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MUNIA v. PURAN.

In second appeal the defendants contended that, with reference to the manner in which the property was acquired by Munia, the plaintiff was not legally competent to impugn its alienation by her, and the provisions of the Hindu law relating to alienations by childless Hindu widows were not applicable in this case.

The Divisional Bench (BRODHURST and MAHMOOD, JJ.) before which the appeal came for hearing referred the following question raised by the appeal to the Full Bench:—

"Who is the reversioner to immoveable property acquired exclusively, either by inheritance or otherwise, by the childless widow of a member of a divided Hindu family, *i.e.*, is the heir of the widow's late husband, or is the heir of the widow's father the reversioner to the property?"

Munshi *Sukh Ram*, for the appellants.

Munshi *Hanuman Prasad*, for the respondent.

The Full Bench delivered the following opinion:

STUART, C. J., and STRAIGHT, OLDFIELD, BRODHURST, and TYRRELL, JJ.—On the understanding that the defendant donor obtained the property in suit from her deceased uterine brother—we are not informed how, although it is conceded she could not acquire it from him by inheritance—it necessarily follows that it is her *stridhan*, and it is *stridhan* with which her deceased husband's heirs have nothing to do. Over such property her control is now absolute and unimpeachable, and the relations of her husband have no such reversionary *status* in respect of it as is set up by the respondent in this case.

Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Straight, Mr. Justice Oldfield, Mr. Justice Brodhurst, and Mr. Justice Tyrrell.

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JAGAT NARAIN, GUARDIAN OF JAGESRA KUARI MINOR (PLAINTIFF) *v.* SHEO DAS AND ANOTHER (DEFENDANTS).

Hindu Law—Mitakshara—Inheritance—Sister.

According to the law of the Mitakshara none but females expressly named can inherit, and the sister of a deceased Hindu, not being so named, is therefore not entitled to succeed to his estate. *Gauri Sahai* v. *Rukko* (1) followed.

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* Second Appeal No. 163 of 1882, from a decree of Hakim Rahat Ali, Subordinate Judge of Gorakhpur, dated the 25th November, 1881, reversing a decree of Maulvi Hafiz Rahim, Munsif of Bansgaon, dated the 30th July, 1881.

(1) I. L. R., 3 All., 45.

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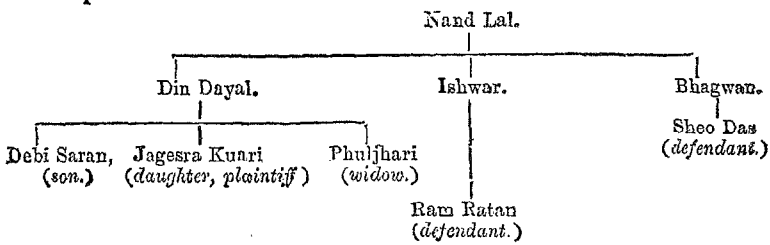
JAGAT NARAIN v. SHEO DAS.

THIS was a reference to the Full Bench by Tyrrell and Mahmood, JJ. The facts of the case and the point of law referred are stated in the order of reference, which was as follows :—

MAHMOOD, J.—The following table shows the relative position of the parties :—



The family have been found to be a divided family. Din Dayal died leaving his son, Debi Saran, a minor, and his name was entered in the Government revenue records in substitution for that of his father. Upon the death of Debi Saran, the name of his widowed mother, Phuljhari, was recorded in the revenue records; and she came into possession of the property in suit. Phuljhari died in 1288 fasli (1881), and the present claim has been brought by her daughter Jagesra Kuari, sister of Debi Saran, in respect of the property said to have been left by him. The claim relates both to moveable and immoveable property.

The defendants Ram Ratan and Sheo Das are the first cousins of Debi Saran, being the sons of his father Din Dayal's own brothers, Ishwar and Bhagwan. They resisted the claim on the ground, *inter alia*, that the plaintiff had no right of inheritance from her brother Debi Saran under the Hindu law according to the Mitakshara or the Benares School.

The Court of first instance decreed the claim. The lower appellate Court has held that "the plaintiff cannot inherit as against the defendants: the sisters are not included among the brothers: though some commentators of the Hindu law may have given various constructions, yet the principle in practice is that a sister cannot by any means inherit her brother's property as against her male cousins."

The present second appeal has been preferred by the plaintiff, who contends that the lower appellate Court is wrong in law in

holding that the sister of a member of a divided family is not entitled to succeed to his property under the circumstances of the case.

The learned pleader for the respondents has referred us to three cases decided by Division Benches of this Court—S. A. No. 235 of 1875, decided 4th May, 1875; S. A. No. 404 of 1876, decided 28th August, 1876; S. A. No. 157 of 1878, decided 9th April 1878—which he contends support the view of the law taken by the lower appellate Court. We are, however, of opinion that the question is not free from doubt, and is important enough to be settled by a Full Bench of this Court. Another Division Bench of this Court has already referred an analogous question of Hindu Law to the Full Bench, and we think that the point raised in this case can be conveniently considered along with the question which has been referred in the other case.

We refer the following question to the Full Bench:—

"Upon the death of a Hindu mother, who succeeded to the divided property of her son, does the property devolve by inheritance upon his sister or upon his first cousins in the paternal line?"

Lala *Lalta Prasad* and Maulvi *Mehdi Hasan*, for the appellant.

The *Senior Government Pleader* (Lala *Juala Prasad*) and Munshi *Hanuman Prasad*, for the respondents.

The Full Bench delivered the following opinion:—

STUART, C. J, and STRAIGHT, OLDFIELD, BRODHURST, and TYRRELL, JJ.—The point raised in this reference is settled law, and has been correctly determined in *Gauri Sahai* v. *Rukko* (1). Our answer to this reference is in the sense of, and in conformity with, that ruling.

(1) I. L. R., 3 All. 45.