1868

KALI KRISHNA PAL CHOWDHRY v. SRIMATI JAGATTARA.

the claim had been so presented, a different result might have been come to, it appears to us that the plaintiff ought to have his costs in the first Court, and that each party should bear his own costs in the lower Appellate Court and in this Court. There will be a decree for the plaintiff for Rs. 960, with costs in the first Court on that amount, and the defendant will obtain costs in that Court, calculated on Rs. 125.

Before Mr. Justice Kemp and Mr. Justice E Jackson.

1868
Dec. 22.

SRINATH GANGOPADHYA AND OTHERS (DEFENDANTS) *v.* SARBAMANGALA DEBI (PLAINTIFF.)*

Stridhan—Unbetrothed Daughter—Succession.

A Hindu directed his wife to settle certain property after his decease upon their daughter. She did so by deed of gift (Hibbanama), giving it to their daughter "to be enjoyed by her, her sons and grandsons, &c., one after another, the other heirs not to have any concern with it." *Held*, that the the plaintiff as the daughter's daughter had no right to share therein with her brothers, the daughter's sons.

A betrothed daughter is not entitled at her mother's death to share in her stridhan, but the unbetrothed daughters alone inherit with the sons.

When stridhan has once devolved as such upon an heir, it does not continue to devolve as stridhan, but afterwards devolves according to the ordinary rules of Hindu law.

THIS was a suit to recover possession of certain movable and immovable properties left by the plaintiff's mother, Durgamani Debi, upon the allegation that Sadasib Roy Chowdry, the maternal grandfather of the plaintiff, gave permission to his wife, Bimala Debi, the maternal grandmother of the plaintiff, to make a gift of all immovable properties to Durgamani, the mother of the plaintiff. That accordingly Bimala granted to Durgamani, by a Hibbanama, the parcel of property No. 1; that some of the other properties in dispute were obtained by gift or purchase by Durgamani; that the rest were purchased during the time the plaintiff and her brothers lived in commensality; that Durgamani being possessed of the property as her stridhan, departed this life, leaving her surviving a married

* Regular Appeals, Nos. 8 and 15, from the decrees of the Principal Sudder Ameen of Rungpore, dated the 19th September 1868.

1868

SRINATH GANGOPADHYA v. SARBAMANGALA DEBI.

daughter, three minor sons, the defendants herein, and an unmarried daughter, the plaintiff. That the plaintiff being an unmarried daughter, inherited the property left by her mother along with her brothers, with whom she had lived in commensality up to Baisakh, 1273 (1866), when, in consequence of a disagreement, she had separated from her brothers. She prayed to be put in separate possession of her property.

The defendants raised the defence (*inter alia*) that the suit was barred by lapse of time; that their mother died after having given birth to a daughter; that at that time the plaintiff was betrothed; that the new-born daughter died two days after the death of their mother; that therefore, according to Hindu law, the plaintiff had no right to the property; that the property No. 1 was not the stridhan of their mother. She had only a life interest therein.

The following is an abstract of the Hibbanama:—"Durgamani, as you have got sons, I give the property to you to be enjoyed by you, your sons, and grandsons, &c., one after another the other heirs are not to have any concern with it."

The Principal Sudder Ameen found as a fact that the plaintiff was betrothed at the time of her mother's death, that a younger maiden sister of the plaintiff survived her mother, but died sometime afterwards; and held that, according to Hindu law as current in Bengal (Macnaghten's Hindu Law, Vol. I., p. 41,) a daughter, whether betrothed or not, inherits with the son the property not obtained at the time of marriage, and therefore the plaintiff, though betrothed, was entitled to inherit along with her brothers. He did not go into the question as to who was heir to the deceased maiden daughter, as the plaintiff did not claim under her. He further held that as the plaintiff lived in commensality with her brother, her claim was not barred by lapse of time. As to property No. 1, the Principal Sudder Ameen held that, as the deed of gift under which Durgamani obtained the property limited the inheritance to "Durgamani, her sons, and grandsons, &c., one after another; the other heirs were not to have any concern with it," the plaintiff could not, according to the intention of the donor, recover the property. He further found that the properties Nos. 2, 3, 4, and

1868

SRINATH GANGOPADHYA v. ARBAMANGALA DEBI

5 having been the stridhan of the plaintiff's mother, the plaintiff was entitled to them, and that her right to the other properties had not been proved. As none of the properties had been proved to have been given by the father, or at nuptials, and as Durgamani left three sons and two maiden daughters, the properties were to be divided into five shares, and the plaintiff was to have one of them. He accordingly passed a decree in favor of the plaintiff for a portion of the property, and dismissed the suit as to the rest.

Both the parties appealed to the Hight Court ; the plaintiff appealed on the ground that it had not been proved that at the time of her mother's death she was a *bagdatta* or betrothed daughter. That she had no younger sister at the time of her mother's death ; and even if she had had one, she had, on the death of such sister, become her heiress according to the Hindu Shastras. That she was the sole heiress to the properties of her mother.

The defendants appealed on the grounds that the suit was barred by lapse of time ; that, according to Hindu law, the plaintiff being a betrothed daughter, could not be heir to the stridhan left by their mother when she left sons and a maiden daughter surviving.

The Advocate-General (Baboos *Anukul Chandra Mookerjee*, *Srinath Doss*, and *Krishna Dayal Roy* with him) for the defendants contended that on the facts found by the lower Court, namely, *first*, the betrothal of the plaintiff during the life time of her mother ; and, *second*, the birth of another daughter who survived her mother, the plaintiff had no right to the property in dispute. The text of Vrihaspati (Dayabhaga, Chapter IV., Section II., Verse 3,) lays down that "a woman's property goes to her children, and the daughter is a sharer with them, provided she be unaffianced ; but if married, she shall not receive the maternal wealth." Here "marriage" is clearly contrasted with "unaffianced." The text of Gautama (Dayabhaga, Chapter IV., Section II., Verse 13,) lays down that "a woman's separate property goes to her daughters unaffianced, and to those not actually married." This is explained in Verses 22 and 23 :— "*first*, the woman's property goes to her unaffianced daughters,

If there be none such, it devolves on those who are betrothed." Betrothal is marriage. "It is this betrothement, in fact, which consititutes marriage. It is complete and irrevocable immediately on the performance of certain ceremonies," &c., 1 Macnaghten's Hindu Law, p. 58. So in Shamacharan's Vyavastha Darpana, p. 645, 2nd Edition. If the betrothal had been revoked after her mother's death, still she was a married daughter at the time of her mother's death. The word "revocable" shows she is married until revoked. The plaintiff being a married daughter at the time of her mother's death, the property was divisible among the three brothers and the unmarried sister, which would give the whole to the defendants. Besides, whether plaintiff had a right or not, her suit is barred by lapse of time. Durgamani died in 1248 (1841); the suit was instituted on the 9th August 1866.

Baboo *Ashutosh Chatterjee* (for the plaintiff) contended that the *bagdan* (betrothal by word) was not proved; that certain ceremonies are necessary to constitute betrothal, and there is no evidence that those ceremonies had been performed. The custom of betrothal does not prevail amongst *Rahri* Brahmins, and therefore the plaintiff could not be affianced. She therefore succeeds with the sons. But if she were betrothed, still she was heir to the property left by her unaffianced sister. Dayakrama Sangraha, Chapter II., Section 3, Verse 6.

Baboo *Bhawani Charan Dutt* (on the same side) referred to Dayabhaga, Chapter IV., Section II., Verse 23, and contended that "affiance" is not "marriage." On the death of the intended husband, the affianced daughter can marry another man. "Such origin belongs to her father alone." Text of Vasishtha cited in 2 Shamacharan's Vyavastha Darpana, 1st Edition, p. 696, para. 386. See Vyavastha Darpana, pp. 785 and 786. In Dayabhaga, Chapter IV., Section II., Verse 13, the words "not actually married" show that, in the opinion of Gautama, betrothal did not constitute marriage, and therefore a betrothed daughter was not an actually married daughter. As to the order of succession to be adopted in this case, see Daya-

1868

SRINATH GANGOPADHYA v. ARBAMANGALA DEBI.

krama Sangraha, the authority in Bengal. Dayakrama Sangraha (original text), p. 16; English translation, p. 45, Verses 2, 3. Yautuka property of women. Dayakrama Sangraha, p. 54, Chapter II., Section IV., Verses 2, 5.

See Vyavastha Darpana, 1st Edition, pp. 794 and 793, Verse 453. In this case the property was not *yautuka*, and therefore the *kanya* (which includes the daughters affianced and unaffianced) would inherit along with the sons, as she is not a married daughter. The text of Vrihaspati in Dayabhaga, Chapter IV., Section II., Verse 13, is vague, and besides it does not appear that, with reference to *yautuka* and *pitridatta* properties, that text is at all applicable, for in those cases the sons are excluded by the daughters. Plaintiff is one of the heirs, because the property had been given by Durgamani's father, and the plaintiff is one of the offsprings; "let it belong to her offspring." Dayabhaga, Chapter IV., Section II., Verse 16.

The question of limitation cannot arise. Section 1, Clause 13, Act XIV. of 1859.

The Advocate-General in reply referred to Macnaghten's Principles of Hindu Law, Vol. I., p. 38; Dayakrama Sangraha, pp. 36, 57, 58; *Prankishen Sing* v. *Bhagwutee* (1); Dayabhaga, Chapter IV., Section II., Verse 6, Text of Devala. The term "kumari" is used in pp. 46 and 58 of the Dayakrama Sangraha, only as a *maiden daughter*. 1 Strange, pp. 35, 36. Notes of Sir William Jones in his translation of Manu, p. 363. Vyavastha Darpana, p. 645 (2nd Edition). Affiance is marriage. It is only revocable, that is, until revoked, the marriage is good. A subsequent confirmation is equivalent to an original ratification. It goes back to date of the original contract. Confirmation must be of something existing, and subject of being confirmed; subsequent marriage continues what was already in existence. Section 13, Act XIV. of 1859 does not apply. There cannot be a joint Hindu family of brothers and sisters.

E. JACKSON, J.—Both these appeals are from the decision of the Principal Sudder Ameen of Rungpore in a suit brought by

(1) 1 Sel. S. D. R., 3.

1863

SRINATH GANGOPADHYA v. SARBAMANGALA DEBI.

Sarbamangala Debi against Srinath Gangopadhya and others. Sarbamangala Debi sued to recover possession of ten different properties, alleging that these were stridhan, belonging to her mother Durgamani Debi, and that she, as heiress of her mother, was entitled to them in preference to her brothers, the defendants. She alleged that since the death of her mother Durgamani, she had lived in commensality with her brothers as a joint Hindu family, and that in the month of Baisakh 1273 (April 1866) a dispute had arisen between her and her brothers regarding a sum of money which she wanted out of the profits of the estate, and which they refused to give, and on this account a quarrel had arisen; the plaintiff had been dispossessed, and preferred this suit.

The defendants allege that the plaintiff had no right or title whatever in any one of these properties.

The Principal Sudder Ameen of Rungpore has given a very careful decision in the case; his conclusion is that the plaintiff is entitled to a portion of her claim, but not to the remainder. From his decision these two appeals have been preferred, and they, in fact, open out the whole case. The plaintiff appeals against that portion of her claim which has been rejected; the defendants appeal against that portion of the claim which has been decreed, and they urge against both that limitation bars the claim, and that they are entitled to the property upon the merits.

The first property, No. 1, which is at issue, was a certain estate which, it appears to be admitted, was given by Sadasib Roy, the father of Durgamani, by a verbal will, which was carried into effect by his widow after his death, and under which the estate was made over as stridhan to Durgamani.

As regards this property, the Principal Sudder Ameen has dismissed the plaintiff's suit, on the ground that in the deed which made over this property it was distinctly stated that it was given to Durgamani, and after her to her sons and grandsons. We are of opinion that the grounds given by the Principal Sudder Ameen are good; we think that the deed is the best evidence of the intention of the donor. It is a very old document, and one which has been acted upon for a great many years.

As regards properties Nos. 2 and 3, these seem to have been made over to Durgamani, the plaintiff's mother, as stridhan,

1868

SRINATH GANGOPADHYA v. SARBAMANGALA DEBI.

in consequence of the adoption of a son by her mother, Bimala Debi; it was agreed on that occasion that a certain amount of property should be set aside for Durgamani, and a certain income should be secured to her, and these properties were purchased to secure that income. The question as regards these properties turns partly on a question of fact, and partly on a question of law. First, what are the facts as regards the state of the family on the death of Durgamani. The plaintiff states that on the death of her mother she was the sole maiden daughter surviving. The defendants allege that she was not at that time a maiden daughter, but a betrothed daughter; that Durgamani died very shortly after having given birth to another girl, who was the sole maiden daughter who survived her mother, and who appears to have survived her but for a few days.

Upon these questions of fact, after hearing the evidence, we are inclined to agree with the Principal Sudder Ameen that Durgamani did die very shortly after having given birth to a daughter, who lived for some days. Upon this point the plaintiff's witnesses and her own statement are contradictory: in one place stating that no child was born at all; in another place some of the witnesses admitting that she was born and lived a few days, but adding that she died before her mother.

On the second point, as to whether the plaintiff was betrothed at the time of the death of Durgamani, there is very conflicting evidence, but we are not prepared to differ from the decision passed by the Principal Sudder Ameen, holding that she was then a betrothed girl.

The question then arises whether, under the Hindu law, the plaintiff, as a betrothed daughter, was entitled to a share in this property with her brothers. In turning to the Dayabhaga Chapter IV., Section II., on the succession of a woman's children to her separate property in the third sloka, the law is thus laid down:—"A woman's property goes to her children, and the daughter is a sharer with them, provided she be unaffianced; but if married, she shall not receive the maternal wealth." In the next paragraph the commentator interprets the meaning of the above sentence by saying "here the word 'children', intend, sons, and they

share their mother's goods with unbetrothed daughters." The Principal Sudder Ameen has decided that the betrothed or unbetrothed daughter inherits her mother's property with sons. We think that the quotation which we have above made from the Dayabhaga distinctly shows that under the Hindu law the unbetrothed daughter alone inherits with sons. Taking therefore the evidence as showing that the plaintiff was a betrothed daughter, we are of opinion that she is not entitled to inherit. In paragraphs 4 and 6 of the same section the law is laid down on this point by other commentators, but it is not equally distinct. The words are "that the brothers are entitled to succeed with unmarried daughters. "It may be a question whether "unmarried" is used as distinguished from "unbetrothed."

The Sanscrit word, which is used on both these occasions, is the word "kumari," which is the word used generally for an unbetrothed daughter, and that the word "unmarried" does here mean unbetrothed is clear from what precedes it, which we have already quoted.

The remaining properties all come under the same head as these numbers 1, 2, and 3. If the plaintiff had obtained a decree for Nos. 1, 2, and 3, she might possibly be entitled to some share in the remaining property; but if the plaintiff fails in these, she is not entitled to any share in the other properties.

We are of opinion that, as a betrothed daughter, the plaintiff was not at the time of her mother's death entitled to any share in her mother's "stridhan." An attempt has been made to show that even if the maiden daughter inherited, the plaintiff is entitled to inherit on the death of the maiden daughter, but the Hindu law on this point is undoubted, namely, that when stridhan has once devolved as stridhan, upon an heir, it does not continue to devolve as stridhan, but afterwards devolves according to the ordinary rules of Hindu law.

Looking, then, to the facts found in this case, the plaintiff being at the time of her mother's death a betrothed daughter, we consider that she is not entitled to any share of the properties which she now claims; and, further, we think it necessary to state that, in our opinion, her claim is wholly barred by the law of limitation,

1868

SRINATH GANGOPADHYA v. SARBAMANGALA DEBI.

and on this point we differ from the decision passed by the Principal Sudder Ameen.

The plaintiff may have lived in commensality with the defendants in the same house; but it is quite evident from the depositions, more especially of her married sister, and also of other witnesses, that she has never been in possession of any share of the property as a member of a joint Hindu family.

Holding this view of the case, we decree the appeal No. 8 of 1868, and dismiss the appeal No. 15 of 1868, dismissing the plaintiff's suit with all costs.

Before Mr. Justice Loch and Mr. Justice Glover.

1869 Jany. 5.

SRIMATI BHABATARINI DASI AND OTHERS (PLAINTIFFS) *v.* J. GREY (DEFENDANT)*

Arrears of Rent—Jurisdiction.

A took a farming lease from B, by which he agreed to pay to B a certain yearly rent, and stipulated further to pay to B half of any enhanced rent which he might succeed in realising from the ryots.

Held, that a suit by B to recover arrears of this moiety of enhanced rent would lie in the Revenue Court.

IN 1269 (1862), the defendant, J. J. Grey, took a farming lease of plaintiff's share in a zemindari, agreeing to pay rent at Rs. 8,884 per annum. By a distinct stipulation in the lease, he consented, in the event of his being able to enhance the rent of the ryots, to pay plaintiff half the profits arising from such enhancement. Plaintiff sued for her share in the enhanced rents which she said had been realised by defendant in the years 1864, 1865, 1866.

The Collector of Malda, on 20th May 1868, dismissed the suit, on the ground that it did not fall within clause 4, section 23, Act X., observing: "Defendant consented to pay a certain fixed yearly sum for his farm, and that being paid, the landlord cannot sue him for arrears of rent even though he fail to observe certain stipulations entered in the same document, and forming part of the conditions of entry. After specifying the yearly rent,

* Regular Appeal, No. 147 of 1868, from a decree of the Collector of Rajshahye, dated the 20th May 1868.