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judicata, but by the fact that their right of redemption has been extinguished by the decree of 1876. The plaintiffs had tried to attack the validity of that decree on the ground that the Munsif had no jurisdiction to entertain the suit. This objection has no force. There is no reliable evidence to show that the value of the property in dispute in 1876 was more than Rs. 1,000. Moreover, the suit was valued at Rs. 601, the amount of consideration mentioned in the document. No objection was raised to the Munsif's lack of jurisdiction and it is too late to raise that plea about 50 years afterwards.

We, therefore, allow the appeal and restore the decree of the trial court. The appeal is allowed with costs.

Appeal allowed.

Before Mr. Justice Sulaiman and Mr. Justice Boys.

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May, 17.

RAM KALI (DEFENDANT) *v.* GOPAL DEI (PLAINTIFF).*

Hindu law—Mitakshara—Stridhan—Succession—Descent of stridhan—Daughter's daughters as against son's sons—Married and unmarried granddaughters.

One *S* died, leaving certain property, which in her hands was stridhan, and that property descended to her daughter *RP*. *S* left also a son *G* and two grandsons *SB* and *LN*. *RP* died leaving two daughters *RK* and *GD*, of whom the latter was married and the former not. *RK* took possession of the entire property. *Held* on suit by *GD* to recover a one-half share, (1) that the two granddaughters of *S* were entitled to succeed to the property in preference to the grandsons, and (2) that as between granddaughters the doctrine that the one who was unmarried should be given preference over the one

* First Appeal No. 48 of 1923, from a decree of Ram Chandra Saksena, Subordinate Judge of Shahjahanpur, dated the 26th of October, 1922.

who was married did not apply. *Sheo Shankar Lal* v. *Debi Sahai* (1), *Sheo Partab Bahadur Singh* v. *The Allahabad Bank* (2), *Jagdish Bahadur* v. *Sheo Partab Singh* (3), *Subramanian Chetti* v. *Arunachelam Chetti* (4), and *Sham Bihari Lal* v. *Ram Kali* (5), referred to.

THE facts of this case are fully stated in the judgements.

Pandit *Uma Shankar Bajpai*, for the appellant.

Pandit *Brijmohan Lal Dave*, for the respondent.

SULAIMAN, J.—This is a defendant's appeal arising out of a suit for possession of a half share in certain properties. The parties are own sisters and are the daughters of Musammat Ram Piari and the grand-daughters of Musammat Sahodra. In the plaint it was stated that Musammat Sahodra was the absolute owner of the entire estate and after her death her daughter Ram Piari came in possession of it as a life-tenant by right of inheritance, and that Musammat Ram Piari died on the 12th of December, 1917, leaving daughters, the plaintiff and the defendant. These facts were admitted in the written statement. The plaintiff claimed a half share on the ground that she was entitled to the estate equally with the defendant. The main pleas raised on behalf of the defendant were a denial of the plaintiff's right and a further plea that the defendant, being unmarried at the time of Musammat Ram Piari's death, had preference as against the plaintiff who was married. The plaintiff's claim has been decreed for a half share.

In this case it is an admitted fact that the entire estate was the absolute property of Musammat Sahodra and was her stridhan and that she had an absolute power of disposal over it. It is also an admitted fact that on the death of Musammat Sahodra

(1) (1903) I.L.R., 25 All., 468. (2) (1903) I.L.R., 25 All., 476.
(3) (1901) I.L.R., 23 All., 369. (4) (1904) I.L.R., 28 Mad., 1.
(5) (1923) I.L.R., 45 All., 715.

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this property devolved on her daughter Musammat Ram Piari not as stridhan (that is with absolute powers of disposal) but as a limited estate only. It therefore follows as a matter of course that on the death of Musammat Ram Piari this property did not devolve on the heirs of Musammat Ram Piari but on the heirs of Musammat Sahodra. This position is conceded by the learned advocate for the appellant. Indeed, in view of the pronouncement of their Lordships of the Privy Council in the case of *Sheo Shankar Lal* v. *Debi Sahai* (1), and the case of *Sheo Partab Bahadur Singh* v. *The Allahabad Bank* (2), it cannot be doubted for a moment that the estate inherited by Musammat Ram Piari was a limited estate only.

Sulaiman, J.

The learned advocate for the appellant, however, has urged two points before us: (1) that the heirs of Musammat Sahodra would be her son's sons, Lachhmi Narayan and Sham Behari, and that the defendant is entitled to plead *jus tertii*, and (2) that, in any case, the defendant being unmarried at the time when Ram Piari died, she had preference over the plaintiff.

With regard to the first contention it may be pointed out that on a previous occasion Lachhmi Narayan and Sham Behari instituted a suit against the defendant Ram Kali for possession of the estate as the heirs of Musammat Sahodra. Their suit was dismissed by the first court as well as by the High Court on the ground that they were not the heirs. The judgement of the High Court is reported in I. L. R., 45 All., 715. As the present plaintiff, Gopal Dei, was no party to that litigation, the judgement cannot operate as *res judicata*. But the plea that Lachhmi Narayan and Sham Behari are the heirs does not

(1) (1903) I.L.R., 25 All., 468. (2) (1903) I.L.R., 25 All., 476.

come with good grace from Ram Kali who successfully resisted their claim on the previous occasion. That judgement, however, is of value as a ruling against the appellant, because it clearly held that on the death of Musammat Sahodra the heirs were not Lachhmi Narayan and Sham Behari, but her descendants in the female line.

Sulaiman, J.

The learned Judges in that case strongly relied on the comment of their Lordships of the Privy Council in the case of *Sheo Partab Bahadur Singh* v. *The Allahabad Bank* (1), " that in the previous case of *Jagdish Bahadur Singh* v. *Sheo Partab Singh* (2), it was not disputed that the succession must be to the heirs of her (Janki's) father, presumably as the stridhan heirs of her mother in the absence of the lineal heirs of the latter." There is no obscurity in this passage. Janki had got the property from her mother, Kabilas Kunwar, whose husband was Mahipal. Their Lordships clearly meant to say that in that case it was not disputed that the succession must be to the heirs of Kabilas Kunwar's husband, Mahipal, presumably as the stridhan heirs of Kabilas Kunwar in the absence of lineal heirs of Kabilas Kunwar. This undoubtedly meant that inasmuch as Kabilas Kunwar had no lineal descendants who could be heirs to her stridhan, the heirs of her husband became her own heirs. That passage does not, as contended on behalf of the appellant, indicate that all lineal heirs, even though they are not stridhan heirs, are given preference to stridhan heirs. In that case, however, the question of succession did not actually arise, as the only point was whether Janki Kunwar had power to alienate the property absolutely or for her life-time.

(1) (1903) I.L.R., 25 All., 476 (480). (2) (1901) I.L.R., 23 All., 369.

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Sulaiman, J.

The case of *Sheo Shankar Lal* v. *Debi Sahai* (1), does, however, create some difficulty. In that case the property was stridhan in the hands of Musammat Jadunath Kunwari. On her death it devolved on her daughter Musammat Jagarnath Kunwari. When Musammat Jagarnath Kunwari died she left two sons (who were the plaintiffs in the suit) and a daughter. The defendants pleaded that, inasmuch as a sister of the plaintiffs was in existence, she was the heir to their mother's property and excluded them. The plaintiffs admitted that their sister was in existence, but replied that her existence did not prejudice their claims. On this admission, only one issue of law was framed, "whether the plaintiffs are entitled to maintain the present suit while the daughter of Musammat Jagarnath Kunwari exists?" The trial court decreed the suit but the High Court dismissed it. The respondent was not represented before their Lordships of the Privy Council. After an exhaustive review of the authorities their Lordships came to the conclusion that under the Benares school, property which a woman has taken by inheritance from a female is not her stridhan in the sense that on her death it passes to her own stridhan heirs. The rule was expressed by saying that what is once descended as stridhan does not so descend again. The only point decided by the courts below was as to whether it was stridhan property in the hands of Jagarnath Kunwari, and their Lordships held that it was not so. There was no counsel on behalf of the respondents, and it was not further contended that even if the property did not come to Musammat Jagarnath as stridhan, the plaintiffs' claim should be dismissed because their sister was the proper heir of Musammat Jadunath. Mr. Mayne, no doubt, in his

(1) (1903) I.L.R., 25 All., 468.

commentary has mentioned that he brought this point to the notice of their Lordships and tried to meet it by the contention that the general tendency was to give preference to males over females. Their Lordships, however, have not noticed this point in the judgement, and it is impossible to hold that their Lordships intended to lay down any such rule of law. The decision that the property was not stridhan in the hands of Musammat Jagarnath Kunwari was considered sufficient to dispose of the case, as that was the only point decided by the High Court. Although that case resulted in favour of Musammat Jagarnath Kunwar's sons, it cannot be said that their Lordships necessarily decided the other question which might have been raised if the respondent had been represented.

Sulaiman, J.

The Full Bench of the Madras High Court in the case of *Subramanian Chetti* v. *Arunachelam Chetti* (1) and the Division Bench of this Court in the case of *Sham Behari Lal* v. *Ram Kali* (2), have interpreted the decision of their Lordships of the Privy Council as being confined to one question only, namely, whether it was the stridhan of Jagarnath Kunwari or not. The above view reconciles the decision with the texts of the Mitakshara and the previous case-law, and is, therefore, reasonable.

The second point can be disposed of more briefly. In the Mitakshara the order of succession to the stridhan property is provided. Unmarried daughters are certainly given preference over married daughters but no express preference is given to a daughter's unmarried daughter over a daughter's married daughter. Musammat Ram Kali therefore cannot claim preference as against Gopal Dei merely because she was Musammat Sahodra's daughter's unmarried daughter. The learned advocate for the appellant contends that

(1) (1904) I.L.R., 28 Mad., 1. (2) (1923) I.L.R., 45 All., 715.

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the same principle which creates a distinction between married daughters and unmarried daughters should be extended to granddaughters. I am not prepared to accede to this contention. An unmarried daughter stands on a quite different footing from an unmarried granddaughter. There is a legal obligation on the part of a lady to provide for the marriage and maintenance of her unmarried daughter. Till her marriage she remains in the family. Whereas the same degree of necessity may not arise in the case of married daughters, who have their husbands to look after them. On the other hand, daughter's daughters do not properly belong to the family of the grandmother and there is no legal obligation on the part of the grandmother to provide for the marriage of the daughter's daughters, as the fathers of such granddaughters have that duty cast upon them. There is therefore a clear distinction between daughters and granddaughters. In the absence of any express text and in the absence of any authority in favour of the appellant, I am unable to extend the principle to granddaughters.

I would, therefore, dismiss the appeal.

BOYS, J.—[After setting out the facts, the judgement proceeded].

The only ground pressed before us is the second, "because under the Hindu law the defendant alone is entitled to obtain (*sic*, "retain") exclusive possession of the property", and this was developed into the contention that neither plaintiff nor defendant had any title, but defendant being in possession could rely on *jus tertii*, i.e. the right of the grandsons.

In support of this contention two points have been argued before us, (1) that by deduction from the decision of their Lordships of the Privy Council in *Sheo Shankar Lal* v. *Debi Sahai* (1) the daughter's

(1) (1903) I.L.R., 25 All., 468.

daughters had no title; and (2) that the heirs to Musammat Sahodra's stridhan are, in view of that decision, the other lineal descendants of Musammat Sahodra and her husband in the male line, namely, the very Sham Behari Lal and Lachhmi Narain whose claim in the previous suit has already been referred to as having been dismissed as against Musammat Ram Kali. To support the present claim, then, it was further necessary for the defendant appellant to contend that that suit was wrongly decided. It would be open to her to maintain this contention if she could show that the decision of their Lordships of the Privy Council above quoted had ruled differently. We may note at once that there is no question of that Privy Council ruling having been overlooked by the learned Judges who decided the case of *Sham Bihari Lal* v. *Ram Kali* (1). The learned Judges very fully considered the decision and there is little, I think, necessary to add to the considerations which led them to hold that that decision did not in terms conclude the matter.

It is not contended for the appellant, and cannot be contended, that the decision in *Sheo Shankar Lal* v. *Debi Sahai* (2) directly governs the case before us. It is in effect contended only that, because their Lordships of the Privy Council did not give effect to a rule of law to which they were not asked to give effect and of which there is no mention in their judgement, therefore they must be taken to have held that there was no such rule.

The property in dispute was the stridhan of one Jadunath Kunwar and it had descended to her daughter Jagarnath Kunwar. The latter left two sons and a daughter. On the death of Jagarnath Kunwar, Debi Sahai, who for the purposes of that case was a stranger, got into possession. The sons sued him and he set up the *jus tertii* of the daughter.

(1) (1923) I.L.R., 45 All., 715. (1) (1903) I.L.R., 25 All., 468.

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The High Court dismissed the plaintiffs' suit. Their Lordships of the Privy Council decreed the suit. On this bald statement of some of the facts it is of course possible to suggest that their Lordships had before them the fact of the alleged existence of a right in the daughter and yet decreed the right of the plaintiffs sons, and from that to argue that in the present case the *jus tertii* set up by the defendant as existing in the sons ought to be upheld. But such a deduction could only be possible by ignoring wholly what the question was to which their Lordships' attention was directed and which alone they proceeded to decide.

The High Court had decided in *Debi Sahai* v. *Sheo Shankar* (1) that " the estate which the mother (Jagarnath Kunwari) of the plaintiffs inherited from her mother (Jadunath Kunwari) was stridhan, governed by the special rules of devolution applicable to this species of property. The sisters of the plaintiffs therefore and not the plaintiffs are entitled to succeed to it ".

The High Court then had held that the property having descended to Jagarnath Kunwari was again stridhan in her hands. At the hearing of the appeal before the Privy Council, counsel for the appellant argued—*Sheo Shankar Lal* v. *Debi Sahai* (2)—that " property inherited by a female was not her stridhan, nor would it on her death descend as her stridhan would do ". At page 471, their Lordships stated the question which they had to decide as follows :—

" The precise question therefore arising for decision is whether under the Hindu law of the Benares School, property which a woman has taken by inheritance from a female is *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."

Again at the bottom of page 473 occur the words " does not on the death of the latter pass as *her*

(1) (1900) I.L.R., 22 All., 353 (358). (2) (1903) I.L.R., 25 All., 468 (469).

stridhan ", and again at page 474 " who would succeed to it if it were *her stridhan* proper ". Finally at page 475 their Lordships state their conclusions: " Their Lordships are therefore unable to agree with the High Court in thinking that the property now in question was the *stridhan of Jagarnath* devolving as such ".

Judging then from their Lordships' judgement, coupled with the only question that had been decided by the High Court, nothing could be more clear than that their Lordships were invited to consider only and did consider only the single question—" Jagarnath Kunwar having inherited her mother's *stridhan*, did the property become *the stridhan of Jagarnath Kunwar* so as to give her daughter a right to inherit in preference to the sons "? Their Lordships were not invited to consider, and did not consider, the question " whether the *stridhan* property of the mother, Jadunath Kunwar, when it was inherited by her daughter Jagarnath Kunwar retained its character of *stridhan of Jadunath Kunwar* so as to descend on the death of Jagarnath Kunwar *to the stridhan heirs of Jadunath Kunwar.* "

The learned Judges of this Court who decided *Sham Bihari Lal* v. *Ram Kali* (1) were justified in holding that the point for decision in that (and in this) case was not concluded adversely to the daughters by the decision of the Privy Council just considered.

Before leaving this point I would add that I have left out of consideration the account given by Mr. Mayne, in the 9th edition of his " Hindu law " at page 993, paragraph 675, of his argument before the Privy Council. I do not, as at present advised, think that the personal statement of counsel in any publication other than a recognized law report ought

(1) (1923) I.L.R., 45 All., 715.

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to be considered when construing a judicial decision. I think I ought to confine myself to the terms of that judicial decision; and while it may be allowable to obtain light from the arguments reported along with the judicial decision, that is the extreme limit to which it is permissible to go.

It has only been necessary to refer to this at all because for the appellant a very natural attempt has been made to find support in Mr. Mayne's account of his argument. I do not think that that can be allowed. Further, if it could be allowed, I do not think that it would carry the case for the appellant any further in view of the fact that their Lordships not only refrained from deciding the point before us but did not even mention it. I am unable to hold, as we are asked to do by the appellant's counsel, that the decision in *Sham Bihari Lal* v. *Ram Kali* (1) in any way conflicted with the decision of the Privy Council

Reliance was further placed on the words " it is not disputed that the succession must be to the heirs of her (Janki's) father " occurring in *Jagdish Bahadur* v. *Sheo Partab Singh* (2). It was suggested that that passage indicated a descent to sons in preference to daughters. A reference, however, to the facts of *Jagdish Bahadur* v. *Sheo Partab Singh* (2) shows that no question of the line of descent was in dispute. Janki Kunwar, the daughter of the owner of the stridhan, Kabilas Kunwar, had died childless; see *Jagdish Bahadur* v. *Sheo Partab Singh* (2). It was common ground that only one or both of the collateral foster brothers, plaintiff and defendant, could succeed. The dispute was between these two only and their descendants. The only points for decision were

(1) (1923) I.L.R., 45 All., 715. (2) (1901) I.L.R., 23 All., 369

whether the estate was partible and whether a first-born-son of a junior wife or a later-born son of a senior wife had a prior claim. No question arose for decision as to whether the claimants in question were entitled as the stridhan heirs to the stridhan of Kabilas Kunwar or as the stridhan heirs to the stridhan of Janki Kunwar or indefinitely as heirs to property held by the childless Janki to be ascertained by tracing through her father. There is nothing to suggest that the expression " her (Janki's) father's heirs " was used to indicate preferential descent in the male line or otherwise than as identifying individuals and equivalent to " Janki's mother's husband's heirs ". That is how the phrase was interpreted by their Lordships in *Sheo Shankar Lal* v. *Debi Sahai* (1) " presumably as the stridhan heirs of her mother in the absence of lineal heirs of the latter ". Their Lordships were of opinion that the only acceptable claim of the collaterals in *Jagdish Bahadur* v. *Sheo Partab Singh* (2) was a claim that they were heirs of property descending as the stridhan of Kabilas Kunwar.

An attempt to evade that interpretation is made by reading " lineal heirs " as " lineal descendants " but the whole phrase will not sustain such a reading.

There is the further suggestion that the interpretation " presumably as the stridhan heirs of her mother in the absence of lineal heirs of the latter " was *obiter*. Strictly speaking that is perhaps so; but, even so, as an interpretation by their Lordships placed on the passage after full consideration, it was not unaptly described in *Sham Bihari Lal* v. *Ram Kali* (3) as their " considered opinion " and obviously must

(1) (1903) I.L.R., 25 All., 468. (2) (1901) I.L.R., 23 All., 369
(3) (1923) I.L.R., 45 All., 715.

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carry very great weight, even if not absolutely binding. If on the supposition that the interpretation is not absolutely binding it were necessary for me to interpret the phrase " her (Janki's) father's heirs ", I should not hesitate to hold that, where the exact nature of the line of descent was not in dispute, the phrase is no authority in favour of the present appellant's contention that the line of descent is to sons in preference to daughters and their children.

Boys, J.

The only other contention urged was that Musammat Ram Kali as being unmarried at the date of Musammat Ram Piari's death would have preference to Musammat Gopal Dei who was married. Counsel for the appellant was unable to support by any authority his contention that the distinction between married and unmarried daughters which applies to the daughters of the owners of the stridhan should also be applied to the granddaughters. He could only contend that there was no reason why such a distinction should apply to daughters and not apply to granddaughters. There is, however, an important distinction, pointed out by my brother in the course of the argument, that in the case of daughters an unmarried daughter remains in the family and it might well be considered desirable to provide for her first out of the mother's stridhan; while the married daughters leave the family. The same consideration would not apply to an unmarried granddaughter who would never have been in the family of her grandmother but would from her birth be in the family of her own father.

I agree in dismissing the appeal.

BY THE COURT.—The appeal is dismissed with costs.

Appeal dismissed.