APPELLATE CIVIL.

Before Das and Allanson, JJ.

1928.

May, 9.

RAJRANI DEBYA

v.

GOMATI DEBYA.*

Hindu Law—Mithila—succession—widowed daughter not excluded—Doctrine of spiritual benefit inapplicable.

Although, according to the Mithila School of Hindu Law, an unmarried daughter is preferred to one who is married, a widowed daughter is not excluded from inheritance.

The doctrine of spiritual benefit plays no part in the law of inheritance according to that School.

Appeal by the plaintiff 1st Party.

The facts of the case material to this report are stated in the judgment of Das, J.

S. M. Mullick, *S. N. Bose* and *L. K. Jha*, for the appellant.

N. C. Sinha and *Bankim Chandra Mitra*, for the respondents.

DAS, J.—In my opinion the decision of the learned Subordinate Judge on the main point argued before us is right and ought to be affirmed.

It was contended before us that a widowed daughter is excluded from succession in Mithila, and reliance was placed on texts which are of paramount authority in Bengal. But it must be remembered that in the Dayabhaga system of Hindu Law the doctrine of religious efficacy controls to a large extent the question of succession. The logical result of that doctrine in Bengal is that under no circumstances do daughters who are either barren or are widows destitute of male issue inherit property.

*Appeal from Original Decree no. 277 of 1924, from a decision of Babu Bhabadev Sarkar, Deputy Magistrate and Subordinate Judge of Deoghar, dated the 27th September, 1924.

It was contended by Mr. Suhil Madhav Mullick before us that the doctrine of religious efficacy also plays an important part in Mithila. We were referred to a passage in Mr. Tagore's translation of Vivada Chintamani at page 289. That passage runs as follows:—

"The right of performing funeral obsequies is settled according to the following authority: 'The son, the son of a son, and the son of a grandson'; hence their right of inheritance, which is similar to the right of performing funeral obsequies, is likewise established. Therefore, in default of a great grandson, the estate devolves on the widow."

Reliance was placed on this passage and, it was contended, that it is quite clear that according to Bachaspati Misra the preferential right of succession follows the preferential right to perform the sradh; but I have no doubt whatever that this passage has not been correctly translated by Mr. Tagore. The same passage has been translated by Mr. Setlur and it will be found at page 265 of his Collection of Hindu Law Books on Inheritance. In his translation the passage runs as follows—

"Dying without issue without son, grandson or great grandson. The right to perform sradhs being established in the order laid down in the text. 'The son, the grandson or the great grandson', the right to succeed to the wealth which is similar to it is also settled."

It is obvious, therefore, that there is no suggestion in Bachaspati Misra, at any rate in the passage cited, that the preferential right to succeed follows the preferential right to perform the sradh. I therefore do not agree with the argument before us that the doctrine of spiritual benefit plays any part in the Mithila system of Hindu Law.

Now a careful examination of the standpoint of Jimuti Vahana in his celebrated treatise and a comparison of that standpoint with that of Bachaspati in Vivada Chintamani will make good my point that whereas the doctrine of spiritual efficacy plays a large part in the Bengal school it plays no part in the Mithila school, It will be noticed that Jimuti

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Vahana bases his conclusions as to the right of a certain class of daughters to succeed principally on the text of Narad which is in these terms:—

"On failure of male issue, the daughter inherits, for she is equally a cause of perpetuating the race; since both the son and daughter are the means of prolonging the father's line."

The comment of Jimuti Vahana on the Text of Narad is as follows:—

"The author states the circumstances of her continuing the line as a reason of the daughter's succession; and the line of descendants here indicates such descendants as present funeral oblations; for one who is not an offerer of oblations, confers no benefits, and consequently differs in no respect from the offspring of a stranger or no offspring at all..... Therefore the doctrine should be respected, which Dikshita maintains; namely, that a daughter, who is mother of male issue, or who is likely to become so, is competent to inherit: not one, who is a widow, or is barren or fails in bringing male issue."

And later on Jimuti Vahana in dealing with the case of an appointed daughter says as follows:—

"Since a daughter's right of succession to the property of her father is founded on her offering funeral oblations by means of her son, therefore, even in the case of an appointed daughter, on whom the estate has devolved by the death of her father, should she bear no male issue in consequence of her proving barren, or because her husband is incapable of procreation, the property does not go to her husband upon her death."

It is obvious, from the different texts upon which Jimuti Vahana relies for his conclusion, that that conclusion is based wholly on the doctrine of religious efficacy.

When we come to Bachaspati Misra there is no reference whatever to the doctrine of religious efficacy except very incidentally. In dealing with the question of succession to the property of one who dies leaving no son, Bachaspati Misra refers prominently to the Text of Vishnu which is as follows:—

"The wealth of one dying without issue goes to the wife; in default of her, it goes to the daughter; in her default, it goes to the

mother; in her default, it goes to the father; in his absence, it goes to the brother; if there are no brothers, it goes to the brother's son; in default of them, it goes to the bandhus; in their absence, it goes to the sakulyas; in his default, it goes to the fellow-student; in his absence, it goes to the King, excepting the property of the Brahmin."

Then coming to the specific case of the daughters, Bachaspati Misra says as follows:—

"In default of the wife, it goes to the daughters, by the text of Vishnu, previously cited."

It is obvious, therefore that, Bachaspati Misra is basing his conclusion exclusively on the text of Vishnu in which no trace of religious efficacy can be detected. It is quite true that Bachaspati Misra refers also to the text of Narad; but he refers to it to strengthen his conclusion that daughters under certain circumstances succeed, not to supply a reason for such succession. A careful search has failed to yield any trace of the doctrine of spiritual benefit in the Vivada Chintamani. It is quite true that in Mithila an unmarried daughter is preferred to one who is married; but failing her, married daughters are entitled to inheritance, no distinction being drawn between daughters who have or are likely to have issue and those who have no issue and are not likely to have any issue. This conclusion is supported by the opinion of eminent authors of Hindu law. I may refer to Mayne's Hindu Law, section 558 and the opinion of Golab Chandra Sarkar and Shama Charan Sarkar.

The only other question that was argued before us was that the jajmanka and other books are not capable of partition; but the learned Subordinate Judge has referred to a decision of the Calcutta High Court which is directly in point and supports his conclusion. I may also refer to the decision in *Ram Chandar* v. *Chhabba Lal* (1) in support of the conclusion at which the learned Subordinate Judge has arrived.

(1) (1923) I. L. R. 45, All. 445.

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There is a cross appeal on behalf of the plaintiff on the question of mesne profits. The learned Subordinate Judge has deprived her of mesne profits on no ground whatever. It is obvious that the plaintiff is entitled to mesne profits.

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I must therefore dismiss the appeal and allow the cross appeal. The result is that the plaintiff will not only have a decree which the learned Subordinate Judge has given her but also a decree for mesne profits.

The case will, therefore, go back to the learned Subordinate Judge to ascertain when the plaintiff was actually ousted by the defendants from participation in the joint family properties. Having done that, the learned Subordinate Judge will ascertain the mesne profits due to the plaintiff from the date of such ouster or within three years from the date of suit.

So far as the actual allotment is concerned, this is not the time to determine that question. The entire matter must be considered by the learned Subordinate Judge after the properties have been actually divided between the parties. The plaintiff is entitled to her costs both in this Court and in the Court below.

There is a question of deficit court-fee of Rs. 75 on the plaint. But by the decree of the learned Subordinate Judge the whole of this amount has to be realised from the defendant, and we direct that, in addition to the sum assessed by the learned Subordinate Judge, that is to say Rs. 1,297-8, an additional sum of Rs. 75 is also recoverable from the defendant.

ALLANSON, J.—I agree.

Appeal dismissed.

Cross-appeal allowed.