

The 25th May 1865.

Present:

The Hon'ble G. Loch and W. S. Seton-Karr,
Judges.

Adopted son (Rights of)—Streedhun—Woman
(Sales by)—Succession of one wife's son to
property of co-wife.

Case No. 346 of 1864.

Application for review of judgment passed by
Justices Loch and Seton-Karr, on the 7th
April 1864, in Regular Appeal No. 145
of 1863.

Teencowree Chatterjee (Plaintiff), *Appellant*,
versus

Dinonath Banerjee and others (Defendants),
Respondents.

Baboo Kishen Kishore Ghose for Appellant.

Mr. R. V. Doyne for Respondents.

An adopted son has all the rights and privileges of a son born, and is also entitled to succeed to the *streedhun* of his mother in the absence of daughters, in like manner as a son born, whether there be or be not a will in his favour.

A woman cannot execute a will regarding any property she inherits from her husband or her father. With regard to *streedhun*, however, she can dispose of it at pleasure either by gift, will, or sale (except immoveable property given to her by her husband).

A son adopted by one wife may succeed to a co-wife's *streedhun*.

This appeal was decided in favour of the appellant on 7th April 1864. An application for review was made by the defendants: *first*, as regards the adoption of the plaintiff by Nubo Monjeree, his adoptive mother; and, *secondly*, in regard to the property which formed the subject of litigation, whether Nubo Monjeree had anything beyond an estate for life. On 15th March 1865, it was held that the property became the absolute property of Nubo Monjeree, given to her by her father during her marriage, and as such her *streedhun*. Two other points then arose on which the review was admitted: *1st*. Whether an adopted son can succeed to the property of his adoptive mother. *2nd*. Whether the adoptive mother did make a will in favour of plaintiff her adopted son, and whether she was competent to make such a will.

On the first point, we think there is no doubt that an adopted son has all the rights and privileges of a son born. He is the son of the father and of the mother, and succeeds to the paternal property, and also to the

streedhun of his adoptive mother in the absence of daughters as a son born would do. In support of his argument, the pleader for

* Sutherland's Dutt: Chand: Synopsis, page 219, or page 153 of the Edition of 1834.

Day Krama Sangraha, page 57, section 5.

Dyabhaga, page 82.

Macnaghten's Hindoo Law, Volume I., pages 39-40.

the plaintiff quoted the texts noted in the margin,* shewing the *status*

of an adopted son, and urged that he had in all respects equal rights with the son born. Against this argument, the learned Counsel quoted the case reported at page 128, Select Reports, Volume III., Gunga Mya, appellant, in which it was ruled that a son adopted by a woman, on whom her father's estate had devolved, would not be entitled to such estate on his adopting mother's death, but such estate would go to her father's heirs. We are not now disposed to differ from or call in question the correctness of that opinion, though in fact it was a mere *obiter* for the question of the *status* of an adopted son was not then before the Court, but it arose from a supposed case put by the second Judge. We think it inapplicable to the present case. The question put to the pundit related to property which had descended to a woman from her father, not as *streedhun*, but in the ordinary course of inheritance; and it may be, as explained to us by Baboo Kishen Kishore, that the reason why the adopted son is excluded from the succession in such cases, is that he is adopted into his adoptive father's family, and not into his mother's family, and cannot perform the *shrad* of his maternal grandfather, though he can perform that of his adoptive mother. But with regard to *streedhun*, which the Court have held the property in dispute in this case to be, the adopted son, in the absence of a will, would succeed to it after the daughters, as a son born; and such being the case, we think it immaterial whether a will was executed or not in favour of the plaintiff by Nubo Monjeree.

It is scarcely necessary for us to go into the question whether a woman can or cannot execute a will, though it does arise in this case. We think that a woman cannot execute a will regarding any property she inherits in the usual course from her husband or her father, for in this she has but a life-interest; but it is otherwise with *streedhun*, which she is at liberty to dispose of at her pleasure either by gift, or will, or sale, except in the case of immoveable property given to her by her husband.

It has also been asked by the learned Counsel for the respondent, whether a son, adopted by one wife, would be looked upon as the son of a co-wife, and succeed to her property. Though this question does not arise, we may point out that the Hindoo Law of Inheritance provides even for this case, and mentions the son of a contemporary wife among the heirs of a woman entitled to succeed to her *streedhun*.

In the case before us, as the Court has found that the adoption is valid, and that the property in dispute belonged to Nubo Monjuree as *streedhun*, we now hold that plaintiff, as her adopted son, is entitled to succeed to that property in the absence of daughters, whether there be or be not a will in his favour. It is, therefore, unnecessary for us to go into the genuineness of the will, and we affirm the former decision of this Court, and charge the respondent with all costs.

The 26th May 1865.

Present:

The Hon'ble H. V. Bayley and J. B. Phear,
Judges.

Limit of minority of Hindoos (not being proprietors of Revenue-paying estates)—(Section 26 of Act XL. of 1858).

Case No. 2868 of 1864.

Special Appeal from a decision passed by Baboo Kalee Kinkur Ray Bahadour, Principal Sudder Ameen of Chittagong, dated the 27th June 1864, reversing a decision of Baboo Poorno Chunder Koslajeer, Moonsiff of Forowabgunge, dated the 6th November 1862.

Monsoor Ali (Plaintiff), *Appellant,*

versus

Ramdial and others (Defendants),
Respondents.

Mr. R. E. Twidale for Appellant.

Baboo Kishen Succa Mookerjee for Respondents.

Discussion as to the limit of minority of Hindoos not being proprietors paying revenue to Government, and as to the proper construction of section 26 of Act XL. of 1858.

Mr. Justice Phear.—THIS was a suit brought by a son to recover his aliquot portion of his late father's estate from his brothers, who, it was alleged, had kept him out of it ever since the father's death.

It is objected that the suit is barred by limitation; and the Lower Appellate Court has upheld this objection.

Whether or not the suit is barred admittedly depends upon the determination of the period of life at which the plaintiff may be legally considered to have attained his legal majority. The Lower Appellate Court has decided that the plaintiff's minority ceased at the age of 15 years; and, in so doing, the plaintiff says it has committed an error of law, against which he, the plaintiff, now specially appeals to the Court.

The plaintiff contends that, by reason of the provisions of Act XL. of 1858, he did not attain majority until the age of 18; and, if this be correct, his suit is brought in time.

Section 26 of that Act says: "For the purposes of this Act every person shall be held to be a minor who has not attained the age of 18 years;" and in the case of Deobo Moyee Dossee *versus* Juggessur Hati, 1 Weekly Reporter, p. 75, a Division Bench of this Court seems to have held that the words "for the purposes of this Act" confine the operation of this section to cases where the minor's estate is actually taken charge of by, or held under, Government, and that, in all matters unconnected with the possession of estates held under Government, the minority of a male Hindoo terminates with the completion of the fifteenth year. The report does not state what was the subject-matter of that suit, nor does the judgment give any of the reasoning which led the Court to its decision. In the case before us the property in question undoubtedly neither is, nor has been, under the charge of Government, and therefore the judgment just quoted appears to be strictly applicable. If we follow it, we shall be obliged to dismiss this appeal.

But the construction which I understand the Court to have put upon section 26 of Act XL. of 1858 in Deobo Moyee Dossee *versus* Juggessur Hati does not entirely command my acquiescence; and I was at first disposed to think that the consequences which flow from it are so important relative to the proprietary *status* of young Hindoo proprietors and their dealings with their land as to render the question deserving of the consideration of a Full Bench.

It seems clear from the words of section 26 of Act XL. of 1858, taken together with section 26, that the jurisdiction of the Civil Court over the person and property of the minor continues until the age of 18, whether its intervention be invoked or not. If in-