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years. The courts below therefore should have held that the suit was time barred and the suit should have been dismissed. Accordingly I allow the appeal and I order the dismissal of the suit on the ground of limitation with costs in all courts in favour of the defendant.

Before Mr. Justice Collister and Mr. Justice Bajpai

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JAIWANTI (PLAINTIFF) v. ANANDI DEVI (DEFENDANT)*

Hindu law—Inheritance—Jains—Custom—Stridhan—Daughters claiming mother's stridhan—Preference as between married and unmarried daughters—"Bhadrabahu Samhita", authority of.

In the absence of proof of special custom varying the ordinary Hindu law of inheritance, that law is to be applied to Jains. Accordingly, unless a custom to the contrary is proved, among Jains an unmarried daughter will inherit the *stridhan* property of her mother in preference to a married daughter.

The "Bhadrabahu Samhita", professing to be a digest of Jain law, is of doubtful authority.

Mr. Shiva Prasad Sinha, for the appellant.

Mr. Baleshwari Prasad, for the respondent.

COLLISTER and BAJPAI, JJ.:—This is a plaintiff's appeal. The plaintiff is Mst. Jaiwanti and she is the daughter of one Mst. Kapuri, who died in July, 1921, leaving certain *stridhan* property. The defendant, Mst. Anandi Devi, is another daughter of Mst. Kapuri. The plaintiff's case was that she as one of the daughters of Mst. Kapuri deceased was entitled to a half share in the latter's *stridhan* and she prayed for a declaration to the above effect. She alleged that at the death of her mother she was unmarried; but alternatively she claimed that even if the contrary were held to be proved, she would have an equal right with her unmarried sister under the law applicable to Jains, to which community the parties belong.

*Second Appeal No. 1348 of 1934, from a decree of J. N. Kaul, Civil Judge of Mainpuri, dated the 30th of August, 1934, confirming a decree of S. C. Chaturvedi, Munsif of Mainpuri, dated the 6th of September, 1933.

The defence to the suit was that Mst. Kapuri was alive at the date of the plaintiff's marriage, that there is no such custom among the Jains as is alleged in the plaint and that the ordinary rules of Hindu law are applicable. Certain other pleas were also taken which need not be considered.

Both the courts below have found against the plaintiff, who has accordingly come to this Court in second appeal.

The finding that the plaintiff was already married when her mother died is a finding of fact which could not be and has not been challenged in this Court. The plea which is taken before us is that under the law applicable to Jains a married daughter has an equal title with an unmarried daughter to property left by their mother. For this proposition learned counsel for the plaintiff appellant quotes as his authority a book entitled "The Jains Law" by a gentleman named Champat Rai Jain. From page 109 to 142 the author quotes texts from a digest by an unknown author known as "The Bhadrabahu Samhita". At page 117 he reproduces a text in Sanskrit which is translated thus: "The mother's property goes to the daughter, whether she be married or unmarried". Dr. Gour at page 476 of his Hindu Code, 3rd edition, comments as follows upon this digest: "The Jains acknowledge the authority of a digest of their laws contained in a work known as the 'Bhadrabahu Samhita' stated to have been compiled in the third century B. C. . . ."

Learned counsel for the plaintiff appellant, however, has not been able to show us that this digest has ever been referred to or recognized in any reported or unreported case. But even assuming that it is authoritative and is entitled to the respect which learned counsel for the plaintiff appellant claims for it, it seems to us that the text quoted at page 117 of Mr. Champat Rai's book is of somewhat dubious meaning and does not clearly and definitely lay down the proposition that in competition between a married and an unmarried daughter they

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shall each have an equal right to the *stridhan* of their mother.

In any case the production of this single text from the "Bhadrabahu Samhita" will not suffice to establish the plaintiff's claim even if its meaning is as is contended by her learned counsel. It is an established principle that the ordinary rules of Hindu law shall apply to the Jain community in the absence of a special custom or usage varying the Hindu law; and the onus of proving such custom or usage lies heavily upon the plaintiff. There is abundant authority for this proposition, but we will content ourselves by referring to a case decided by their Lordships of the Privy Council, *Chotay Lall v. Chunnoo Lall* (1), in which their Lordships laid down in clear terms that in the absence of proof of special custom varying the ordinary Hindu law of inheritance, that law is to be applied to Jains. It is a matter of admission that in the case before us the plaintiff has been unable to prove a single instance in which the custom alleged by her has been recognized in any court of law. It is also conceded before us by learned counsel for the plaintiff appellant that if the ordinary Hindu law be held applicable, then the plaintiff's suit must fail.

For the reasons given above we are of opinion that the view taken by the courts below is correct. This appeal, therefore, fails and is dismissed with costs.

Before Mr. Justice Harries and Mr. Justice Rachhpal Singh

1937

October, 28

KALYAN DAS (PLAINTIFF) v. KASHI PRASAD AND OTHERS
(DEFENDANTS)*

Res judicata—General principle of res judicata—Decision of an issue in a suit is binding at subsequent stages of same suit—Civil Procedure Code, section 11; order XIV, rule 2.

The decision of an issue in a suit is binding between the parties at subsequent stages of that suit; its binding force depends not upon section 11 of the Civil Procedure Code, which

*First Appeal No. 230 of 1934, from an order of Raghunath Prasad Trivedi, Civil Judge of Agra, dated the 27th of October, 1934.

(1) (1878) I.L.R. 4 Cal. 744.