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should be entitled to the advantages of the Act because he happens in conjunction with his trading transactions to carry on agricultural business, so that, if the income from agriculture is more than the income from his trading transactions, he can ask to have the accounts of trading transactions taken under the Dekkhan Agriculturists' Relief Act. That is the law, and, as the defendants are agriculturists, these accounts, though recording trading transactions, should be taken according to the Act. The case must, therefore, go back to the Subordinate Judge for an account to be taken of all the five Khatas under section 13 of the Dekkhan Agriculturists' Relief Act, and the result must be certified to us within three months.

*Case sent back.*

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## APPELLATE CIVIL.

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

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September 2.

ZIPRU CHINDU SHIMPI (ORIGINAL PLAINTIFF), APPELLANT v. BOMTYA DAGDU KUMBHAR AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS<sup>2</sup>.

*Hindu law—Illegitimate son—Collateral succession—Sudras.*

A Sudra died leaving a legitimate son and an illegitimate son.

*Held*, on the death of both the above sons, that the son of the legitimate son could not inherit the property of the illegitimate son.

*Dharma v. Sakaram*<sup>(1)</sup>, applied.

SECOND appeal from the decision of Dadiba C. Mehta, Acting District Judge of Khandesh, reversing the decree passed by G. L. Dhekne, Subordinate Judge at Dhulia.

<sup>2</sup> Second Appeal No. 7 of 1921.

(1) (1919) 44 Bom. 185.

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Suit to recover possession of property.

The original owner of the property was one Vedu, a tailor, who was classed as Sudra. He had a son named Chintu by his married wife, and an illegitimate son named Dhaklu by his mistress. Chintu died leaving a son Zipru (plaintiff).

Dhaklu died leaving only a mistress named Nagu. She sold one of the fields belonging to Dhaklu to defendant No. 1.

Zipru, thereupon, sued to recover possession of the field from defendant No. 1.

The trial Court decreed the suit.

On appeal, the decree was reversed and the suit dismissed, on the following grounds :—

“ It is now settled law for this Presidency at least that an illegitimate son of a Sudra is entitled to inherit to his father either wholly or partially. The converse proposition, viz., where an illegitimate Sudra son dies without leaving issue, widow or mother, his putative father becomes his heir, is also decided in an elaborate Full Bench judgment reported in I. L. R. 41 Mad. 44. Thus there is heritability between a Sudra and his illegitimate son. By a parity of reasoning the learned Sub-Judge in this suit has come to the conclusion that an illegitimate son can inherit to his collaterals and *vice versa*. The current of authorities against this view is very strong. They are referred to by Kumar Swami Sastriar J. at p. 73 of the Full Bench Madras Ruling quoted above. No doubt his Lordship does express an opinion that on a first impression he would be inclined to agree with Dr. Sarbadhikari's view that an illegitimate son of a Sudra has a right to succeed to collaterals. That is, however, an *obiter dictum*, not supported by any reasoning of his own. To my mind in the face of positive texts disallowing a Sudra's illegitimate son equal rights of inheritance to his own father's property with a legitimate son it is inconceivable that the illegitimate son or *dasiputra* can be in the same position as an *aurasa* or legitimate son for the purpose of inheritance to collaterals. Sanctity of marriage is not absolutely at a discount even among the Sudras. In a class in which concubinage is not considered so heinous, some provision had at best to be made for the illegitimate offspring. Beyond that there is no warrant. It is not permissible to treat them as Sapindas of collaterals. Sapindaship naturally presupposes lawful marriage.”

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The plaintiff appealed to the High Court.

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*W. B. Pradhan*, for the appellant :—The lower appellate Court has reversed the decision of the trial Court mainly relying on the recent decision in *Dharma v. Sakharam*<sup>(1)</sup>. That decision supports the converse of the present position. Three difficulties have been pointed out in that decision which lead to the rejection of the right of an illegitimate son of a Sudra to succeed to the property of a collateral, viz., (1) long and uniform course of decisions of all the High Courts ; (2) the absence of the mention of the illegitimate son of a Sudra in the verses laying down the order of succession in the case of obstructed heritage, although they are applicable to all cases ; and (3) differential treatment given to a *dasiputra* in matters of succession to his father could not be observed if he were to succeed to the property of his collaterals.

None of these difficulties applies to the present case. As to the first, there are no decisions at all of this High Court governing the present point. The second and third, since the question is of succession to him and not by him, do not apply. On the contrary, in the text he is described as a "brother" (see *Mitakshara*, Chapter I, section 42 ; *Stokes' Hindu Law Books*, page 426 ; *Mayukha*, Chapter IV, section 4, para. 32 p. 55 and *Mandlik*, p. 47).

The fact that he has been given the place prior to obstructed succession and immediately after the enumeration of all the kinds of sons shows that a position of special advantage is given to him and not that any rights are taken from him ; see *Mitakshara*, Chapter I, section 11, verses 30 and 31, page 422, and *Subramania Ayyar v. Rathnavelu Chetty*<sup>(2)</sup>. So the

<sup>(1)</sup> (1919) 44 Bom. 185.

<sup>(2)</sup> (1917) 41 Mad. 44 at p. 64, p. n.

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discussion of his rights in the text is in fact an advantage in his favour, rather than a difficulty as in the converse case of *Dharma v. Sakharam*<sup>(1)</sup>.

The fact that he has been given a definite portion out of his father's property instead of bare maintenance as in the three regenerate classes shows that he had a status in the family and not that he was a mere stranger; there is no reason why the portion of the father's estate to which he succeeded should not return again to the family after him when he left no heirs of his own as in this case.

As to reciprocity, the Hindu law of succession is more or less arbitrary and this doctrine is not recognized in the case of female heirs, such as daughter and sister. So the fact that he could not succeed to the collateral is no reason why the collaterals should not succeed to him.

Another reason why the illegitimate son had a higher position amongst the Sudras than in the other three classes is that amongst them continuous concubinage was treated as equivalent to a marriage: see *Meenakshi v. Muniandi Panikkan*<sup>(2)</sup> and *Soundararajan v. Arunachalam Chetty*<sup>(3)</sup>.

Succession to his property, therefore, should be treated by reference to ordinary rules of Hindu law. That a *dasiputra* is a member of the family has been recognised by this Court since *Sadu v. Baiza*<sup>(4)</sup> and this position has been accorded to him by the Privy Council in *Jogendro Bhupati Hurrochundra Mahapatra v. Nitayanand Man Sing*<sup>(5)</sup> and *Subramania Ayyar v. Rathnavelu Chetty*<sup>(6)</sup>, that there is heritable blood, so

<sup>(1)</sup> (1919) 44 Bom. 185.<sup>(4)</sup> (1878) 4 Bom. 37 at p. 46.<sup>(2)</sup> (1914) 38 Mad. 1144.<sup>(5)</sup> (1890) 18 Cal. 151.<sup>(3)</sup> (1915) 39 Mad. 136 at p. 152.<sup>(6)</sup> (1917) 41 Mad. 44 at p. 55.

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that the son of a predeceased illegitimate son can succeed to the property of his grand-father has been recognized in *Fakirappa v Fakirappa*<sup>(1)</sup> and *Ramalinga Muppan v. Pavadai Goundan*<sup>(2)</sup>. He can also offer a *pinda* : see Ghose on Hindu Law, Vol. I, p. 765. Therefore, the appellants ought to succeed in preference to the respondents who are the alienees from the concubine of the deceased Dhaklu.

*S. V. Palekar*, for respondents Nos. 1 and 2, was not called upon.

SHAH, J.:—In this case one Vedu had two sons: a legitimate son called Chindhu and an illegitimate son called Dhaklu. Chindhu died leaving a son named Zipru. Dhaklu died without leaving any relations and it is with reference to the property of Dhaklu that the present suit is brought by Zipru to establish his claim as heir to Dhaklu.

It is established now, and in spite of the argument of the appellant to the contrary it must be accepted that the illegitimate son of a Sudra cannot inherit the separate property of his father's legitimate son, as a brother. It is sufficient to refer to the decision in *Dharma v. Sakharam*<sup>(3)</sup>, in which the earlier decisions bearing on this point have been referred to. It has been argued that it does not follow necessarily from that decision that Zipru, the son of the legitimate son of the original ancestor, could not inherit the property of Dhaklu, the illegitimate son of Vedu. There is no authority on the question before us; but if the rule in *Dharma v. Sakharam*<sup>(3)</sup> is to be consistently followed, I do not see how a collateral could succeed to the property of an illegitimate son, when that son is not entitled to collateral succession. It necessarily follows

<sup>(1)</sup> (1902) 4 Bom. L. R. 809.

<sup>(2)</sup> (1901) 25 Mad. 519 at p. 524.

<sup>(3)</sup> (1919) 44 Bom. 185.

that Zipru could not inherit the property of Dhaklu ; and his claim to that property must fail.

The decree of the lower appellate Court is right and must be affirmed with costs.

MACLEOD, C. J. :—I agree.

*Decree affirmed.*

R. R.

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### CRIMINAL APPELLATE.

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

EMPEROR v. ABDUL REHMAN ISMAIL.\*

*Reformatory Schools Act (VIII of 1897)—Juvenile prison at Dharwar—  
Sentence passed on juvenile offender—Severity of sentence.*

Of two accused, who were found guilty of the offence of theft, one, a boy of 16, was ordered to be detained under rigorous imprisonment in the Juvenile Prison at Dharwar for a period of two years, the other, an adult with three previous convictions, was sentenced to rigorous imprisonment for one year. On appeal:—

*Held*, that the sentence passed on the juvenile offender should not exceed one year which was the sentence passed on the other accused.

THIS was an appeal from the conviction and sentence passed by B. N. Athavale, Presidency Magistrate of Bombay.

Two accused persons were found guilty of the offence of theft. The principal offender, who was an adult, was sentenced to rigorous imprisonment for one year in view of three previous convictions against him. The other accused was a boy of sixteen : he was sentenced to be detained in the Juvenile Prison at Dharwar for a period of two years.

\* Criminal Appeal No. 473 of 1921.

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