1882

LLEWHELLIN v. CHUNNI LAL.

Admittedly the principal sum claimed has been due since the 17th March, 1878, or for more than four years, and if, as contended by the defendant-appellant, the plaintiffs were compelled under the law to institute the suit in the Court at Chapra, at a distance of more than three hundred miles from their place of business, a great hardship would under the circumstances have been inflicted upon them.

Before Mr. Justice Straight and Mr. Justice Tyrrell.

1882
May 16.

NAWAL SINGH (PLAINTIFF) *v.* BHAGWAN SINGH AND ANOTHER (DEFENDANTS.)*

Hindu law—Mitakshara—Partition—Right of son born after partition to father's property.

The property acquired by a Hindu governed by the law of the Mitakshara after a partition has taken place between him and his sons devolves on his death, when he leaves a son born after partition, on such son, to the exclusion of the other sons.

THE plaintiff in this suit, one of the sons of one Chatar Singh, deceased, by his first wife, sued the defendant, the son of Chatar Singh by his second wife, for possession of certain land, claiming by right of inheritance under Hindu law. The defendant set up as a defence to the suit that the land in question had been acquired by his father Chatar Singh after he and his sons by his first wife had partitioned the ancestral property of the family, and before he had married his second wife; and that Chatar Singh had made a verbal gift of the land to him and had placed him in possession. The Court of first instance decided that the family property had not been partitioned, and gave the plaintiff a decree. The lower appellate Court found that a partition of the family property had taken place, and held that the plaintiff had no right to property which his father had acquired after the partition, but that the defendant was entitled to succeed to such property. It accordingly dismissed the plaintiff's suit.

The plaintiff having appealed to the High Court, the Court (STRAIGHT and TYRRELL, JJ.), by an order dated the 28th January, 1882, remanded the case to the lower appellate Court for the trial

* Second Appeal, No. 701 of 1881, from a decree of Sayyid Farid-ud-din Ahmad, Subordinate Judge of Aligarh, dated the 13th April, 1881, reversing a decree of Maulvi Mubarak-ul-lah Khan, Munsif of Jalesar, dated the 18th December, 1880.

1882

NAWAL SINGH v. BHAGWAN SINGH.

of the issue whether Chatar Singh had made a gift of the land in suit to the defendant. The lower appellate Court decided that Chatar Singh had not done so. On the case being returned to the High Court the defendant contended that the gift to him of the land in suit by his father Chatar Singh was proved; and that, assuming that such gift was not proved, the plaintiff had no right under Hindu law to the land in suit.

Babu *Jogindro Nath Chaudhri*, for the appellant.

Pandit *Ajudhia Nath* and Munshi *Sukh Ram*, for the respondent.

The judgment of the Court (STRAIGHT, J., and TYRRELL, J.) was delivered by

STRAIGHT, J.—The findings on remand have been returned to us, and we proceed to dispose of the appeal. Objections have been filed by the respondent, under s. 567 of the Procedure Code, and it is conceded that the first of these has no force. The second, however, raises a question of Hindu law, for the purpose of determining which it is necessary to recapitulate a few facts, that, we may add, are admitted on both sides. Chatar Singh had three sons by his first wife, Nawal Singh the plaintiff, Bhagwan Singh the guardian of the minor defendant, and Niladhar who died childless in the lifetime of his father. Prior to his death, however, partition had taken place between Chatar Singh and his three sons, and each of them had entered into separate enjoyment of his divided share of the ancestral estate. Subsequent to such partition, Chatar Singh married a second wife, by whom was born to him the minor defendant. Chatar Singh, after the separation from his three sons, acquired by inheritance from one Ratan Singh the 4 bighas, 6 biswas, 6 biswansis of muafi land part of which is claimed by the plaintiff in the present suit. After the demise of Chatar Singh, the plaintiff asserted a right by inheritance to his share of this 4 bighas, 6 biswas, 6 biswansis, and it is on this basis he now comes into Court. At first sight his contention appears to be plausible enough, as, although he would have no right to inherit any portion of the ancestral property allotted to, and taken by, his father upon partition, yet he and his brothers would, under ordinary circumstances, be entitled as heirs

to participate equally in the self-acquired estate left by the father. But in the present case a contingency has intruded itself that alters the whole aspect of matters. We refer to the second marriage of Chatar Singh, and the birth of the minor defendant subsequent to his father's separation from his three half-brothers. Now it is obvious that, unless the partition can be re-opened,—which it cannot, "for a son born after partition has no claim on the wealth of his brothers" —or some equivalent for the share he would have been entitled to had he been alive at the time of partition can be found, the minor respondent would be placed at a great disadvantage, for having lost his personal share in the ancestral property by reason of the partition having taken place before his birth, he would still only get a proportionate part of the self-acquired estate of his father. This condition of things, however, is distinctly provided for by the Mitakshara, ch. i, s. vi, v. 122:—"When the sons have been separated, one who is afterwards born of a woman equal in class, shares the distribution," and distribution is explained as meaning "the allotments of the father and mother after death," with the reservation that he will only take the mother's portion, should she leave no daughters surviving her. The same principle is enunciated by Manu: "A son born after division shall alone take the parental wealth," that is, what appertains to both father and mother. Vrihaspati upon this point also observes: "All the wealth which is acquired by the father himself, who has made a partition with his sons, goes to the son begotten by him after the partition; those born before it are declared to have no right". We likewise find this subject fully discussed at pp. 92 and 93 of the Vira-Mitrodaya by Gopalchandra Sarkar, where all the authorities are reviewed; and as far as we can see they endorse to the full this principle of Vrihaspati, and the rule of inheritance laid down by the Mitakshara as already quoted. Applying the law thus clearly enunciated to the present case, the minor defendant has a distinct right to the 4 bighas, 6 biswas, 6 biswansis, to the exclusion of the plaintiff, whose suit accordingly fails and must be dismissed. The appeal must also be dismissed with costs.

Appeal dismissed.