APPELLATE CIVIL.

Before Sir Shadi Lal, Chief Justice, and Mr. Justice Addison.

TEGH INDAR SINGH AND OTHERS (DEFENDANTS) Appellants

versus

HARNAM SINGH (PLAINTIFF) Respondent.

1925

May 7.

Civil Appeal No. 303 of 1921

Hindu Law—Mitakshara—*Step-mother*—*whether entitled to a share on partition of her deceased husband's estate between his sons.*

Held, that according to the *Mitakshara* School of Hindu Law (unlike the *Dayabhaga* School) a step-mother is entitled, like a mother, to a share equal to that of a son on partition of her deceased husband's estate between his sons.

Damoodur Misser v. *Senabutty Misrain* (1), *Damodardas Maneklal* v. *Uttamram Maneklal* (2), *Vithal Ramkrishna* v. *Prahlad Ramkrishna* (3), *Harnarain* v. *Bishambar Nath* (4), and *Suba Raut* v. Mst. *Manla Rautain* (5), followed.

Bishan Das v. Mst. *Devi* (6), dissented from.

Second appeal from the decree of A. H. Brasher, Esquire, District Judge, Amritsar, dated the 25th October 1920, modifying that of Sayad *Muhammad Shah, Subordinate Judge, 2nd class, Amritsar, dated the 17th March 1920, in so far as to give plaintiff possession, by partition, of 1/3rd of the immoveable property in suit.*

TEK CHAND, for Appellants.

MAN SINGH, for Respondent.

JUDGMENT.

SIR SHADI LAL C. J.—This second appeal arises out of an action brought by the plaintiff Harnam Singh

(1) (1882) I. L. R. 8 Cal. 537.
(2) (1892) I. L. R. 17 Bom. 271.
(3) (1915) I. L. R. 39 Bom. 373.
(4) (1915) I. L. R. 38 All. 83.
(5) (1918) 47 I. C. 204.
(6) 47 P. R. 1914.

1925

TEGH INDAR SINGH v. HARNAM SINGH.

for the partition of the estate left by his father, who died in July 1916 leaving a widow *Mussammat* Bhagwanti and three sons, namely, the plaintiff and his two step-brothers, who with their mother *Mussammat* Bhagwanti are defendants in the case. It is not disputed that the parties are governed by the *Mitakshara* school of the Hindu Law, and the question for determination is whether *Mussammat* Bhagwanti, who is the step-mother of the plaintiff, is entitled to a share on partition equal to that of a son.

The learned Vakil for the plaintiff, while conceding the mother's right to a share on a partition between her sons, contends that a step-mother does not occupy the same position as a mother, and that she is not entitled to any share out of the joint estate. This distinction is, no doubt, recognised by the *Dayabhaga* school of the Hindu Law which does not allow any share to a sonless step-mother on a partition between her step-sons; but the doctrine adopted by the leading authorities of the *Mitakshara* school is to the effect that a mother and a step-mother are equal sharers with the sons.

This proposition was laid down as long ago as 1882 by a Division Bench of the Calcutta High Court in *Damoodur Misser and another* v. *Senabutty Misrain and others* (1); and the same view has since been affirmed by the Bombay High Court in *Damodardas Maneklal and others* v. *Uttamram Maneklal and others* (2) and *Vithal Ramkrishna and others* v. *Prahlad Ramkrishna and others* (3), by the Allahabad High Court in *Harnarain and another* v. *Bishambar Nath and another* (4), and by the Patna High Court in *Suba*

(1) (1882) I. L. R. 8 Cal. 537.
(2) (1892) I. L. R. 17 Bom. 271.
(3) (1915) I. L. R. 39 Bom. 373.
(4) (1915) I. L. R. 38 All. 83.

1925

TEGH INDAR SINGH v. HARNAM SINGH.

Raut v. *Mussammat Manla Rautain and another* (1). The learned Vakil for the plaintiff places his reliance upon the judgment of the Punjab Chief Court in *Bishan Das* v. *Mussammat Devi and Ram Partap* (2) which enunciates the rule that a step-son is not bound to contribute to his step-mother's maintenance after the joint property has been partitioned between the step-son and her own son. It is true that the judgment contains some observations to the effect that there is no difference between the two systems of the Hindu Law, the *Dayabhaga* and the *Mitakshara*, as to the position and rights of a step-mother; but the question whether on a partition of the joint property a step-mother is entitled under the *Mitakshara* Law to a share was not before the learned Judges, and the general observations relating to the step-mother's position *qua* her step-son can be regarded as mere *obiter dicta*. With all respect to the learned Judges I am unable to endorse the view that the doctrine of the *Mitakshara* school on the subject of the step-mother's right to a share is identical with that followed by the *Dayabhaga* school.

Mr. Man Singh for the plaintiff frankly admits that, with the exception of the observations in *Bishen Das* v. *Mst. Devi and Ram Partap* (2), there is not a single judicial authority in support of his contention; but he invites our attention to the original text and urges that the word '*mátá*' used therein means only a mother and does not include a step-mother. This contention runs counter to all the authorities on the subject, the jurists of the *Mitakshara* school as well as the judicial decisions, and I have no hesitation in rejecting it. The commentaries including the *Mitakshara* are unanimous that the word '*mátá*' used by

(1) (1918) 47 I. C. 204. (2) 47 P. R. 1914.

1925

TEGH INDAR SINGH v. HARNAM SINGH.

Yajnavalkya in the text, which speaks of the share of a mother on the occasion of the partition of the property among sons after the decease of their father, included a step-mother; and it would be presumptuous to impeach the correctness of the interpretation adopted by all the jurists.

Mr. Man Singh also urges that, even if *Mussammat* Bhagwanti is entitled to a share in the estate, the value of the *stridhan* received by her from her husband should be deducted from that share. The determination of this question depends upon facts and, as the point was not raised in either of the Courts below, it cannot be agitated for the first time in second appeal.

I accordingly hold that *Mussammat* Bhagwanti is entitled to a share equal to that of each of the sons, and that the plaintiff cannot get more than one-fourth of the estate. The result is that I accept the appeal and grant him a decree for possession by partition of one-fourth of the immoveable property specified in the plaint. The respondent must pay the costs incurred by the appellants in this Court.

ADDISON J.—I concur.

A. N. C.

Appeal accepted.