

APPELLATE CIVIL.

Before Sir Richard Couch, Kt., Chief Justice, and Mr. Justice Ainslie.

MUSSAMAT DOORGA BIBEE AND ANOTHER (DEFENDANTS) v. JANAKI
PERSHAD (PLAINTIFF).*

1872
Aug. 7.

Hindu Law—Mitakshara—Inheritance—Succession.

A brother's daughter's son succeeds as heir, under the Mitakshara, in the absence of nearer heirs.

THE facts of this case were as follows:—Zorawur Sing had two sons, Rogoonath Sing and Boodnath Sing. Rogoonath Sing had two sons, Bishnath Sing and Sheonath Sing (neither of whom, according to the plaintiff's case, left any legitimate sons) and a daughter by name Sheo Dae. Sheo Dae left a son, the plaintiff. The plaintiff stated that the property of Boodnath Sing, after Boodnath's death, went to his widow Mungla Bibee, who died childless, and that consequently the plaintiff became entitled to the same; but that one Tulsiram, whose mother was a servant of the family, took wrongful possession of the property and that after his death the property was taken possession of by his widow, the defendant, Doorga Bibee. Hence the plaintiff brought this suit to establish his right to succeed to the property as a brother's daughter's son under the Mitakshara law, and to set aside a certain alienation in favor of one Pireet Coornwar, one of the defendants in the case. Doorga Bibee's defence among other things was that Tulsiram, her late husband, was a legitimate son of Bishnath Sing by a second wife, Mussamut Badamoo, and that therefore he was the rightful heir to Boodnath, being a brother's son. The Subordinate Judge considered that Tulsiram was Bishnath's legitimate son, and dismissed the suit. On appeal the Judge came to an opposite conclusion and passed a decree in favor of the plaintiff.

* Special Appeal, No. 142 of 1872 from a decree of the Officiating Additional Judge of Patna, dated the 30th June 1871, reversing a decree of the Officiating Subordinate Judge of that district, dated the 13th of February 1871.

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The following passage occurred in his judgment :—

“To my mind they (certain documents filed in the case) make it clear that Bishnath Sing sold to Juggernath Pershad and Mungla Bibee some property (that purchased by the latter with others forming the subject of the present suit); that before their names could be entered in the Collector's register, he died; and that, in order to get the mutation of names settled, Rukman Bibee, a wife of Bishnath Sing, appeared and acknowledged the sale-transaction, but not so Tulsiram.”

The defendants appealed to the High Court.

Baboo *Kaliprosono Dutt* for the appellants contended that a brother's daughter's son is not entitled under the Mitakshara to succeed—*Illias Coonwur v. Agund Rai* (1.) If he was heir under the law, he would not have been omitted from the enumeration of cognates in c. 2, s. 6, art. 1 of the Mitakshara. It is not clear from the judgment of the Court below whether the whole of the property was Mungla Bibee's *stridhan* or not. What she purchased was of course her *stridhan*. The portion acquired from her husband also must be considered as her *stridhan*, and must go to such persons as would be entitled to take her *stridhan* under the law; 1 Macnaghten's Hindu Law, pp. 38 and 39.

Mr. R. E. Twidale for the respondent.—The plaintiff is entitled to succeed as a *bandhu* or cognate. *Bandhu* is defined to be one who is sprung from a different family, but connected by funeral oblations; Colebrooke's Mitakshara, c. 2, s. 5, art. 3; and by art. 1, s. 6, of the same chapter, cognates are heirs. The plaintiff could offer *pind* to Rogoonath, his maternal grandfather, and to Zorawur, his father, and to Zorawur's father. By offering the cake to Zorawur, he confers benefit on his son Booduath Sing. This point was fully discussed before the Full Bench in *Amrita Kumari Debi v. Lakhinarayan Chuckerbutty* (2), which was a case of a sister's son. It was laid down in that case, on the authority of Menu, that a sister's son is like a son's son. The case of *Illias Coonwur v. Agund Rai* (1) is not supported by any authority. The omission of the brother's daughter's son from the enumeration of cognates in

(1) 3 Sel. Rep., 37.

(2) 2 B. L. R., F. B., 28.

c. 2, s. 6, art. 1, is not material, because it has been held by the Judicial Committee in *Giridhari Lal Roy v. The Government of Bengal* (1), and by this Court in *Amrita Kumari Debi v. Lakhinarayan Chuckerbutty* (2) that the enumeration there given is not exhaustive. In *Giridhari Lal Roy v. The Government of Bengal* (1), the Judicial Committee took notice the case of *Ilias Coonwur v. Agund Bai* (3) and overruled it. Property which has come to a widow from her deceased husband goes to the heirs of the husband after the death of the widow—*Chowdhry Bholanath Thakoor v. Mussamut Bhagbatti Deyi* (4). There are several cases to show that property acquired by a woman does not on her death go to her heirs—*Gobardhun Nath v. Onoop Roy* (5) and *Punchannund Ojhab v. Lalshan Misser* (6). Property acquired by a woman by inheritance is not to be classed as *stridhan*—*Sengamalathammal v. Valayada Mudali* (7). It must therefore go to her husband's heirs. But here, the property claimed in the suit was treated throughout as that of the husband, Boodnath Sing.

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Baboo Kaliprosono Dutt in reply.—The contention that, because the sister's son succeeds, therefore a brother's daughter's son must succeed is not correct. A sister's son is a nearer relative and succeeds for the reasons given in *Amrita Kumari Debi v. Lakhinarayan Chuckerbutty* (8). According to that case, a sister's son is a *sapinda*, and such as he succeeded; but a brother's daughter's son is not a *sapinda*. The sister's son was not allowed to succeed merely on the ground that the enumeration of *bandhus* in the Mitakshara is not exhaustive.

The judgment of the Court was delivered by

COUCH, C. J.—Three objections were raised in this special appeal on the part of the appellant; the first was that, on the plaintiff's own showing, there was a nearer heir to Boodnath

(1) 1 B. L. R., P. C., 44.
(2) 2 B. L. R., F. B., 28.
(3) 3 Sel. Rep., 37.
(4) 7 B. L. R., 93.

(5) 3 W. R., 105.
(6) *Id.*, 140.
(7) 3 Mad. H. C. Rep., 312.
(8) 2 B. L. R., F. B., 28. See pp. 32, 22 of the report.

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Sing than the plaintiff, as one of the witnesses had mentioned in his deposition that there was a sister's son, who might be entitled in preference to the plaintiff. But we thought and said during the argument that we could not take this mention of the sister's son as a fact that was found by the Court, and could not act upon it. We are to deal with the case upon the facts found by the lower Appellate Court; that objection therefore could not be allowed to be raised.

Another objection was that the property, which was the subject of the suit, was not the property of Boodnath Sing, but of his widow Mungla and her *stridhan*, and a passage in the judgment was referred to in support of this view. But it is clear, notwithstanding that passage, that the lower Appellate Court, and indeed the parties also in the course of the suit, treated the property in question as that of Boodnath Sing, and the question in the suit being who was entitled to it as heir, it is certainly possible that the circumstance mentioned in the judgment of the purchase of some portion of it by Mungla might have been explained. That objection, therefore, could not be allowed to be taken.

The only question that remained was whether the plaintiff being a brother's daughter's son could inherit the property, and that is settled by the decisions of the Privy Council in the case of *Giridhari Lal Roy v. The Government of Bengal* (1) and of a Full Bench of this Court in *Amrita Kumari Debi v. Lakshinarayan Chuckerbutty* (2), where it was held that the enumeration of *bandhus* in art. 1, s. 6, c. 2 of the Mitakshara is not to be considered exhaustive. That being so, there is no ground for saying that a brother's daughter's son cannot inherit in the absence of any nearer heir; and as it is not found in this suit that there is a nearer heir, the plaintiff is entitled to a decree.

The appeal must be dismissed with costs.

Appeal dismissed.

(1) 1 B. L. R., P. C., 44.

(2) 2 B. L. R., F. B., 28.