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held jointly has been practically settled by the Privy Council in the case of *Watson & Co.* v. *Ram Chand Dutt* (1), and the subsequent case of *Lachmeswar Singh* v. *Manowar Hossein* (2), and whatever rights they possess according to law, of course they can claim. All we wish to say at present is that Hodding is entitled to get into joint possession with the 15 annas zamindar, and to remove such tenants as may refuse to vacate. We make no order as to costs.

C. S. *Appeal dismissed.*

Before Mr. Justice O'Kinealy and Mr. Justice Ameer Ali.

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July 5.

MOHUN PERSHAD NARAIN SINGH AND ANOTHER, THROUGH HIS FATHER AND GUARDIAN, LUCHMI PERSHAD NARAIN SINGH (PETITIONERS), *v.* KISHEN KISHORE NARAIN SINGH (OBJECTOR).*

Hindu Law—Stridhan—Mithila Law—Succession—Letters of administration.

The husband's sister's sons are preferential heirs to the husband's paternal great-grandfather's great-grandsons in the succession to *stridhan* property.

In an application for letters of administration, *held*, on the evidence, that the deceased left property to which administration could be granted without finally determining the title to such property.

THE petitioners applied to the District Judge of Mozufferpore for a grant to them of letters of administration to the estate of a lady named Punit Koer, who died at Mozufferpore on the 3rd of December 1890. They filed their application on the 19th of September 1891. In their petition they stated that Punit Koer died, leaving the petitioners, her husband's sister's sons, her heirs to her *stridhan* under the Mithila school of Hindu law. The petition further set out that the deceased left her surviving one Malikrani Koer, her husband's stepmother, and Awadh Behari Narain Singh, Janki Pershad Narain Singh, and Kishen Kishore Narain Singh, her husband's paternal great-grandfather's great-grandsons, and Kishen Buldeo Narain Sing, her brother's son; but the petitioners submitted that they were preferential heirs to the *stridhan* property,

* Appeal from Original Decree No. 97 of 1892, against the decree of W. H. Page, Esq., District Judge of Tirhut, dated the 6th of April 1892.

(1) I. L. R., 18 Calc. 10; L. R., 17 I. A., 110.

(2) I. L. R., 19 Calc., 253; L. R., 19 I. A.., 48.

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of which a list was set out, of the deceased. A caveat was entered on the 21st of September 1891 on behalf of Awadh Behari Narain Singh, Janki Pershad Narain Singh, and Kishen Kishore Narain Singh. The questions dealt with by the District Judge were two—1st, Was the property *stridhan?* 2nd, if so, who were the heirs? He decided that Punit Koer left no *stridhan* property, and that as she therefore had no estate, no administration could be given. He did not, however, decide the second point.

The applicants then appealed to the High Court.

Mr. *W. C. Bonnerjee*, Moulvi *Mahomed Yusuff*, Babu *Golap Chunder Sarkar*, and Babu *Okhoy Koomar Bannerjee* for the appellants.

Sir *Griffith Evans*, Babu *Saroda Churn Mitter*, and Babu *Degumber Chatterjee* for the respondent.

Babu *Golap Chunder Sarkar*:—In this case the parties are governed by the Mithila school of Hindu law, and according to the Mithila school a woman's husband's sister's son is entitled to inherit her *stridhan* property in preference to the husband's paternal great-grandfather's great-grandsons in the male line. The rule laid down in the Mitakshara on the subject is that "in default of a woman's issue by the body her estate goes to her husband and his *sapindas*." See Mitakshara, Chapter II, section XI, paragraphs 9—11. But the Vinadaratnakara, the authority for Mithila law, cites the text of Vrihaspati, which is not cited in the Mitakshara but is cited in the Viramitroyda, page 243, which enumerates by implication the sister's son, the husband's sister's son, the husband's brother's son, the brother's son, the son-in-law, and the husband's younger brother as heirs to a woman's property. Mayne has misunderstood the meaning of the texts as regards the relations implied by it. The aforesaid relations enumerated in Vrihaspati's text are entitled to inherit in preference to those who come under the general term "husband's kinsmen" in the Mitakshara. See *Sree Narain Rai* v. *Bhya Jha* (1), *Bachha Jha* v. *Jugmon Jha* (2), *Ranjit Singh* v. *Jagannath Prosad Gupta* (3).

Babu *Saroda Charn Mitter* for the respondent:—It is clear on the evidence that the lady had no property which can be

(1) 2 Sel. Rep., (O.) 23, (N.) 29 (35). (2) I. L. R., 12 Calc., 348.
(3) I. L. R., 12 Calc., 375.

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characterised as *stridhan*, therefore no administration ought to be granted, as there is no property to administer. The *sapindas* are not postponed to the sister's son and the husband's sister's son. The case of *Bachha Jha* v. *Jugmon Jha* (1) is opposed to the contention put forward on behalf of the appellants. Mayne treats the text of Vrihaspati quite differently from the view of it taken by the other side. Mayne says that they do not take in the order there stated. No authority is quoted to show that Mayne is wrong. Mayne's Hindu Law, 5th ed., para. 623.

The judgment of the Court (O'KINEALY and AMEER ALI, JJ.) was as follows:—

This is an appeal from the decision of the District Judge of Tirhut, refusing to grant letters of administration to the appellants.

The appellants state that Punit Koer, who died on the 3rd of December 1890, at Mozufferpore, had left moveable and immoveable property in the nature of *stridhan*, and applied to be allowed to administer the estate.

In answer, it was stated that the lady left no property as *stridhan*, that the property was really her husband's, who was the last full owner; and even if she had any property, still the applicants, not being the next heirs, ought not to get administration.

On the case coming on before the Judge in the Court below, two points of the nature already stated were raised for decision—(1) Was the property *stridhan*? (2) If so, who are the heirs?

The Judge came to the conclusion that the lady had no *stridhan*, and as she had no estate, no administration could be given. He did not decide the second point. The facts of the case are as follows:—One Ram Gobind Singh held property jointly with others. In 1863, he applied for the partition of the property. The partition proceedings commenced in 1864, and were completed in August 1866. Somewhere about November 1864, he gave 19 gundas of Rajkhund and of Sarkhand Bhitto to Punit Koer. That lady and Ram Gobind both applied for partition, and in the application Ram Gobind stated that he was all along in possession. The partition was made in March 1866, the usual papers showing the definite shares allotted to each were made out, and the parties

(1) I. L. R., 12 Calc., 348.

were placed in possession of their shares in the usual way. Sometime after Ram Gobind died. We do not know the exact date, that is to say, whether it was in 1868 or 1869. In 1877 the lady, who up to that time had been only entered in the *batwara* register, and in the register in existence before 1876 in the Collectorate, applied and had the estate of Sarkhand, &c., which formed the 19 gundas, registered in her name, she being described as the owner. In the same year she also applied and succeeded in having her name entered as owner of the property 1 anna 1 gunda, not by gift, as the 19 gundas, but by inheritance. Therefore, we find that, so far as the 19 gundas are concerned, we have it stated, so far back as 1864, that she was in possession. It also appears that she was given possession under the *batwara;* and in the subsequent proceedings and dealings with the property she is described as in possession; so that up to 1890, that is, for a period of nearly 26 years, the ostensible title is in the lady, so far as the 19 gundas are concerned.

It has been argued on behalf of the respondent in this Court, that, although it is impossible to contest the fact that the lady was the ostensible owner of the property, still she was never in possession, and no gift was ever made to her; and in support of that contention the evidence of a person who was at one time *dewan* is relied upon. He states that although the *jamabandi* accounts were separate, the collections were joint; and the property was in Ram Gobind's name. Again, there is an entry in her petition, filed in 1877, to get the registration of her name, that she obtained possession of the property on a certain date; and that date is undoubtedly the date of her husband's death. But if we read it in conjunction with the remarks under the 11th head of that petition, it seems quite clear that she contended that she had been in possession on the date of the partition. On the other hand, there is the evidence of another individual who also was undoubtedly an officer under her husband, and of a ryot and a patwari. Their evidence goes to show that the lady had all along held these properties as separate and has dealt with them as her own. It thus appears that for a long period the ostensible title is in the lady. We think the respondent has not shown to us that the estate comprising 19 gundas which she claimed to have received

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from her husband, so far back as 1864, did not really belong to her as owner, but formed part of her husband's estate. Moreover, it appears from the schedule of the properties filed with the application, that some of the moveables and ornaments must belong to the lady. Ram Gobind died so far back as 1868; and the only reasonable conclusion we can come to is, that these ornaments and garments really did belong to the lady.

Now, although we have come to the conclusion, for the purposes of the present suit, that the lady has an estate to administer, we wish carefully to guard ourselves from being understood to attempt finally to determine either the nature or the extent of her estate.

The next point raised is in regard to the right of being heir or successor to the lady's *stridhan*. She belongs to a family governed by the Hindu law of the Mithila school. So far back as the year 1812, in the case *Sree Narain Rai* v. *Bhya Jha* (1), the Pundits of the Sudder Dewany Adawlut gave their *vyavasthas* as follows:—"Supposing that the Rani did not appoint Bhya Jha her adopted son, he would not inherit her *stridhan*; the son of the mother's brother not being one of the legal heirs to her peculiar property. If the Rani left a brother, sister, sister's son, husband's sister's son, husband's brother's son, brother's son or son-in-law, any such person is entitled to succeed to the *stridhan*. If she left none of these, Sri Narain and Lallut Narain, the nearest *sapindas* of her husband, are entitled to her peculiar property as well as the Rajah's estate." In dealing with the subject of "peculiar property" under the Mithila school of Hindu law in 1878, Mr. Justice Banerjee stated that, after the husband or the parents, the heirs would be those mentioned by Vrihaspati. After them "the order of succession would be the same as that according to the Dravida school." According to Vrihaspati, on failure of heirs down to her husband, a woman's property goes as provided in the following text:—"The mother's sister, the maternal uncle's wife, the paternal uncle's wife, the father's sister, the mother-in-law, and the wife of an elder brother, are pronounced similar to mothers. If they leave no issue of their body, nor daughter's son, nor his son, then the sister's son and the rest shall take their property." By "sister's son and the rest" is meant those

(1) 2 Sel. Rep. (O.) 23, (N.) 29.

persons who are in the same category as the sister's son, that is to say, husband's brother's son, husband's sister's son and others. That seems also to have been the view taken by the Pundits in the case of *Sree Narain Rai* v. *Bhya Jha* (1), and by Mr. Justice Banerjee in his Tagore Lectures of 1878, where he says that "the group of heirs given in Vrihaspati's text, *i e*, 'the sister's son,' 'the husband's sister's son,' &c., are entitled to inherit." Then it is argued that whatever may have been the opinion up to 1878, still there is no direct decision upon the point. The question is still open, and it is further asserted that the case of *Bachha Jha* v. *Jugmon Jha* (2) is entirely opposed to that opinion. According to that decision, the respondents argued that the *sapindas* are not postponed to the sister's son and the husband's sister's son. But it seems to us that that case is in no way antagonistic to the opinion we have expressed. In that case it is admitted that the husband's brother's son and the husband's sister's son were the heirs. It was even pointed out at page 354 of the report that, according to a book which is of some importance in the Mithila school, the sister's son took the peculiar property; what was decided in that case was not whether the class of sister's sons came before or after them, but whether the husband's brother's son took prior to the sister's son, both being of the same class. We can find nothing in that judgment which could support the present contention. Indeed, the case proceeded upon the assumption that the sister's son took before the husband's *sapindas*. During the discussion of the case it was asked whether the husband's brother's son or the *sapindas* took first. It was not controverted that in that case the husband's brother's son would succeed.

Looking, therefore, to the circumstances of the case, we think we ought to allow this appeal. The decision of the Lower Court must accordingly be set aside; and we direct that letters of administration do issue to the applicant, upon his putting in the usual security to the satisfaction of the Lower Court.

The appellants are entitled to costs.

C. S. *Appeal allowed.*

(1) 2 Sel. Rep. (O.) 23, (N.) 29 (34). (2) I. L. R., 12 Calc., 348.