., 46.

(2) (1910) L. L. R., 32 All., 155.

(3) (1907) I. L. R., 81 Mad., 100.

(4) (1878) I. L. R., 4 Cal., 550.

[Babu Mangal Prasad Bhargava, for the respondent, referred to *Vedammal v. Vedanayaga Mudaliar* (1). The word 'out-caste' had nothing to do with *patita*; *Musammal Ganga Jati v. Ghasita* (2); Gopal Chandra Sastri, Hindi Law, p. 330.]

Mr B. E. O'Connor (with him Babu Mangal Prasad Bhargava), for the respondent, was not called upon.

RICHARDS, C. J., and BANERJI, J.—This appeal arises out of a suit brought by the plaintiff, Baldeo Singh, who is the paternal uncle of one Shib Singh, deceased, for possession of the estate left by Shib Singh at his death. The defendant is the mother of Shib Singh. In the ordinary course she would be the next heir to the estate of her son, but the plaintiff claims it on the ground that she became unchaste during the life-time of her son. The question to be determined, therefore, is whether a Hindu mother forfeits her right of inheritance by reason of unchastity. The court below has found that the defendant, Musammal Mathura Kunwar, the mother of Shib Singh, had after the death of her husband formed an immoral intimacy with one Pitam and had a child by him. It is urged that under these circumstances she forfeited her right of inheritance. The court below has held against the plaintiff and dismissed the claim. In our judgement the question raised is concluded by authority. In the case of *Musammal Ganga Jati v. Ghasita* (2), which was a case relating to the right of inheritance to *stridhan*, the learned Acting Chief Justice remarked that "want of chastity in a mother does not deprive her of her right of inheritance." The question before us was fully considered in the case of *Dal Singh v. Musammal Dini* (3). In that case the authorities of Hindu Law on the subject were considered, and it was held that there was no authority for holding that a Hindu woman who after her husband's death had become unchaste is thereby excluded from inheritance to the estate left by her son. The same view was taken by the Madras High Court in several cases, the last of which is that of *Vedammal v. Vedanayaga Mudaliar* (4). The decision of the Bombay High Court is also to the same effect. The Calcutta High Court has, no doubt, taken a different view, but its decision is based on

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(1) (1907) I. L. R., 31 Mad., 100.

(2) (1875) I. L. R., 1 All., 46.

(3) (1910) I. L. R., 32 All., 155.

(4) (1908) I. L. R., 31 Mad., 100.

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grounds which, as pointed out by the Madras High Court, do not apply to a case governed by the Mitakshara. It is admitted that there is no authority in the Mitakshara which, in the case of a mother, requires as a necessary condition of succession that she should be chaste. Her case is unlike that of a widow succeeding to her husband's property, where it is laid down that unchastity would deprive her of her right of inheritance. The learned vakil for the appellant relied on the word '*patilu*' to be found in the Mitakshara, chapter II, section X, verse 140, but that word was rendered as 'outcaste' in the case of *Dal Singh v. Musammatt Pini* (1), and its effect was considered by the learned Judges who decided that case. We are not prepared to dissent from the view taken by them, and in the face of the long course of decisions on the point we should not be justified in departing from the rule laid down in these decisions. No doubt it is repugnant to Hindu sentiment that an unchaste woman should inherit property. But in the absence of clear authority in the texts of Hindu law precluding an unchaste mother from succeeding to her son's property, and having regard to the decided cases on the point, we are unable to hold that the decision of the court below is erroneous.

We accordingly dismiss the appeal with costs.

*Appeal dismissed.*

(1) (1910) I. L. R., 32 All., 155.