

APPEAL FROM ORIGINAL CIVIL.

Before Mr. Justice Leslie-Jones and Mr. Justice Wilberforce.

Mst. SUJAN DEVI (PLAINTIFF)—Appellant,

versus

JAGIRI MAL AND Mst. MALAN (DEFENDANTS)—

Respondents.

Civil Appeal No. 334 of 1916.

Hindu Law—Mitakshara—Bengal and Benares Schools—Succession—brother's daughter—whether a bandhu.

The plaintiff, the brother's daughter of one Mani Ram, deceased, sued for a declaration that Jagiri Mal had not been adopted by Mani Ram or his widow. The Lower Court dismissed the suit on the ground of limitation. The plaintiff appealed to the Chief Court and it was contended by the defendants-respondents that even if the suit was not barred by limitation the plaintiff not being a *bandhu* with rights of inheritance had no *locus standi* to bring the suit.

Held, that by the Bengal and Benares Schools of Hindu Law, the only females entitled to inherit are the widow, the daughter, the mother, the father's mother and the father's father's mother, and that consequently plaintiff as a brother's daughter had no *locus standi* to bring the present suit.

Gouri Sakai v. Rukho (1), *Jagat Narain v. Sheo Das* (2) *Nanhi v. Gauri Shankar* (3), *Jagan Nath v. Champa* (4), *Jogdam-ba Koer v. Secretary of State* (5), *Mussamat Bibi Sodhan v. Harsa Singh* (6), and *Shambhu Nath v. Mst. Ralli* (7), followed.

Mulla's Hindu Law, 3rd Edition, page 68, Ghose's Principles of Hindu Law, Volume I, 3rd Edition, page 156, Rama Krishna's Hindu Law, Volume II, page 180, and Mayne's Hindu Law, 8th Edition, paragraphs 536-539, referred to.

Raghunath v. Munan Misr (8), dissented from.

Multani Chund v. Lala Mal (9), and *Nanak Gir v. Mst. Kishen Kaur* (10), distinguished.

(1) (1880) I. L. R. 3 All. 45.

(2) (1883) I. L. R. 5 All. 311.

(3) (1905) I. L. R. 28 All. 187.

(4) (1905) I. L. R. 28 All. 307.

(5) (1889) I. L. R. 18 Cal. 367, 370.

(6) 51 P. R. 1916.

(7) (1919) 52 Indian Cases 591

(8) (1897) I. L. R. 20 All. 191.

(9) 180 P. R. 1889.

(10) 161 P. R. 1919.

First appeal from the decree of Mir Ibad Ullah, Senior Subordinate Judge, Sialkot, dated the 29th October 1915, dismissing plaintiff's suit.

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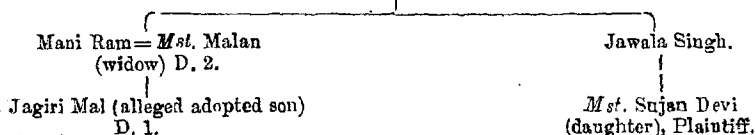
ROSHAN LAL and C. L. MATHUR, for Appellant.

TEK CHAND and TIRATH RAM, for Respondents.

The facts of the case are given in the judgment of the Court, delivered by —

LESLIE-JONES, J.—The following pedigree table will illustrate the case :—

FAQIR BUKHSH



Mussammat Sujan Devi sued for a declaration that Jagiri Mal had not been adopted by Mani Ram or by his widow with her husband's authority. The Subordinate Judge dismissed the suit on the ground that plaintiff was aware of the alleged adoption more than six years before the institution of the suit which was accordingly barred under Article 118 of the Limitation Act.

The plaintiff has appealed. We have heard arguments on the merits and we should not be prepared to maintain the finding of the Lower Court on this point. When Mani Ram died his widow who obtained mutation for herself in 1902 proclaimed to the world that Jagiri Mal had not been adopted and though in the following year she executed a deed of gift in which she recited the fact of adoption, there was no deed which purported to be one of adoption, and it has been admitted by her that in a case heard in the Munsif's Court at Daska she again denied that Jagiri Mal had been adopted. The natural result of these denials would be to put *Mussammat* Sujan Devi off her guard, and in view of them, we consider that when she had given *prima facie* evidence of her want of knowledge, it was for the defendants to show in the clearest possible way that the fact of the alleged adoption must have come to her knowledge afterwards. We are not impressed by the evidence of her visits to her paternal home when she was about to give birth to children, and the statement of *Mussammat* Gian

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Devi on which the Subordinate Judge has particularly relied, because she was called by the plaintiff, loses most of its weight when it is realised that she is the wife of Jagiri Mal.

Counsel for the defendants-respondents has, however, contended that the decision must be maintained on another ground, *viz.*, that according to Hindu Law by which the parties are admittedly governed a brother's daughter is not a *bandhu* with rights of inheritance. He has cited many authorities on this point, *e.g.*, Mulla's Hindu Law, 3rd Edition, page 68; Ghose's Principles of Hindu Law, Volume 1, 3rd Edition, page 156; Rama Krishna's Hindu Law, Volume II, page 180, and Mayne's Hindu Law, 8th Edition, paragraphs 536—539. The opinions of these commentators are based on numerous judgments of which the earliest appears to be one the *Sudder Dewany Adawlat* mentioned in *Gauri Sahai v. Rukho* (1). This judgment was also approved in *Jagat Narain v. Sheo Das* (2) and *Nanhi v. Gauri Shankar* (3), also *Jagan Nath v. Champa* (4). The leading Calcutta case is *Jogdamba Koer v. Secretary of State* (5). These authorities have been followed in *Mussammat Bibi Sodhan v. Harsa Singh* (6), a Single Bench judgment. They are all to the same effect that the only females entitled to inherit are the widow, the daughter, the mother, the father's mother and the father's father's mother. From the above authorities it is clear that the Bengal and Benares Schools of Hindu Law do not recognise any other female as an heir. As against these authorities the learned counsel for the appellant has placed his reliance on *Nanak Gir v. Mst. Kishen Kaur* (7) and the judgments cited therein. In that judgment it was held by a Division Bench of this Court that a sister is a *bandhu* with rights of inheritance, and reference is made to another judgment of this Court *Multani Chand v. Lala Mal* (8). That decision was merely to the effect that a sister's grandson is a *bandhu*, and it is of no assistance to us in this case. The learned Judges.

(1) (1880) I. L. R. 3 All. 45.

(2) (1888) I. L. R. 5 All. 311.

(3) (1905) I. L. R. 28 All. 187.

(4) (1905) I. L. R. 28 All. 307.

(5) (1839) I. L. R. 16 Cal. 367.

(6) 51 P. R. 1916.

(7) 161 P. R. 1919.

(8) 180 P. R. 1839.

also referred to *Raghunath v. Munan Misr* (1). This judgment, however, of the Allahabad High Court has been expressly dissented from in the two judgments in I. L. R. XXVIII All. The two Madras judgments are certainly authorities in favour of the appellant, but on this question the Madras and Bombay High Courts have differed from the Bengal and Benares Schools and are not authorities for the Punjab. Counsel for the respondents has also pointed out to us that *Nanak Gir v. Mst. Kishen Kaur* (2) is not even an authority for this Court, inasmuch as it has been dissented from in two subsequent judgments, viz., *Shambhu Nath v. Mst. Ralli* (3) and Civil Appeal No. 2928 of 1916 (4), in the latter of which it is stated that the head-note of *Nanak Gir v. Mst. Kishen Kaur* (2) is misleading and that it was never intended to lay down the rule so broadly as it is there stated. We therefore must uphold the contention of counsel for respondents that the plaintiff in this case had no *locus standi* to sue.

In these circumstances we dismiss the appeal with costs. Counsel for the respondent has made no reference to the third and fourth grounds of cross-objections.

Appeal dismissed.

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(1) (1897) I. L. R. 20 All. 191.

(3) (1919) 52 Indian Cases 591.

(2) 161 P. R. 1919

(4) Printed at page 588 *supra*.