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[871] APPELLATE CIVIL.

Before Mr. Justice Rampini and Mr. Justice Caspersz.

SUNDARI LETANI v. PITAMBARI LETANI.*

[19th and 30th May, 1905.]

Hindu Law—Inheritance—Disqualification of daughter—Unchastity—Marriage with Mahomedan during lifetime of undivorced Hindu husband—Legitimacy of issue—Act XXI of 1850.

Where a Hindu married woman embraced Islamism and married a Mahomedan according to the forms of Mahomedan law, and had sons by him during the lifetime of her Hindu husband without having been divorced from the latter :

Held that as the sons were illegitimate, she was in the position of an unchaste daughter, and, was, under Hindu Law, disqualified from inheriting her father's property.

Dhan Bibi v. Laloo Bibi (1) and *Ramananda v. Raibishori Barmoni* (2) referred to.

The provisions of Act XXI of 1850 cannot save her right of inheritance because she had not lost such right by reason of her renouncing or being excluded from the Hindu communion.

Bhagwant Singh v. Kallu (3) distinguished.

[Ref. 31 Mad. 100 ; 15 M. L. T. 107=26 M. L. J. 260=22 I. C. 697=1914 M. W. N. 278 ; 40 Cal. 650 ; Fol. 41 Mad. 1078=35 M. L. J. 317=24 M. L. T. 183=1918 M. W. N. 625=48 I. C. 50.]

APPEAL by the first defendant.

This was an appeal from a suit by the plaintiff-respondent, Pitambari Letani, in the Court of the Munsiff, at Rampore Hat against her two sisters for her one-third share of the estate of their father, Golami Let, upon the death of their mother Rakha Letani. The plaintiff was a Hindu by birth, and was married to a Hindu named Michu Let, and bore him daughters. She subsequently became a convert to Islamism, and married a Mahomedan in the forms required by the law of that community, [872] and had sons by him. Her Hindu husband abandoned her in consequence of her apostacy and took another wife. He was still living at the time of the suit. The Munsif gave the plaintiff a decree holding that under Act XXI of 1850 the renunciation of the Hindu religion and the consequential excommunication from caste were not causes of exclusion from inheritance. No questions as to the legitimacy of her children by her Mahomedan husband, or as to her incapacity of inheritance by reason of unchastity or of the inability of her sons to offer oblations arose before, or were decided by, the Munsiff.

The defendants appealed to the District Judge of Birbhun and disputed the validity of the Mahomedan marriage, alleged to have been contracted without a divorce from the Hindu husband, and the legitimacy of the issue of such marriage. They also contended that even if the plaintiff's sons were legitimate, they did not confer upon her a capacity of inheritance, as they could not perform the necessary religious ceremonies upon the death of their grandfather on account of their Mahomedan faith.

* Appeal from Appellate Decree No. 2785 of 1903 against the decree of S. J. Douglas, District Judge of Birbhun, dated the 20th August 1903, affirming the decree of Mohar Lall Day, Munsiff of Rampore Hat, dated the 27th of March 1903.

(1) (1900) I. L. R. 27 Cal. 801.

(3) (1888) I. L. R. 11 All. 100.

(2) (1894) I. L. R. 22 Cal. 47.

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The District Judge found that the plaintiff's Hindu husband had abandoned her, and had by his conduct condoned or consented to her marriage with her Mahomedan husband; that the Hindu marriage had, therefore, been dissolved; and that the Mahomedan marriage was lawful and the issue thereof legitimate.

He also held that the inability of her sons to perform the rites of the Hindu religion owing to their difference of creed was a fact which impaired her right of inheritance to her father's estate and did not, therefore, having regard to Act XXI of 1850, impose a disability upon her.

He affirmed the decree of the Munsiff with costs, whereupon the first defendant appealed to the High Court.

Babu *Mahendra Nath Roy* for the appellant.

Mr. *B. C. Seal* for the respondent.

RAMPINI AND CASPERSZ JJ. The facts of this case are that the plaintiff *Pitambari Letani alias Islam Bibi*, sues to establish her title to, and to recover, possession of, a one-third share of her father's property. Her right to succeed is denied by her sisters, [873] the defendants, on the ground of her having renounced the Hindu religion and become a Mahomedan, and of her having a Hindu husband still living, notwithstanding which fact she has contracted a *nika* marriage with a Mahomedan and has had several children by him. The plaintiff, however, relies on Act XXI of 1850, which provides that "so much of any law or usage as inflicts on any person forfeiture of right or property, or may be held in any way to impair or affect any rights of inheritance, by reason of his or her renouncing or having been excluded from the communion of any religion or being deprived of caste, shall cease to be enforced."

Both the lower Courts have allowed the plaintiff's claim and given her a decree. The Judge of the Court of First Instance, it may be noted, is a Hindu gentleman, but he has based his decision on a ruling of the Allahabad High Court in *Bhagwant Singh v. Kallu* (1).

The defendant No. 1 appeals and on her behalf it has been urged:

(i) that although, if the plaintiff had succeeded to her father's property, she could not have been deprived of it, yet as she is now in the position of an unchaste daughter, and of a daughter who cannot have a Hindu son, who can offer oblations to her father, she cannot now inherit his estate according to Hindu Law; and

(ii) that the Judge is wrong in holding that the issue of her marriage with a Mahomedan are legitimate.

With regard to the latter argument we would say that it is difficult to see how the issue of the plaintiff's marriage with a Mahomedan can be held to be legitimate. Her Hindu husband is still living. He has abandoned, but not divorced, her, and, according to Hindu law, there can be no divorce except by custom. No ceremony of divorce of her first husband, even in conformity with the rites of Mahomedan Law, is said to have been performed. Her children are, therefore, illegitimate: see *Dhan Bibi v. Laloo Bibi* (2).

If this be so, then she is in the position of an unchaste daughter, who cannot inherit according to Hindu Law: *Bamananda v. Baikishori Barmani* (3). The provisions of Act [874] XXI of 1850 cannot save her right of inheritance, because she has not lost her right by reason of her renouncing or being excluded from the Hindu communion.

(1) (1888) I. L. R. 11 All. 109.

(2) (1894) I. L. R. 22 Cal. 247.

(3) (1900) I. L. R. 27 Cal. 801.

In this view of the case it is unnecessary to consider the plea of the appellant that the plaintiff cannot have a son, who can offer oblations to her father.

The case of *Bhagwant Singh v. Kallu* (1) would not seem to be any authority in favour of the plaintiff in this case, because we do not hold that the plaintiff is disqualified from inheriting by reason of change of religion, but merely because she has put herself in a position in which she cannot, according to Hindu Law, inherit a share in her father's property.

We, therefore, allow this appeal with costs.

Appeal allowed.

32 C. 375 (=9 C. W. N. 705.)

[875] APPELLATE CIVIL.

Before Mr. Justice Ghose and Mr. Justice Holmwood.

BIDYA MOYEE DEBYA CHOWDHURANI v. SURJA KANTA ACHARJI.*

[5th, 6th and 19th April, 1905.]

Transfer—District Judge—Additional Judge—Transfer of part-heard appeal to Additional Judge, legality of—Assignment of "functions" to such Judge—Bengal, N.-W. P. and Assam Civil Courts Act (XII of 1887), ss. 8, 10, 11, 21 (3) and 22—Civil Procedure Code (Act XIV of 1882), s. 25.

A District Judge has no jurisdiction under s. 8 of the Bengal, N.-W. P. and Assam Civil Courts Act to transfer a case partly heard before himself to an Additional Judge for disposal.

Where, therefore, the District Judge admitted an appeal, heard the arguments and reserved judgment on a certain date, but on the next day, upon the application of the appellant, deputed an amin and a pleader to make a survey and identify some lands, to prepare a map and to take certain evidence, and after the receipt of their report fixed a date for further hearing, but ultimately transferred the appeal to the Additional Judge for disposal :

Held that the order of transfer was without jurisdiction.

Kumarasami Reddiar v. Subbaraya Reddiar (2) ; *Sita Ram v. Naini Dulaiya* (3) ; *Dumree Sahoo v. Jugdharee* (4) ; *Moulvi Abdool Hye v. Macrae* (5) ; *Kishore Mohun Sett v. Gul Mohamed Shaña* (6) referred to.

A District Judge may under section 8 assign to the Additional Judge the function of hearing any particular class of cases, but it is extremely doubtful whether he can transfer to such Judge any particular case pending before himself.

[*Ref.* 13 I. C. 542 ; 10 C. W. N. 12 ; *Commented on* : 10 C. W. N. 841 ; *Dist.* 8 C. L. J. 34 ; *Expl. & Diss.* 36 Cal. 193 = 5 C. L. J. 611.]

APPEAL by the plaintiff.

The plaintiff-appellant, Bidya Moyee Debya, instituted a suit in the Court of the First Subordinate Judge of Mymensingh to [876] recover possession of certain lands alleged to be part of a *bhil* appertaining to her estate, and obtained a decree for a portion of such lands.

* Appeal from Appellate Decree No. 547 of 1902 against the order of Babu Dwarka Nath Mitter, Officiating Additional District Judge of Mymensingh, dated the 6th December 1901, reversing the order of Babu Mohendra Nath Roy, First Subordinate Judge of Mymensingh, dated the 31st January 1898.

(1) (1888) I. L. R. 11 All. 100.

(2) (1899) I. L. R. 23 Mad. 314.

(3) (1899) I. L. R. 21 All. 290.

(4) (1870) 13 W. R. 398.

(5) (1874) 28 W. R. 1.

(6) (1867) I. L. R. 15 Cal. 177