

take proceedings in that State in order that he may recover his debt from any property he may discover situate in that State. Generally speaking, it would certainly be contrary to all ideas of equity that a party trading and incurring debts in Bombay, and having property in foreign territory, which the Official Assignee could not get hold of, should be able to completely get rid of all his liabilities as regards his creditors inside British India and then proceed to enjoy his property outside British India, free from all those liabilities. This case, in my opinion, does not come within any of the three classes of cases which were referred to in *Carron Iron Company v. Maclaren*⁽¹⁾ in which it would be considered that a party within the jurisdiction should be restrained from taking proceedings outside the jurisdiction of the Court.

I, therefore, think the appeal fails and it will be dismissed with costs.

Solicitors for appellant: Messrs. *Kharas & Co.*

Solicitors for respondent: Messrs. *Jamsetji, Rustomji & Devidas.*

Appeal dismissed.

G. G. N.

(1) (1855) 5 H. L. C. 416.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Fawcett.

DUNDAPPA BASAPPA YEDAL AND ANOTHER (ORIGINAL DEFENDANTS),
APPELLANTS v. BHIMAWA KOM BASWANTIAPPA PATIL (ORIGINAL
PLAINTIFF), RESPONDENT*.

Hindu Law—Shudras—Illegitimate daughter—Succession to her mother.

Under Hindu law, the illegitimate daughter of a Shudra succeeds to her mother in absence of any nearer heir.

* Second Appeal No. 6 of 1920 from Order.

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KEVALRAM

POONAM-
CHAND
PITAMBER.

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APPEAL from an order passed by F. Boyd, District Judge of Belgaum, reversing the decree passed by, and remanding the suit to, Sumitra A. H., Subordinate Judge at Bail-Hongal.

Suit for account on a mortgage under the Dekkhan Agriculturists' Relief Act.

The plaintiff, who was the illegitimate daughter of a Shudra woman named Somawa, sued for account of a mortgage executed by Somawa. The defendants, mortgagees, contended that the plaintiff was not the heir of Somawa and was not entitled to sue. The trial Court agreed with the contention and dismissed the suit.

On appeal, the District Judge was of opinion that the defendants were estopped from denying the title of their mortgagor. He, therefore, reversed the decree and remanded the suit to the lower Court for trial on merits.

The defendants appealed against the order of remand.

D. G. Dalvi, for the appellants :—The plaintiff, who is an illegitimate daughter of Somawa, is not entitled to inherit and cannot therefore sue for redemption or account. Under Hindu law, an illegitimate daughter is not recognised as an heir: *Bhikya v. Babu*⁽¹⁾. It is doubtful if she is even entitled to claim maintenance: *Parvati v. Ganpatrao Balal*⁽²⁾. Assuming that the plaintiff has a right of maintenance, this right does not entitle her to sue for redemption or account: *Roshan Singh v. Balwant Singh*⁽³⁾; *Balwant Singh v. Roshan Singh*⁽⁴⁾.

The pleader for the respondent in the District Court has made no definite admission: but, assuming that it

(1) (1908) 32 Bom. 562.

(3) (1899) 22 All. 191.

(2) (1893) 18 Bom. 177 at p. 183.

(4) (1896) 18 All. 253 at p. 255.

is so, such admission, if erroneous in law, does not bind the parties: *Krishnaji v. Rajmal*^(a).

A. G. Desai, for the respondent, not called upon.

MACLEOD, C. J.:—The plaintiff sued for an account under the Dekkhan Agriculturists' Relief Act of a mortgage executed by her mother Somawa. In their written statement the defendants said that the plaintiff's mother Somawa was kept by Somanaiik, therefore the plaintiff had no right to sue. The seventh issue was: Does the plaintiff prove that her mother Somawa was the lawful wife of Somanaiik? The plaintiff's pleader notified to the Court that he did not wish to lead any evidence on issue No. 7, and it was, therefore, presumed that the plaintiff could not prove that Somawa was married to Somanaiik. The Judge seemed to consider that that was conclusive, and that the plaintiff being the illegitimate daughter of Somawa was unable to sue for an account.

In appeal this question does not seem to have been dealt with. But the appellant relied on the fourth ground of the appeal that it was not open to the defendant-respondents to question the status of the plaintiff-appellant's mother Somawa as wife of Somanaiik. Ground No. 6 was that the lower Court failed to see that appellant-plaintiff was entitled to sue as heir of her mother Somawa, if not as heir of Somanaiik. The judgment of the learned appellate Judge is not very clear, but it appears from what he says that both pleaders agreed that the case had to go back. Therefore we have not got the findings of the learned Judge on the various grounds of appeal beyond this that he thought that the defendants could not deny the title of their mortgagor Somawa. That, no doubt, is

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perfectly correct, but it did not follow from that that the plaintiff was entitled to sue in the place of the deceased Somawa. The decree of the lower Court was reversed and the suit was remanded for trial and decision of the other issues. All evidence having been led, neither side was to be at liberty to adduce further evidence.

Now the question whether the plaintiff can sue on the mortgage executed by her mother depends on the question whether as an illegitimate daughter she can succeed as heir to her mother's estate. There can be very little doubt that amongst Shudras at any rate the illegitimate daughters succeed as heirs to their mother in default of any nearer heirs. Mr. Ghose at p. 763 of his work on Hindu law (Third Edition) says: "According to Hindu law, an illegitimate child is not the child of the father but only of the mother, and can thus have no relations or rights of inheritance except to the mother's property." The dispute has always been whether illegitimate children can succeed as heirs of their fathers. It has never been disputed that they are heirs to their mother's property. The result must be that as Somawa is the mortgagor, the defendants, as the learned appellate Judge points out, cannot dispute the fact that Somawa was entitled to mortgage the property. Then as the plaintiff is the nearest heir to Somawa, she is entitled to sue for an account of that mortgage. The judgment of the learned Judge in the Court below reversing the decree of the trial Court is therefore correct. The case must be dealt with by the trial Court in the light of our remarks and findings recorded on issues Nos. 1 to 6. The appeal is dismissed. The respondent is entitled to her costs of the appeal.

Appeal dismissed.

R. R.