

*Before Mr. Justice Kemp and Mr. Justice Markby.*

BR. JAKISHOR MITTER MAZUMDAR (PLAINTIFF) *v.* RADHA  
GOBIND DUTT AND OTHERS (DEFENDANTS.)\*

1869  
Aug 13

*Hindu Law—Inheritance—Grandson of maternal Grand father's Brother.*

According to Hindu law the grandson of a brother of the maternal grandfather of the deceased is heir to his property in default of nearer heirs.

THIS was a suit brought by the grandson of the brother of the maternal grandfather of one Ramlochan, to establish a title to Ramlochan's estate as his nearest heir. The widow had been in possession during her life-time, but upon her death the defendants entered and resisted the plaintiff's claim, alleging that according to Hindu law, he was no heir to Ramlochan deceased. The moonsiff passed a decree in favor of the plaintiff. On appeal, the Subordinate Judge held that the plaintiff was no heir to Ramlochan according to Hindu law. The plaintiff appealed to the High Court.

Baboo *Kalimohan Das* (with him Baboos *Upendra Chandra Bose* and *Mahendra Nath Banerjee*) contended that the plaintiff, as a descendant of the maternal great grandfather, in the fourth degree, was, according to the Hindu law as prevalent in Bengal, a Sapinda, and as such, an heir to Ramlochan. Elberling on Inheritance, section 36, p. 80; 1 Macnaghten, p. 29; Daya Krama Sangraha, Chapter I., Section X., Sloke 17; 3 Colebrooke's Digest, p. 529—Samacharan's Vyavastha Darpana, section 114, p. 279 (2nd edition).

Baboo *Ashutosh Chatterjee* (with him Mr. *Gregory* and Baboo *Jadabchandra Seal*) cited *Gobind Hureekar v. Woomesh Chunder Roy* (1); Dayabhaga, Chapter XI., Section VI., verse 12; Vyavastha Darpana, pp. 257-275 (2nd edition); and Dayakrama Sangraha, Chapter I., Section IX.

\* Special Appeal, No. 268 of 1869, from a decree of the Subordinate Judge of East Burdwan, dated the 5th of November of 1868, reversing the order of the Moonsiff of that district, dated 26th of June 1868.

(1) Case No. 2130 of 1863; June 21st 1864.

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Baboo *Kalimohan Das* (in reply) cited verse 12, Section VI., Chapter XI. of the *Dayabhaga*. The latter part of this verse favors the plaintiff's case; for he is one who can offer the funeral cake to an ancestor of the deceased who likewise partakes of the funeral cake offered by the deceased himself when alive.

KEMP, J.—The plaintiff is the special appellant. He sues as heir of one *Ramlochan*, claiming to be entitled under the Hindu law to succeed to the estate of the said *Ramlochan*. The defendants are in possession of the estate of *Ramlochan*, and the plaintiff must therefore prove his title. The Court of first instance found on the evidence that *Ramlochan* survived his father, and that according to the Hindu law, the plaintiff is the heir of *Ramlochan*. The suit of the plaintiff was decreed.

In appeal the Subordinate Judge of East Burdwan, Baboo *Yasik Lal Bose*, reversed the decision of the moonsiff. He observes that the moonsiff has not stated on what principle he holds the plaintiff to be the heir of *Ramlochan*. The Subordinate Judge was of opinion that according to the contention of the pleaders for the defendants, it appeared that the inheritance passed to the maternal grandfather, but that no other offspring of the maternal great grandfather can succeed to the property as heir; for these reasons, being of opinion that the plaintiff was not the true heir of the deceased *Ramlochan*, the Subordinate Judge reversed the decision of the first Court.

The grounds of special appeal are, that the plaintiff as the great-grandson of *Ramlochan's* maternal great-grandfather, is entitled to succeed to the estate left by *Ramlochan*, and that the Subordinate Judge's decision is wrong in law.

I am of opinion that the decision of the moonsiff is correct.

The plaintiff takes the estate of *Ramlochan* as a *Sapinda*, and not as a *Sakulya* or a *Samanodaka*. He, the plaintiff, is entitled to offer un-divided oblations to his great-grandfather *Kishto Nath* to whom the deceased *Ramlochan* was also bound to offer such oblations. The plaintiffs, *Ramlochan* and *Kishto Nath*, are therefore *Sapindas* of each other; *Vyavashtha Darpana*, volume I. 1st Edition, p. 283.

The defendants are not the heirs of *Ramlochan*, they being the father's brother's daughter's sons of the said *Ramlochan*.

I would reverse the decision of the Subordinate Judge, and restore that of the moonsiff.

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The special appeal is decreed with costs payable by the special respondent.

MARKBY, J.—In this case it appears to me sufficient to say that the plaintiff is an heir of the deceased. This being so, and it being admitted that there is no nearer heir than the plaintiff, he is entitled to recover.

*Before Mr. Justice Markby and Mr. Justice Glover.*

TARINI CHARAN GANGULI AND OTHERS (PLAINTIFFS) v. JOHN  
WATSON AND OTHERS (DEFENDANTS) \*

1869  
Sept 20

*Patni Talook—Hindu Widow—Hindu Mother, Power of, to enter into Compromise—Minor Son.*

The word "patni Talook" *prima facie* conveys an hereditary and transferable interest in land.

A Hindu widow, as representative of the entire estate in litigation, has the same control with respect to compromise as she has with respect to the assertion of rights and with respect to appeal against an adverse decision. Where a cause of action with regard to her husband's estate has once accrued to a Hindu widow, who nevertheless fails to assert her rights, no new cause of action arises to the heirs after her death.

Mr. Montrion and Baboos *Annadoprasad Banerjee* and *Sir-nath Das* for appellants.

*The Advocate-General*, Messrs. *G. C. Paul* and *R. T. Allan*, and Baboo *Ashutosh Dhar* for respondents.

The facts of the case sufficiently appear in the judgment of the Court, which was delivered by

MARKBY, J.—This was a suit brought to recover possession of a share of two zemindaries, called Pergunna Bogri and Taraff Bihala, under the following circumstances :

These zemindaries belonged to a family of Mookerjees. At some time prior to the year 1243, that family consisted of three

\* Regular Appeal, No. 111 of 1869, from a decree of the Judge of Midnapore, dated the 12th March 1869.