FULL BENCH.

1912
May, 11.

Before Sir Henry Richards, Knight, Chief Justice, Mr. Justice Banerji and Mr. Justice Tudball.

SHEO NARAIN (PLAINTIFF) *v.* JANKI PRASAD AND OTHERS (DEFENDANTS) AND LACHMI NARAIN (PLAINTIFF).*

Hindu Law—Mitakshara—Partition—Whether grandmother entitled to share in the case of a partition between father and sons.

Held that upon a partition between a father and his sons, the grandmother, that is, the father's mother, does not get a share in the case of a family governed by the Benares school of the Mitakshara law.

Radha Kishen Man v. *Bachchaman* (1) followed. *Sheo Dyal Tewaree* v. *Judoo Nath Tewaree* (2), *Badri Roy* v. *Bhugwat Narain Dobey* (3) and *Shibbosoondery Dabia* v. *Bussoomutty Dabia* (4) distinguished.

This was a suit for partition of family property brought by one Sheo Narain against his father and brother (by another wife), claiming ⅓rd share. The mother and the grandmother and the son of the plaintiff were subsequently added as parties on objection taken by the defendant. The defence among other defences was that the grandmother of the plaintiff was entitled to a share also. The learned Subordinate Judge gave a share to the grandmother. The plaintiff appealed. The Bench before which the appeal came referred to a Full Bench the following question, namely, whether a grandmother in a *Mitakshara* family is entitled to a share on partition of ancestral property, which the grandsons seek to obtain.

The Hon'ble Dr. *Sundar Lal* (with him Maulvi *Muhammad Ishaq*), for the appellant, submitted that in Hindu Law, there are two classes of writers, one represented by Yajnavalkya, who give a share to father's wives, and the other represented by Vyas, who give a share to the mother (which includes a grandmother but not a stepmother). Yajnavalkya uses the word "father's wives" which cannot include a grandmother. The share which is assigned to the mother is in lieu of maintenance. There are others too who are entitled to maintenance, but no share is assigned to them. Yajnavalkya in Chapter II, verse 114-115, says that a father may separate his sons at his pleasure, and

* First Appeal No. 178 of 1910, from a decree of Mohan Lal Hukku, Subordinate Judge of Cawnpore, dated the 4th of March, 1910.

(1) (1883) I. L. R., 3 All., 118.
(2) (1867) 9 W. R., C. R., 61.
(3) (1883) I. L. R., 8 Calc., 649.
(4) (1882) I. L. R., 7 Calc., 191.

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if he makes the allotments equal, his wives to whom no *stridhan* has been given, must be made partakers of equal portions. This text clearly shows that the only persons who are entitled to a share at partition between father and sons are the father's wives. Yajnavalkya nowhere gives a share to the grandmother. As a general rule in Hindu Law, females are not entitled to any share, but the text here directs that the mother should get the share and thus it makes an exception in favour of the mother. The females only get in the absence of males. The Mitakshara, which is a commentary on Yajnavalkya, also in Chapter I, section II, *placitum* 19, says, that father's wives are partakers of equal portions, but allots no share to the grandmother. Viramitrodaya, which is a commentary on the Mitakshara, deals with partition in Chapter II, part I, and in *placitum* 19, quotes Yajnavalkya, Vyas and other writers, and says in the end that the stepmother does not get a share and makes no mention of the grandmother. Subodhini and Balambhatta also do not assign any share to the grandmother. The Madan Parijata gives a share to the mother but not to the grandmother. Thus, it appears, that so far as authorities of the Benares school are concerned, none of them give a share to the grandmother. There are authorities which gave a share to the grandmother, but they are applicable to Bengal only. As to case law, the only case of Allahabad is that of *Radha Kishen Man* v. *Bachhaman* (1), but no authorities have been discussed. The case of *Puddum Mookhee Dossee* v. *Rayee Monee Dossee* (2) and *Rayee Monee Dossee* v. *Puddum Mookhee Dossee* (3) are cases governed by Bengal law. In *Sheo Dyal Tewaree* v. *Judoo Nath Tewaree* (4) the point did not arise and is an *obiter dictum*. The case of *Shibbosoondery Dabia* v. *Bussoomutty Dabia* (5) and *Purna Chandra Chakravarti* v. *Sarojini Debi* (6) are both cases from Bengal and only Bengal authorities have been discussed. The case of *Badri Roy* v. *Bhugwat Narain Dobey* (7) is apparently a Mitakshara case, but the decision is based on Bengal authorities.

Pandit *Shiam Krishna Dar* (for Dr. *Tej Bahadur Sapru*; with him Pandit *Kailash Nath Kunzru*), for the respondents,

(1) (1880) I. L. R., 3 All., 118.
(2) (1869) 12 W. R., C. R., 409.
(3) (1870) 13 W. R., C. R., 66.
(4) (1868) 9 W. R., C. R., 61.
(5) (1881) I. L. R., 7 Calc. 191.
(6) (1904) I. L. R., 31 Calc., 1065.
(7) (1882) 1. L. R., 8 Calc., 649.

submitted that it was not a specific case of a grandmother claiming a share against a grandson, but it was a case of a mother claiming against a son. The eldest member of the family is the father and the grandmother claimed as mother of the father. She was a member of the joint family in her own right. She has certain rights, such as that of maintenance. There are some authorities which use the word 'mother' and not 'father's wives' Vishnu and Brihaspati use the word mother, and so does Vyas, who includes grandmother in the word mother. In any case, the grandmother will take a share as mother of the father. She may not get any share where the partition is between grandsons only, but when one of the parties to the partition is the father, she comes in as mother of the father. There are no texts which contradict Vyas, and assuming that there are, these texts are to be reconciled, and the only way to do that is to give the grandmother a share. He cited Mayne's Hindu Law, 7th edition, pp. 650 and 544; Jolly's Hindu Law, p. 103; Ghose's Hindu Law, p. 283; Golap Chandra Sarkar's Hindu Law, pp. 268 and 270. Even in Bengal, an attempt was made to show that grandmother had no share. In I. L. R., 31 Calc., p. 1065, the arguments were based on the same principles as in the present case, and the Judges on consideration of all texts held that the grandmother has a share. He cited Mandlik's Hindu Law, p. 44; Sir Francis Macnaghten's Hindu Law, pp. 28, 30 and 52; and West and Bühler's Hindu Law, pp. 677, 780.

RICHARDS, C. J., and BANERJI and TUDBALL, JJ.—The question referred to the Full Bench is, "whether on a partition between a father and his sons the grandmother, that is, the mother of the father, gets a share, according to the Mitakshara as prevailing in these Provinces."

This question has arisen in a suit brought by the plaintiff, Sheo Narain, against his father, Janki Prasad, and his brother, Bishambhar, who are governed by the Benares school of the Mitakshara, for partition of joint ancestral property, and he claimed a third share. His stepmother, Musammat Ram Dei, and Musammat Mana, his paternal grandmother, that is, the mother of his father Janki Prasad, were added as defendants. Both of them claimed shares for themselves. It was urged in the court below that the grandmother was not entitled to a share, but this contention was

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overruled. As there is a conflict of authority on the point, it has been referred to us for determination. We may state that the plaintiff's father, Janki Prasad, is the only son of his father, Mangal Sen, and has no brother or nephews, so that this is not a case of partition between the sons and grandsons of Mangal Sen.

After hearing the arguments addressed to us and considering the authorities placed before us, we are of opinion that the question referred to us must be answered in the negative.

The Mitakshara in the Chapter I, section II, §§ 8 and 9, lays down the rule for partition between the father and his sons in the lifetime of the father. In section VII of the Chapter, is stated the rule as to partition between sons after the death of the father. In the case of partition in the lifetime of the father, the text of Yajnyavalkya is this :—

" If he (the father) makes the allotments equal, his wives, to whom no separate property has been given by the husband or the father-in-law, must be rendered partakers of like portions " (Mitakshara, Chapter I, Section II, §8).

The author of the Mitakshara expounds the above texts in these terms :—

" When the father by his own choice makes all his sons partakers of equal portions, his wives, to whom peculiar property had not been given by their husband or by their father-in-law, must be made participant of shares equal to those of sons. "

In both the text and the commentary there is no mention of the grandmother and the only female who is declared entitled to a share is the wife of the father. The word in the original is *patni, i. e.*, wife, which can never mean the mother of the father.

As to partition after the father's death, section VII, § 1, of the Mitakshara is as follows :—

" When a distribution is made during the life of the father, the participation of his wives equally with his sons has been directed." * * * The author now proceeds to declare their equal participation, when the separation takes place after the demise of the father : " Of heirs dividing after the death of the father, let the mother also take an equal share." [Yajnyavalkya, 123 (*a*).] The word used in this case is, as is natural, ' mother, ' the original being ' *mata,*'

It is thus manifest that Yajnyavalkya and the author of the Mitakshara make a distinction between partition during the lifetime of the father and partition after his demise. In the former case a share is allotted to the wife of the father; in the latter to the mother of the sons effecting the partition. A text of Vyasa is quoted in the Virmitrodaya, the Vyavahara Mayukha, the Saraswati Vilasa and other works to the following effect:—"The father's sonless wives, however, shall be made equal sharers; as also the paternal grandmothers, for they are declared to be equal to mothers." And this text is relied upon as an authority for the allotment of a share to the grandmother. It must be borne in in mind that Vyasa evidently refers to the case of a partition between sons after the demise of the father, when the *mother* of those effecting the partition gets a share, and declares that grandmothers being "equal to mothers" are like the mother entitled to a share. This text cannot apply to the case of partition in the father's lifetime when his wife (*patni*) gets a share. Therefore, if in any case the grandmother would be given a share, it would be in the event of a partition between sons after the father's death. On this point we express no opinion, as the case before us is not one of partition after the father's demise. No other text has been cited to us, and we can find none, which supports the contention that when in the father's lifetime a partition takes place between him and his sons, the grandmother of the sons, that is, his own mother, should be allotted a share. The *Vyavastha Chandrika* by Shyama Charan Sarkar was referred to in a case decided by the Calcutta High Court to which we shall presently refer. The learned author, on p. 356, Volume II, Part I, states the rule deducible from the authority of text-writers in these terms:—"When a paternal grandfather's estate is divided by grandsons, the paternal grandmother is to have a share equal to that of a grandson," and he cites the text of Vyasa referred to above and a passage in Strange's Hindu Law. It is clear from the context and from the position of the above passsage, as compared with what precedes, that the learned author was referring to the case of partition among grandsons after the death of the father and not to the case of partition in the lifetime of the father. We are, therefore, unable to hold upon the authority of the texts of sages and

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commentators that on a partition between the father and his sons the mother of the father gets a share. The reason for the rule seems to be that the mother of the father should look to her own son for support and maintenance.

The view which we have taken above was adopted by this Court in *Radha Kishen Man* v. *Bachchaman* (1). The learned Judges gave no reasons for their opinion but assumed that the grandmother does not get a share.

The contrary opinion was held by the Calcutta High Court in *Badri Roy* v. *Bhugwat Narain Dobey* (2). The learned Judges apparently followed the ruling in *Shibbosoondery Dabia* v. *Bussoomutty Dabia* (3) which was a case under the Dayabhaga law of the Bengal school, and not a case governed by the Mitakshara. They also rely on the passage in the Vyavastha Chandrika which we have quoted above. As we have already pointed out, that passage does not support the view of the learned Judges. We are, therefore, unable, with all deference, to agree with them.

No other case to which the Mitakshara law of the Benares school applies has been cited before us or referred to in the judgement of the court below except the case of *Sheo Dyal Tewaree* v. *Judoo Nath Tewaree* (4) which was undoubtedly a *Mitakshara* case, but all that the learned Judges say in it is that "the mother or grandmother, as the case might be, is entitled to a share, when sons or grandsons divided the family estate between themselves." This *dictum* is inapplicable to the present case, which is not one of partition between sons and grandsons.

For the reasons stated above, we are of opinion that upon a partition between the father and his sons, the grandmother, that is, the father's mother, does not get a share in the case of a family governed by the Benares school of the law *Mitakshara*. This is our answer to the reference.

(1) (1881) I. L. R., 3 All., 118.
(2) (1883) I. L. R., 8 Calc., 649.
(3) (1882) I. L. R., 7 Calc., 191.
(4) (1867) 9 W. R., C. R., 61.