

1924.

MAGINDAS
MOTILAL
v.
NILAII
MORORA.

judgment of Aikman J. in *Anjora Kunwar v. Babu*⁽¹⁾, that the law in India is not so strict in regard to erroneous advice on the part of a legal adviser as the view taken in *In re Coles and Ravenshear*⁽²⁾.

I also concur that this is a case where the Court can properly interfere with the discretion that has been exercised by the learned Chief Justice. As to the disposal of the application for a certificate I think the case is similar to one arising under Order XXI, Rule 23, the application having been disposed of on a preliminary point as to its admissibility. I concur therefore in the proposed order.

Order reversed.

R. R.

⁽¹⁾ (1907) 29 All. 638.

⁽²⁾ [1907] 1 K. B. I.

APPELLATE CIVIL.

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

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March 7.

HOSBANNA DEVANNA NAIK (ORIGINAL PLAINTIFF), APPELLANT v. DEVANNA SANNAPPA NAIK, AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS^o.

Hindu law—Mitakshara—Partition between father and sons—Share of step-mother.

According to the Mitakshara, a step-mother is entitled to a share on partition between the father and his sons.

Jairam Nathu v. Nathu Shamji⁽¹⁾, followed.

SECOND appeal from the decision of V. M. Ferrers, District Judge of Kanara, amending the decree passed by H. V. Kane, Subordinate Judge at Karwar.

Suit for partition.

^o Second Appeal No. 83 of 1923.

⁽¹⁾ (1906) 31 Bom. 54.

The plaintiff was the son of defendant No. 1 by his first wife. By his second wife Honnama, defendant No. 1 had five sons (defendants Nos. 2 to 6). The plaintiff sued to recover one-seventh share by partition of the family property. He ignored Honnama and did not make her a party to the suit.

The trial Court awarded a seventh share to the plaintiff.

On appeal, Honnama was added as a party respondent by the District Judge. The learned Judge awarded the plaintiff an eighth share in the property, on the ground that the step-mother Honnama was entitled to a share also.

The plaintiff appealed to the High Court.

G. P. Murdeshwar and *D. R. Ugrankar*, for the appellant.

Nilkant Atmaram, for the respondents.

MACLEOD, C. J. :—The plaintiff filed this suit for partition against the 1st defendant, his father, and defendants Nos. 2 to 6, his step-brothers. He claimed one-seventh share in the family lands, house, moveables, ornaments and trade of the joint family. Honnama, the wife of the first defendant, was afterwards added as a party respondent in the appeal. The lower Court passed a partition decree directing that the plaintiff should be declared the owner of the one-seventh share in all the properties of the joint family.

In appeal the question arose whether Honnama was entitled to a share in the partition. In *Jairam Nathu v. Nathu Shamji*^(a), a partition suit was filed by a Hindu son against his father and brothers. It was held that the father's wife on partition was entitled to a share equal to that of the son, but from her share the value of any *stridhan* received by her as a gift from

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her father-in-law or husband would have to be deducted. The parties were Bhatias and would presumably be governed by the Mayukha. But it seems to have been conceded in the argument that the claim of the mother or step-mother for a share in the partition should be admitted. The provisions of the Mitakshara, which govern the present case are perfectly clear, C. 1, s. 2, pl. 8 is as follows :—

“Two sorts of partition at the pleasure of the father, namely equal and unequal have been stated. In the case of equal partition if it makes the allotment equal, his wives, to whom no separate property has been given by the husband or the father-in-law, must be rendered partakers of like portions.”

It appears to have been urged by the plaintiff-appellant that as Honnama was his step-mother, she was not entitled to share in the partition. But if plaintiff had been her son, undoubtedly she would be entitled to a share, and it seems to me there can be no reason for depriving her of her share in the partition because the plaintiff was the son of the 1st defendant by another wife, now deceased. We think the District Judge was right in holding that Honnama was entitled to share in the partition, and in directing the clause awarding past mesne profits to be deleted. The appeal, therefore, fails and must be dismissed with costs.

SHAH, J. :—I agree. I desire to add that this case comes from the District of Kanara and the parties would be governed by the Mitakshara. The case of *Jairam Nathu v. Nathu Shamji*^(a) was governed by the Vyavahara Mayukha. But it is sufficient to state that on this point there is no difference between the Vyavahara Mayukha and the Mitakshara, and that this conclusion is based upon the express text of Yajnavalkya.

Appeal dismissed.

R. R.

(a) (1906) 31 BOM. 54.