

The plaintiff has also contended that she is entitled to require the Administrator-General to execute a conveyance to Bhatnath Mitter. Bhatnath might be entitled to require such a conveyance to be executed, but I cannot see how the plaintiff could require such conveyance, or would be in any way injured by the absence of such a conveyance. In the absence of authority I decline to hold that any such conveyance can be enforced by the plaintiff.

I agree with Mr. Justice Frinsep as to the form of the decree which we should make.

PETHERAM, C. J.—For the reasons given by the other two learned Judges who heard this appeal I agree in the conclusions at which they have arrived.

Attorneys for the appellant: Messrs. *Dignam, Robinson & Sparkes*.

Attorney for the respondents: *Babu Gonesh Chunder Chunder*.

J. V. W.

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 NARAYANI
 DASI
 v.
 ADMINISTRATOR-GENERAL OF
 BENGAL.

TESTAMENTARY JURISDICTION.

Before Mr Justice Sale.

IN THE GOODS OF KAMINEYMONEY BEWAH (DECEASED.)

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 April 24.

Probate—Revocation of Probate—Interest entitling person to apply for revocation—Hindu Law—Inheritance—Succession to property of degraded and outcaste woman—Right of her husband's family in her property acquired while degraded.

In an application for revocation of probate of the will of *K*, which had been granted to *D*, it appeared that *K* was a Hindu widow who many years ago left her husband's family dwelling-house and became a woman of the town; that she had lived under the protection of *D* for 35 years; that when she came to *D*, she had no property, but that all the property she left had been acquired by her while in a degraded and outcaste state. *Held*, that the applicant, as her husband's sister's son, had no interest in her estate entitling him to maintain the application.

The general rule, that the tie of kindred between a woman's natural family and herself ceases when she becomes degraded and an outcaste, applies with even greater force as between her and the members of her husband's family. Those members therefore have no right of inheritance in property acquired by a woman who leaves her husband's family and becomes degraded.

In this matter an application was made by Mr. *Chowdhry* for a rule on the petition of one Hem Chunder Dass, which alleged

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that the petitioner was the husband's sister's son of the deceased Kamineymoney Bewah, who died on 28th March 1893 in Calcutta, leaving the petitioner, and a sister, named Atulmoney Dassee (who resided at Serampore), her only surviving relatives; that one Debnath Dey had, on 11th July 1893, obtained probate from the High Court of a will alleged to have been executed by Kamineymoney Bewah on 26th March 1893, in which Debnath was appointed her executor, and by which, after making a bequest to her sister, the deceased had left the whole of her property to Debnath, and it was in his possession, and that there were grounds (which he stated) for supposing that the will was not a genuine one.

The rule was issued calling on Debnath to show cause why the probate granted to him should not be revoked and the will proved in solemn form.

At the hearing of the rule it was objected that the applicant, Hem Chunder Dass, had no such interest in the estate of the deceased as entitled him to maintain the application for revocation of probate.

Mr. T. A. Apar and Mr. Singha showed cause.

Mr. R. Mitra and Mr. Chowdry in support of the rule.

The further facts and the arguments and cases cited are sufficiently stated in the judgment.

SALT, J.—On the 11th July 1893 one Debnath Dey, as the sole executor appointed by the will of Kamineymoney Bewah, dated the 26th March 1893, applied for and obtained probate thereof from this Court.

Subsequently Hem Chunder Dass, alleging himself to be the husband's sister's son of the deceased, obtained a rule calling on Debnath Dey to shew cause why the probate granted to him should not be revoked, and why the alleged will should not be proved in solemn form.

In shewing cause against the rule, Debnath Dey alleged that Kamineymoney Bewah was a woman of the town, and had been so for thirty-five years previous to her death; that she had lived under his protection for the past thirty years; and that when she came under his protection, she had no property whatever, and that the property left by her at her death was acquired by her during the period she was living under his protection, and represented her

savings from gifts of money and ornaments made by him to her. Under these circumstances Debnath Dey, while not admitting the relationship set up by the applicant to the deceased, denied that he had any interest in the estate of the deceased entitling him to maintain the application.

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It was then ordered that the matter should be set down for trial of the preliminary issue as to whether the applicant has a sufficient interest to maintain the application for revocation of probate. On the evidence adduced by the applicant, the following facts have, I think, been established :—

The deceased woman, Kamineymoney, was the widow of one Ram Coomar Dass, who died some 35 or 40 years ago, leaving his widow and an infant son and also a sister, Hurromoney, who was married to one Rammohun Dass.

Rammohun and Hurromoney took in adoption the applicant, Hem Chunder Dass. Both Rammohun and Hurromoney died long ago, leaving no issue but only Hem Chunder, their adopted son and sole heir.

After her husband's death Kamineymoney and her son continued to live in the family dwelling-house with her husband's relatives. The son died in infancy, and shortly thereafter, and about 35 years ago, Kamineymoney left the family dwelling house and became a woman of the town. From that time all connection and intercourse with the members of her husband's family ceased. Upon the affidavits filed by Debnath Dey, and in the absence of any contradiction, I think it appears sufficiently that the property left by Kamineymoney at her death consisted entirely of acquisitions made by her during the period of her degradation as the mistress of Debnath Dey.

It also appears that, besides the applicant, who it is proved is the husband's sister's son, Kamineymoney at her death left a natural sister, named Atulmoney, who is living at Serampore and is undegraded. These are the only relatives, members of her own natural family or of her husband's family, who were surviving at Kamineymoney's death. Atulmoney is a legatee under her sister's will, and a suit was instituted by her against Debnath to obtain payment of the legacy. Shortly after the institution of the suit the legacy was paid by Debnath. On these facts it is said that

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Hem Chunder Dass is under Hindu law the next heir of Kamney-money, and as such heir has an interest in her estate entitling him to apply for revocation of probate and to have the alleged will proved in solemn form.

On the question of heirship or succession to the estate of a Hindu woman who has become degraded from caste by reason of prostitution—so far as such estate represents property acquired by her during the period of degradation—the text books on Hindu law are silent.

Mr. Mitra contends that according to Hindu law the right of succession is based upon the right or power of the claimant to confer spiritual benefits on the deceased, and that inasmuch as there is nothing in the text books to show that an undegraded member of a family cannot confer such benefits on a degraded member, the right of an undegraded member of a family to succeed to the estate of a degraded member ought to be recognized.

On the other hand, there are decisions of the Courts in this country which go to show that the tie of kindred between the degraded member and the undegraded members of a family is broken, and that there is no right of succession on the part of the undegraded member to the estate of a degraded member.

The earliest authority for this proposition is a Bengal case decided by the Sudder Court—*Tara Munnee Dasse v. Motee Buneanee* (1). In that case a daughter born in wedlock claimed to succeed to the estate of her mother who had lapsed into prostitution as against the daughter born subsequent to the mother's degradation, and it was held that the plaintiff had no such right, the ground of the decision being that the conduct of the mother had entirely severed her from her natural family.

This case is referred to in Dr. Banerjee's *Tagore Lectures on the Hindu Law of Marriage and Stridhan*, page 402, as an existing authority. Moreover, the principle of the severance of the tie of kindred operating so as to extinguish the right of succession of an undegraded member to the estate of a degraded member has been expressly recognised and adopted in three cases decided by the Madras Courts—*Myna Bai v. Uttaram* (2), *Sivasangu v. Minal* (3).

(1) 7 Sel. Rep., 273.

(2) 2 Mad., 202.

(3) I. L. R., 12 Mad., 277.

and *Narasanna v. Gangu* (1). The last case no doubt relates to the question of the right of inheritance to the estate of a woman belonging to the class of dancing girls—a class of people having a peculiar status and governed, it has sometimes been said, by special customs or rules of inheritance. But the case in question does not appear to have been decided with reference to any special rule or custom. At page 134 of the report there occurs the following passage: “However that may be, it appears to us that it is immaterial how the property was originally acquired. It was, at the death of Lakshmi, the property of a dancing girl, and the question is who is the nearest heir to the dancing girl. The *general rule* is that the legal relation between a prostitute dancing girl and her undegraded relatives remaining in caste becomes severed, and in this view the defendant No. 6 is the only legal heir to Lakshmi.”

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The *general rule* here referred to is, I take it, the rule of the severance of the tie of kindred between the degraded and undegraded members of a Hindu family.

This is clear, I think, inasmuch as the decision in the case of *Sivasanyu v. Minal* (2) is specially referred to and is followed, and in the latter case, at page 281 of the Report, the rule is referred to in these terms: “It was held by the Sudder Dewany Adawlut in *Tara Munnee Dassie v. Motee Buneanee* (3) that under Hindu law prostitute daughters living with their prostitute mother succeeded to the mother’s property in preference to a married daughter living with her husband. The *ratio decidendi* was that the legal relation of a married and respectable daughter to her mother ceased when the latter became an outcaste.”

If this principle is held to apply as between a degraded woman and the members of her own natural family, it would seem to apply with even greater force as between her and the members of her *husband’s* family. Applying, therefore—as I think I am bound to do—this principle to the present case it follows that Hem Chunder Dass has no right to, or interest in, the estate of Kamineymoney as her heir. I am aware that in certain cases this Court has granted letters of administration to the estate of

(1) I. L. R., 13 Mad., 133. (2) I. L. R., 12 Mad., 277.

(3) 7 Sel. Rep., 273.

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prostitutes who have died intestate to members of their own natural family. I myself in the case of *In the goods of Sowdaminey Dasse*, April 28th, 1893, after consideration, granted letters of administration to the degraded natural sister of the deceased, but I did so, as in the case of an intestacy, and under the special power granted to the Court by section 41 of the Probate and Administration Act for the protection and preservation of the estates of deceased persons. These grants have been made in the exercise of the discretionary powers of the Court, and not as recognising any legal interest of the grantees in the estate of the deceased persons. I must hold, therefore, that the applicant Hem Chunder Dass has no interest in the estate of Kamineymoney entitling him to maintain the application for revocation of probate.

As the result the application is refused. The applicant must pay the costs of the trial of the issue, to be taxed on scale 2 and must also pay the costs of the rule.

Application refused with costs.

Attorney for Hem Chunder Dass : Mr. C. H. Manuel.

Attorney for Debnath Dey : Babu R. C. Bose.

J. V. W.

APPELLATE CIVIL.

Before Mr. Justice Ghose, Mr. Justice Beverley, and Mr. Justice Rampini.

GOPENDRO CHUNDER MITTER AND OTHERS (PLAINTIFFS) v. MOKAD-
 DAM HOSSEIN AND OTHERS (DEFENDANTS.)^{*}

1894
 March 16,

Sale for arrears of rent—Bengal Regulation VIII of 1819, section 11—"Defaulting Proprietor"—"Defaulter"—Incumbrances created by previous putnidar—Mokurari lease, avoidance of—Voidable incumbrances.

In 1839 a *mokurari* lease was granted to the predecessors of the defendants by the then *putnidar* of a *putni* created in 1819. In 1848 the *putni* was sold for arrears of rent under the provisions of Bengal Regulation VIII of 1819, but the purchaser at that sale did not interfere with the *mokurari*. In 1885 the *putni* was again brought to sale under the same Regulation for arrears of rent, the default being made by one of the successors of the par-

^{*} Appeal from Appellate Decree No. 1711 of 1892, against the decree of J. Kelleher, Esq., District Judge of Burdwan, dated the 23rd of June 1892, reversing the decree of Babu Rajendra Kumar Bose, Subordinate Judge of that District, dated the 11th of June 1891.