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effect defence witnesses. Their testimony did not favourably impress the Sessions Judge, and has in our view rightly been rejected. The prosecution theory receives very material corroboration from the recovery at the house-search of the house of the accused of the articles I have referred to above of which Paltanbati's mat was found to be stained with blood and the scrapings of earth from the wall of the room were found to be stained with human blood. That being so, the inference cannot be in my opinion resisted that Paltanbati was murderously done to death in the house of the accused on the night of 1st March, 1939, and the three accused persons all took part in causing the evidence of the crime whoever was its author to disappear.

I would affirm the conviction. In awarding sentence the Sessions Judge has had regard to the ages of the accused persons and to what appeared in all probability to be their relative degrees of responsibility. I see no reason to differ from the Sessions Judge's appreciation of these matters and I do not consider the sentence on either of the accused to be excessive. I would dismiss the appeal.

CHATTERJI, J.—I agree.

S.A.K. *Appeal dismissed.*

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Dec. 22.

APPELLATE CIVIL.

Before Fazl Ali and Chatterji, JJ.

MUSAMMAT DAULAT KUAR

v.

BISHUNDEO SINGH.*

Hindu Law of Inheritance (Amendment) Act, 1929 (Act II of 1929), section 2, applicability and scope of—"sister", whether includes half-sister.

* Appeal from Appellate Decree no. 708 of 1938, from a decision of D. E. Reuben, Esq., I.C.S., District Judge of Patna, dated the 14th April, 1938, confirming a decision of Babu Shivapujan Rai, Munsif at Patna, dated the 18th March, 1937.

"Sister" as contemplated by section 2 of the Hindu Law of Inheritance (Amendment) Act of 1929 does not include half-sister.

Ram Adhar v. *Sudesra*(1), *Angamuthu Muthirian* v. *Sinnapennammal*(2) and *Kabootra* v. *Ram Padarath*(3), followed.

Amrut v. *Musammat Thagan*(4) and *Shankar* v. *Raghoba*(5), not followed.

Rameshwar v. *Musammat Ganpati Devi*(6), discussed.

Grieves v. *Rawly*(7) and *Miles* v. *Wilson, In re Cozens*(8), *distinguished.*

The Hindu Law of Inheritance (Amendment) Act, 1929, applies to persons subject to the law of Mitakshara. It has altered the Mitakshara law of succession to a certain extent. It must, therefore, be strictly construed and words must not be read into it which are not there. There is no scope for the application of the general principles of Hindu Law in matters governed by the Act.

While passing the Hindu Law of Inheritance (Amendment) Act of 1929, the Legislature must be presumed to have been aware of the well recognised distinction existing under the Hindu Law between a sister and a half-sister, and if it was their intention to include half-sister also within the new class of heirs she would have been specifically mentioned in section 2 of the Act. The Act proceeded on the principle of affinity and the Legislature might have advisedly left her out of consideration.

Appeal by the plaintiffs.

The facts of the case material to this report are set out in the judgment of Chatterji, J.

K. Husnain and *Girja Nandan Prasad*, for the appellants.

(1) (1933) I. L. R. 55 All. 725, F. B.
(2) (1938) A. I. R. (Mad.) 364.
(3) (1935) I. L. R. 11 Luck. 148.
(4) (1938) A. I. R. (Nag.) 134, F. B.
(5) (1938) A. I. R. (Nag.) 97.
(6) (1936) I. L. R. 18 Lah. 525.
(7) (1852) 68 Eng. Rep. 840.
(8) (1903) 1 Ch. Div. 138.

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L. K. Jha (with him *G. Sharma* and *M. Rahman*) for the respondents.

CHATTERJI, J.—This appeal arises out of a suit brought by Musammat Daulat Kuar and Musammat Besar Kuar, daughters of Jaglal Singh deceased, who was governed by the Mitakshara School of Hindu Law, for a declaration that a sale deed dated the 20th of May, 1932, executed by their mother Musammat Sulachan Kuar, defendant no. 5, in favour of defendants nos. 1 to 4 is not binding on them. Admittedly the last full owner of the disputed property was Ramasre Singh, son of Jaglal Singh. The plaintiffs as sisters of Ramasre Singh claimed to be his next reversionary heirs. The suit was contested by the defendants 1, 3 and 4 on the grounds, inter alia, (*1*) that the plaintiffs were half-sisters of Ramasre Singh and as such could not be his heirs and had therefore no locus standi to bring this suit and (*2*) that the sale deed was justified by legal necessity. The learned Munsif who tried the suit held that legal necessity was not proved for the sale, but he dismissed the suit on the finding that the plaintiffs were half-sisters of Ramasre Singh and were, therefore, not his heirs. On appeal to the District Judge this decision has been affirmed. Hence this second appeal by the plaintiffs. Musammat Daulat Kuar having since died, Musammat Besar Kuar is now the sole appellant.

Two questions have been raised in this appeal: first, whether the plaintiffs were full sisters of Ramasre Singh as alleged by them; and, second, even if they were his half-sisters, whether they were his heirs.

On the first question both the Courts below have found as a fact that the plaintiffs, who were admittedly born of the womb of Sulachan Kuar, defendant no. 5, were half-sisters of Ramasre Singh. This being a finding of fact would be binding in second

appeal. But Mr. Khurshaid Husnain for the appellants contends that this finding is vitiated by error of law. In the first place, he argues that in the sale deed in question Sulachan Kuar, the vendor, is described as mother and heir of the deceased Ramasre; so the defendants 1 to 4, the vendees, would be estopped from disputing her title and consequently from denying that she was the mother of Ramasre, because her title depended upon her status as mother of Ramasre. Necessarily they would also be estopped from denying that the plaintiffs were full sisters of Ramasre. But in order that estoppel may be used against defendants 1 to 4 it must be shown that they made some representation which induced the defendant no. 5 to execute the sale deed. Of this there is no proof whatever. On the contrary the defendants 1 to 4 might have honestly believed that their vendor, defendant no. 5, had good title to the property she was conveying. Again the plaintiffs do not claim through defendant no. 5 but claim in their independent right; and so far as they are concerned, it cannot even be suggested that they were induced to do anything by any representation made by the defendants 1 to 4. The question of estoppel, therefore, does not arise. Mr. Khurshaid Husnain then contends that even if the recital in the sale deed does not create any estoppel, it must at any rate be regarded as a strong piece of evidence. It may be so, but it is after all a piece of evidence and the learned District Judge in appeal has duly considered it. His appreciation of this evidence may be right or wrong, but it cannot be questioned in second appeal. Mr. Khurshaid Husnain next complains that the Courts below have not attached due importance to the plaint, Ext. 1, in suit no. 66 of 1935, which was brought by a mortgagee to enforce a mortgage executed by Ramasre Singh, deceased. In that plaint Musammat Sulachan Kuar, who was defendant no. 1, was described as the mother and the present plaintiffs, who were also defendants, as full sisters of Ramasre. But these

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assertions were not denied in their written statement by the present defendants 1, 3 and 4 who also were defendants in that suit. The learned District Judge has pointed out that in that mortgage suit in which the present defendants 1, 3 and 4 were impleaded as transferees from Sulachan Kuar the question whether Sulachan Kuar was the mother or the present plaintiffs were full heirs of Ramasre was irrelevant, and therefore no inference can be drawn against the defendants from their not having denied those assertions. This view of the learned Judge seems quite right.

Mr. Khurshaid Husnain in the next place contends that the learned District Judge has not at all considered the oral evidence adduced by the parties on the point under consideration. This is no doubt true to some extent, but the learned Judge has referred to certain facts disclosed by the evidence which in his opinion are sufficient to prove that the plaintiffs could not be the full sisters of Ramasre. In the present plaint it is stated that Ramasre who died in Bhado 1338 was at the time of his death aged only 26 years. The present age (at the time of hearing of the suit) of Daulat Kuar, plaintiff no. 1, is about 18 or 20 years. Ramasre was, therefore, more than 10 years older than Daulat Kuar. Sulachan Kuar in her evidence says that Daulat was born three years after her marriage and Ramasre was 10 years older than Daulat. The learned District Judge considers that

> "these two statements are sufficient to disprove the claim of Daulat Kuar and Besar Kuar to be full sisters of Ramasre."

We have looked into the oral evidence adduced by the parties which is conflicting. In my opinion no useful purpose will be served by remanding the case for recording a finding after consideration of the oral evidence because the above statements relied on by the learned Judge fully justify his finding.

The next question turns on the meaning of the word "sister" in section 2 of the Hindu Law of Inheritance (Amendment) Act II of 1929. Under the Hindu Law as it stood before this Act was passed in 1929 sister was not an heir at all except in the Presidencies of Bombay and Madras. It is under this Act that the plaintiffs as sisters of Ramasre Singh claimed to be his heirs. Section 2 of the Act runs as follows:—

"A son's daughter, daughter's daughter, sister, and sister's son shall, in the order so specified, be entitled to rank in the order of succession next after a father's father and before a father's brother:

Provided that a sister's son shall not include a son adopted after the sister's death."

Mr. Khurshaid Husnain contends that "sister" in this section includes a half-sister. According to Murray's Oxford Dictionary "sister" means "a female in relationship to another person or persons having the same parents". This is, however, followed by a note that it is "sometimes loosely used in the sense of half-sister and in that of sister-in-law". This suggests that strictly speaking 'sister' does not mean half-sister. In the Concise Oxford Dictionary the meaning of 'sister' is given as "daughter of same parents (also sister german) or (strictly half-sister) parent as another person". According to Webster's Dictionary 'sister' means "a female person, or by extension, animal, considered in her relation to another person or animal, having the same parents (whole sister) or one parent in common (half-sister)". Though Webster gives a much wider meaning, the preponderance of opinion seems to be that "sister" does not include half-sister in the strict sense of the term. In Stroud's Judicial Dictionary, relied upon by Mr. Khurshaid Husnain, there is no separate meaning given for the word 'sister' but it occurs with 'brother' where it is stated that "a gift to Brothers; Sisters,—includes the Half-blood" and reference is made to the case of

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Grieves v. *Rawley*(1) from which the following passage in the judgment of Turner, V. C. is quoted:

"I think that, in general, when a man speaks of his brothers and sisters he speaks of them, not with reference to the definition of the word in the dictionary, but as a class standing in the same relation to one or both of his parents in which he himself stands."

This passage itself shows that the dictionary meaning of the words 'brother' and 'sister' is otherwise. In the aforesaid case, however, which related to the construction of a Will it was held that the description of "nephews and nieces" in the Will included the children of brother or sister of half-blood of the testator. In *Miles* v. *Wilson*, *In re Cozens*(2) cited by Mr. Khurshaid Husnain which also was a case of a Will, it was held that the words "nephews and nieces" mean *prima facie* the children of brothers and sisters including those of the half-blood. Neither Stroud nor these cases, therefore, are of any assistance to the appellant. There appears to be no reason why the dictionary meaning as given by Murray should not be accepted.

Mr. Khurshaid Husnain then contends that whatever may be the dictionary meaning of the word "sister" we must construe it with reference to the subject-matter with which the Act II of 1929 deals. He has referred to the following passage in Maxwell on the Interpretation of Statutes, 7th Edition, page 46:—

"Whenever a statute or document is to be construed, it must be construed not according to the mere ordinary general meaning of the words but according to the ordinary meaning of the words as applied to the subject-matter with regard to their use unless there is something which renders it necessary to read

(1) (1852) 68 Eng. Rep. 840.
(2) (1903) 1 Ch. Div. 138.

them in a sense which is not their ordinary sense in the English language as so applied."

It is argued that the Hindu Law of Succession recognises no difference between relations of full blood and those of half-blood except that among themselves precedence is given to the former over the latter, and this conception of Hindu Law must be kept in view in construing the Hindu Law of Inheritance (Amendment) Act II of 1929. Now, this Act, as section 1, clause (2), shows, applies to persons subject to the law of Mitakshara. Under that law as applied in different parts of India except in the Presidencies of Bombay and Madras sister was not recognised as an heir at all. According to the Bombay School she is an heir as a *Gotraja Sapinda*, being the father's daughter, while according to the Madras School she comes in as a *bandhu*. Half-sister is also an heir under both these Schools but comes next after sister. Even in the Bombay Presidency in cases governed by the Mayukha half-sister does not come immediately after full sister but father's father and half-brother intervene between them. According to Mayukha even a half-brother is removed from the full brother by several places, the intervening heirs being (1) full brother's son, (2) father's mother and (3) full sister. The position of a half-sister being thus distinct from that of the sister even under those Schools of Hindu Law which recognise them as heirs, there is no justification for reading the word "sister" in section 2 of the Act in a sense different from its ordinary meaning in the English language. Let us then look to the scheme of the Act. It refers to certain specified near relations, namely, (1) son's daughter, (2) daughter's daughter, (3) sister and (4) sister's son. The first three, being females, were not recognised as heirs at all under the Hindu Law except only in the Presidencies of Bombay and Madras, and even in those Presidencies these females, rather the first two of them, were postponed to many

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remotely connected heirs. The fourth, that is, sister's son, though already an heir, ranked as a *bandhu* and thus occupied a much inferior position. By the new Act the claims of these four relations on the ground of propinquity were recognised and they were brought in within the nearer group of heirs, namely, the *Gotraja Sapindas* and were assigned their place between the father's father and father's brother. The Mitakshara law of succession was thus altered to a certain extent by legislative enactment. That being so, the Act must be strictly construed and words must not be read into it which are not there. While passing the Act, the Legislature must be presumed to have been aware of the well-recognised distinction existing under the Hindu Law between a sister and a half-sister, and if it was their intention to include half-sister also within the new class of heirs she would have been specifically mentioned in section 2. The Act proceeded on the principle of affinity and the Legislature might have advisedly left her out of consideration. Mr. Khurshaid Husnain suggests that 'sister' is a generic term and should be interpreted as 'father's daughter' in which case half-sister would be included in the term. This suggestion is based on the following passage from Nanda Pandit's commentary on placitum 5 in section 5 of Chapter 2 of the Mitakshara: "The daughters of the father and other ancestors must be admitted, like the daughter of the man himself, and for the same reason". Following this text the Bombay School recognised the sister to be an heir as a *Gotraja Sapinda*. The text expressly says "The daughters of the father". This cannot afford any guide for interpreting the plain word 'sister' used in the Act. Again if 'sister' be read to mean 'father's daughter', sister and half-sister would both come under the same category and would inherit together. This would be opposed to the spirit of the Act itself which is based on considerations of propinquity. It is said that in such a case the general principles of

Hindu Law will apply so that full blood will exclude the half-blood. But the Act is enacted, as the preamble shows, " to alter the order in which certain heirs of a Hindu male dying intestate are entitled to succeed to his estate ". These heirs are specified in section 2 and the order in which they are entitled to rank is fixed by it. The Act supersedes the Hindu Law in certain respects and in matters governed by the Act there is no scope for the operation of the general principles of Hindu Law. If half-sister is to come in, she will have to be placed after sister and before sister's son in the section. But is this permissible under the section as it stands? In my view it is difficult to hold that sister as contemplated by the section includes a half-sister.

This view is supported by the Full Bench decision of the Allahabad High Court in *Ram Adhar* v. *Sudesra*(1) and the decision of a Division Bench of the Madras High Court in *Angamuthu Muthirian* v. *Sinnavennammal*(2). The same view is also taken by the Oudh Chief Court in *Kabootra* v. *Ram Padarath*(3). A contrary view, however, has been taken by the Nagpur High Court in the Full Bench case of *Amrut* v. *Musammat Thagan*(4) which follows an earlier decision of the same Court in *Shankar* v. *Raghoba*(5). In these cases the learned Judges of the Nagpur High Court proceeded on the view that " to exclude a half blood where the full blood is entitled to succeed would be contrary to the general principle of Hindu Law and section 2 of Act II of 1929 should be interpreted so far as it is possible in accordance with the notions of Hindu Law ". But their Lordships had to recognise the distinction between full sister and half-sister in case of competition inter se. In case of such competition the full sister would

(1) (1933) I. L. R. 55 All. 725, F. B.
(2) (1938) A. I. R. (Mad.) 364.
(3) (1935) I. L. R. 11 Luck. 148.
(4) (1938) A. I. R. (Nag.) 134, F. B.
(5) (1938) A. I. R. (Nag.) 97.

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exclude the half-sister. What would then be the position of a half-sister in the order of succession specified in section 2 of the Act? The Act itself makes no such provision. Are we to supplement the Act and declare that half-sister would come after sister? To do so will be importing into the Act something which is not there. In the case of *Rameshwar* v. *Musammat Ganpati Devi*(1) the learned Judges of the Lahore High Court referring to the decision of the Full Bench of the Allahabad High Court in *Ram Adhar* v. *Sudesra*(2) observed as follows:—

"The decision of the Full Bench, however, proceeded on general grounds and laid down categorically that the word 'sister' in section 2 of the Act II of 1929 does not include a half-sister. With great respect I think that the conclusion of the learned Judges is expressed too broadly and I confess I have great doubts as to the soundness of the reasons on which it is based. But as already stated it is not necessary to express a final opinion on this point in this case".

Thus there was no express decision on the point in this Lahore case.

In the view I take the plaintiffs were not the heirs of Ramasre Singh and had no right to bring the suit for a mere declaration. I would, therefore, dismiss the appeal, but in the circumstances, without costs.

FAZL ALI, J.—I agree.

K. D.

Appeal dismissed.

(1) (1936) I. L. R. 18 Lah. 525.
(2) (1933) I. L. R. 55 All. 725, F. B.