1878

KUMOOD NARAIN BHOOP v. PURNA CHUNDER ROY.

disbursed to his servants. In like manner, the money in the Oriental Bank, whatever its origin may have been, was so much cash at the disposal of the master.

Clearly, therefore, this was a suit of which certainly not the whole, and possibly not any part, was cognizable by the Revenue Court. It appears quite clear that it was properly brought in the Civil Court, and improperly dismissed for want of jurisdiction.

The judgments of the Courts below must be set aside, and the suit must be tried upon its merits.

Case remanded.

Before Mr. Justice Mitter and Mr. Justice Maclean.

1878
Aug. 14.

RAMNATH TOLAPATTRO AND ANOTHER (PLAINTIFFS) *v.* DURGA SUNDARI DEBI AND ANOTHER (DEFENDANTS).*

Hindu Law—Mother—Unchastity—Inheritance to Property of Son.

A mother, guilty of unchastity before the death of her son, is, by Hindu law, precluded from inheriting his property.

THIS was a suit to establish the plaintiff's title to, and obtain possession of, certain property, left by one Prosonno Narain Thakur, to whom the plaintiff claimed to be next heir by Hindu law. The property in question originally belonged to one Rajendro Narain Thakur, the maternal grandfather of the plaintiff. Rajendro Narain left two sons, Durga Narain and Shib Narain. Durga Narain, the maternal uncle of the plaintiff, died in 1255 (1848), leaving a widow, the defendant Durga Sundari Debi, and a son, Prosonno Narain. Shib Narain died without issue in 1263 (1856), leaving a widow, who died in 1264 (1857): and Prosonno Narain thereupon succeeded to the ownership and possession of the entire property in dispute. Prosonno Narain died in 1274 (1867), and his mother, the defend-

* Special Appeal, No. 148 of 1877, against the decree of J. B. Worgan, Esq., Officiating Judge of Zilla Rajshahye, dated the 7th of September 1876, affirming the decree of Baboo Jodo Nath Mullick, Roy Bahadur, First Subordinate Judge of that District, dated the 24th of March 1874.

ant Durga Sundari, took possession of the property as his heir. The plaintiff alleged that, for some years before the death of Prosonno Narain, the defendant Durga Sundari had become unchaste and forfeited her caste, and therefore was not entitled to the estate as heir of her son Prosonno Narain.

The Subordinate Judge dismissed the suit on the ground that the alleged unchastity was not proved. On the appeal which, on the plaintiff's death, was carried on by Ram Sundari Debi his widow, for Ramnath Tolapattro and Kalinath Tolapattro, his minor sons, it was contended, that the unchastity, even if proved, would not debar Durga Sundari from inheriting from her son, whatever might have been the case if she had inherited it from her husband as his widow; and the Judge, relying mainly on the case of *Musamat Ganga Jati* v. *Ghasita* (1), concurred with this contention, and dismissed the appeal. From this decision the plaintiffs appealed.

Baboo *Kishory Mohan Roy* for the appellants.

Baboo *Sreenath Dass* and Baboo *Omesh Chunder Banerjee* for the respondents.

The following judgments were delivered:—

MITTER, J.—The question raised in this special appeal is, whether, according to Hindu law, an unchaste mother is entitled to succeed to the properties of a deceased son, it being established that she became unchaste before the succession opened out to her?

The District Judge in the lower Appellate Court has answered this question in the affirmative. In this opinion, we do not concur. The District Judge relies upon a Full Bench decision of the Allahabad High Court—*Musamat Ganga Jati* v. *Ghasita* (1). He is also of opinion, upon the authority of the judgments of Mr. Justice Markby and the Chief Justice Sir Barnes Peacock in the case of *Matangini Debi* v. *Jaykali Debi* (2) that Act XXI of 1850 removed the bar to the succession of an unchaste woman arising from loss of caste.

(1) I. L. R., 1 All., 46. (2) 5 B. L. R., 466.

1878

RAMNATH TOLAPATTRO v. DURGA SUNDARI DEBI.

The question raised in the case before the Allahabad High Court was different. It was, whether unchastity in a woman does not incapacitate her from inheriting any *stridhan* property? And the Court held that it did not. But the lower Appellate Court relies upon a portion of the judgment of the Officiating Chief Justice, in which he says, that he was a party to a decision holding "that want of chastity in a mother does not defeat her right of inheritance." The case referred to is *Musumat Deokee* v. *Sookhdeo* (1). The decision in that case is, that a mother, who has already inherited from her son an estate, is not divested of it by reason of her subsequent unchastity. The same view of the law has been taken by the majority of Judges in the case of a widow's inheritance by a Full Bench of this Court in *Kery Kolitani* v. *Moneeram Kolita* (2). But the question in this case is different. Here the mother is alleged to have become unchaste before the son's death, or, in other words, before the succession to the estate opened out to her. These cases, therefore, do not support the view taken by the lower Appellate Court.

Then as regards the effect of Act XXI of 1850, the question becomes material only if the exclusion of the mother from the right of inheritance be based solely upon the ground of the loss of caste arising from unchastity. I shall refer to this question after I deal with the grounds upon which I think that a mother guilty of unchastity before the estate vests in her is precluded from inheritance according to Hindu law.

As a general rule females, according to Hindu law, have no right of inheritance. The widow, the daughter, the mother, the grandmother and the great-grandmother are exceptions to this general rule. But their right of inheritance is subject to certain special rules. These rules have been at some length discussed and enunciated by the author of the Dayabhaga in the chapter on inheritance of the widow. But they are intended to apply to all the individuals of this exceptional class.

"Baudhyana, after premising 'a woman is entitled,' proceeds 'not to the heritage; for females and persons deficient in an organ of sense or member are deemed incompetent to inherit.' The construction of the passage is, 'a woman is not entitled to

(1) 2 N. W. P. H. C. Rep., 361. (2) 13 B. L. R., 1.

the heritage.' But the succession of the widow and certain others (*viz.*, the daughter, the mother, and the paternal grandmother) takes effect under express texts without any contradiction to this maxim."—Dayabhaga, Chap. XI, Sec. vi, v. 11.

Then in the chapter on the widow's rights of succession, the following texts have been cited in the Dayabhaga in support of that right:

"Thus Vrihat Menu says:—'The widow of a childless man, keeping unsullied her husband's bed and persevering in religious observances, shall present his funeral oblation, and obtain (his) entire share.'"—Dayabhaga, Chap. XI, Sec. i, v. 7.

"But on failure of heirs down to the son's grandson, the wife being inferior in pretensions to sons and the rest, because she performs acts spiritually beneficial to her husband from the date of her widowhood (and not, like them, from the moment of their birth) succeeds to the estate in their default. Thus Vyasa says:—'After the death of her husband, let a virtuous' (in the original the word 'साध्वी' (1) occurs, which means 'chaste'), 'woman observe strictly the duty of continence, and let her daily, after the purification of the bath, present water from the joined palms of her hands to the manes of her husband, &c., &c., &c.'"—Chap. XI, Sec. i, v. 43.

"But the wife must only enjoy her husband's estate after his demise. She is not entitled to make a gift, mortgage, or sale of it. Thus Katyayana says:—'Let the childless widow, preserving unsullied the bed of her lord, and abiding with her venerable protectors, enjoy with moderation the property until her death. After her, let the heirs take it.'"—Chap. XI, Sec. i, v. 56.

From these passages three special rules relative to the succession of the widow are deducible:—*First*, that an unchaste wife does not inherit her husband's property; *second*, that when the widow inherits, she can only enjoy the estate with moderation, but cannot exercise the ordinary rights of alienation of a male owner; *third*, that after her death, her heirs do not succeed, but the heirs of the last owner succeed.

These three special rules, I think, are applicable to

(1) Saddhi.

1878

RAMNATH TOLAPATTRO v. DURGA SUNDARI DEBI.

the succession of all females who constitute the aforesaid exceptional class.

This will appear clear if we refer to vv. 30 and 31 of Sec. ii, Chap. XI of the Dayabhaga.

"But if a maiden daughter, in whom the succession has vested, and who has been afterwards married, die (without issue), the estate which was hers becomes the property of those persons, a married daughter, or others, who would regularly succeed if there were no such (unmarried daughter) in whom the inheritance vested, and, in like manner, succeed on her demise after it has so vested in her. It does not become the property of her husband or other heirs; for that (text, which is declaratory of the right of the husband and the rest) is relative to woman's peculiar property. Since it has been shown by a text before cited (Sec. i, v. 56) that, on the decease of the widow in whom the succession had vested, the legal heirs of the former owner, who would regularly inherit his property if there were no widow in whom the succession vested,—*viz.*, the daughters and the rest,—succeed to the wealth; therefore the same rule (concerning the succession of the former possessor's next heirs) is inferred *à fortiori* in the case of the daughter and grandson whose pretensions are inferior to the wife's"—(v. 30); "or the word 'wife' (in the text above quoted, Sec. i, v. 56) is employed with a general import; and it implies that the rule must be understood as applicable generally to the case of a woman's succession by inheritance."—v. 31.

At first sight it would seem, that only rules 2nd and 3rd, mentioned above, are intended to be extended to the succession of females generally. But that it is not so, is evident from the commentary of Raghunandan. The authority of Raghunandan is acknowledged and respected universally in the Bengal school. Commenting on verse 31 he says:—"The word 'wife' implies females generally. In the text of Katyayana—'Let the childless widow, preserving unsullied the bed of her lord, and abiding with her venerable protectors, enjoy with moderation the property until her death; after her, let the heirs take it:' and, in the first half of the next text of the same sage, *viz.*, 'the wife *who is chaste* takes the wealth of her husband,' the word 'wife' is illustrative. According to the rule of con-

struction deducible from reason that a text used in one part of the *shaster* has the same import in another; both wife and daughter are impliedly meant by the use of the word 'wife' (in these texts)."

It is evident that, according to Rughunandan, the effect of v. 31 is to lay down generally for all females, as it has been repeatedly laid down for the wife, that chastity is a *sine quâ non* for their right of inheritance.

As our conclusion upon this question is not based on the ground of the loss of caste of the unchaste mother, the consideration of the effect of Act XXI of 1850 becomes wholly unnecessary.

The result is, that the decision of the lower Appellate Court must be reversed, and the case remanded to that Court for the determination of the other questions. Costs to abide the result.

MACLEAN, J.—I cannot pretend to add any weight to the exposition of Hindu law as applicable to this case, which has just been delivered by Mr. Justice Mitter. I will, therefore, content myself with saying, that I concur with him in holding that the authorities quoted all point in the same direction, and show that the position of a woman in respect of inheritance is the same, whether she be a widow succeeding to her husband, or a mother succeeding her childless son. But I certainly do not consider it satisfactory that we have been called upon to consider a matter which may really be of great importance in what I will call a speculative case. In this case the plaintiff based his claim on the alleged unchastity of the defendant Durga Sundari, and the Subordinate Judge, who went fully into the evidence bearing upon that question, dismissed the suit, on the ground that her unchastity was not proved. The District Judge has not pronounced any opinion upon this point: but has confirmed the Subordinate Judge's decision, on the ground that, even if Durga Sundari became unchaste before succeeding her son, she did not forfeit her right of inheritance. In our opinion, this is not a correct view of the Hindu law applicable to the case, and consequently the question of fact, *viz.*, whether Durga Sundari was unchaste or not, has still

1878

RAMNATH TOLAPATTRO v. DURGA SUNDARI DEBI.

to be decided by the Judge. Had the District Judge come to the same conclusion as the Subordinate Judge, the question we now decide need not have been raised at all; and it would have been better that it should not have been raised except under real necessity.

Appeal allowed.

Before Mr. Justice L. S. Jackson and Mr. Justice Tottenham.

1878
June 7.

JADU DASS (PLAINTIFF) *v.* SUTHERLAND AND ANOTHER (DEFENDANTS).*

Co-sharers,—Suit by one, for Separate Share of Rent—Parties.

A co-sharer, on the allegation that a tenant, in collusion with the rest of the co-sharers in the estate, had withheld the payment of his rent (hitherto paid jointly to all the co-sharers), brought a suit for the recovery of his share of the arrears of rent, making the tenant and all the colluding shareholders defendants in the suit. *Held*, that such suit was maintainable.

Doorga Churn Surma v. *Jampa Dassee* (1) followed.

THIS was a suit for the recovery of arrears of rent. In this case the plaint stated that the plaintiff and the second and succeeding defendants had, under the will of the plaintiff's father, become the joint owners of certain lands; that the first defendant had, on the 27th Kartick 1276, B. S. (11th November 1869), and again on the 2nd Aughran of the same year (16th November), taken leases of portions of those lands, but had failed to pay rent for the years 1873 to 1876; that the plaintiff had applied to the second and succeeding defendants to join him in a suit to recover the rent so due, but that they, acting in collusion with the first defendant, had refused to become parties to such suit. The present suit was thereupon instituted to recover the plaintiff's share of the rent due for those years, the other co-sharers being made *pro forma* defendants in the suit.

Appeal from Appellate decree, No. 221 of 1878, against the decree of C. D. Field, Esq., Judge of Zilla East Burdwan, dated the 15th of December 1877, reversing the decree of Baboo Radha Kissen Sen, Munsif of Raneegunge, dated the 29th of June 1877.

(1) 12 B. L. R., 289; S. C., 21 W. R., 46.