Before Mr. Justice Banerjee and Mr. Justice Brett.

GOPAL CHANDRA PAL (PLAINTIFF) *v.* RAM CHANDRA PRAMANIK AND ANOTHER (DEFENDANT).* 1901 *Jan.* 15.

Hindu Law—Dayabhaga—Heir—Whether husband or brother is the preferential heir to moveable property obtained from her father, after her marriage, by a childless woman—Nuptial presents—Whether additions made to ornaments subsequent to marriage should be treated as part of the nuptial presents.

According to the Bengal School of Hindu Law the brother is the preferential heir to the husband to moveable property obtained, from her father after her marriage by a woman, who has died childless.

Judoo Nath Sircar v. *Bussunt Coomar Roy Chowdhry* (1) referred to.

Additions made subsequent to her marriage to ornaments given by a father to his daughter at the time of her marriage must be treated as being in the nature of gifts subsequent to marriage, and as not being governed by the law applicable to nuptial gifts.

THIS appeal arose out of an action brought by the plaintiff to recover certain ornaments from the defendants. The allegations of the plaintiff were that the ornaments were presented to his wife, Tarangini, by her father at the time of her marriage; that subsequently her father made additions to these ornaments and got them made again; that his wife with these ornaments came to her brother's (defendant No. 1's) house and there she died on the 4th Aswin 1304 B. S., and that, although he made a demand of these ornaments from the defendant he did not deliver them to him, and hence the suit was brought. The defence mainly was, that the father of the deceased Tarangini did not give her any ornament at the time of her marriage, that he did not subsequently make additions to the ornaments alleged to have been given and did not get them made again; that Tarangini brought certain ornaments with her, but *that* they were pledged by her before her death. The Court of First Instance having held that the husband was the preferential heir to the brother regarding the moveable properties given by the father to her daughter at the time of her

* Appeal from Appellate Decree No. 763 of 1899, against the decree of L. Palit, Esq., Officiating District Judge of Jessore, dated the 11th of February 1899, affirming the decree of Babu Sham Chand Roy, Subordinate Judge of that District, dated the 11th of June 1898.

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marriage gave a partial decree. But as regards the ornaments given by the father after marriage and as to the subsequent additions, he held that the brother was the preferential heir. The Lower Appellate Court on an appeal by the plaintiff upheld the decision of the First Court.

From this decision the plaintiff appealed to the High Court.

Babu *Sreenath Dass* (with him Babu *Brojo Lal Chuckerbutty*) for the appellant.

Babu *Saroda Prosunno Roy* for the respondent.

The judgment of the High Court (BANERJEE and BRETT, JJ.) was as follows :—

Two questions have been raised in this appeal by the learned vakil for the plaintiff appellant : *First*, whether according to the Bengal School of Hindu Law the husband or the brother is the preferential heir to moveable property obtained from her father after her marriage by a woman, who has died childless, and *second*, whether additions made subsequent to her marriage to ornaments given by a father to his daughter at the time of her marriage, should be treated as a part of the nuptial presents and as devolving according to the rule of law applicable to nuptial presents.

Upon the first question, though there is no doubt some conflict between the Dayabhaga on the one hand and the Daya Tatwa and the Dayakrama Sungraha on the other, the Dayabhaga, which is the work of paramount authority in the Bengal School, is clearly in favour of the brother's preferential right. This is evident from paragraphs 10 and 29 of s. III of Chapter IV of that treatise.

The learned vakil for the appellant contends that neither paragraph 10 nor paragraph 29 relates to property obtained by gift from the father.

We are unable to assent to this contention. It is clearly opposed to the language of the Dayabhaga. It is also opposed to the interpretation of the Dayabhaga as given in the case of *Jadu Nath Sircar* v. *Bussunt Coomar Roy Chowdhry* (2). It is true the point for decision in that case was not precisely the same as

(2) (1873) 19 W. R., 264.

the one now under consideration, but the reasoning upon which that decision is based, is clearly applicable to this case, and we see no reason for dissenting from the view adopted in that case. That view, we may add, has been accepted as correct in Shama Charan's Vyavastha Darpana, 3rd Edition, pages 246 to 248 and 262, and also by Mr. Mayne in his Treatise on the Hindu Law and Usage, 6th Edition, page 875.

We were referred to a passage in Babu Golap Chunder Sircar's Hindu Law, page 284, in which it is said that with reference to a father's gifts other than nuptial presents the husband should come before the brother. The learned author however is careful to say, after noticing that there is a doubt about the authenticity of a particular passage in the Dayabhaga, namely Chapter IV, s. III, paragraph 33; "so the following order of succession should be taken as provisional only being not settled yet in that respect as well as in other respects." So that we have not here any decided opinion of the learned author on the point. Nor does he state his reasons for adopting the order of succession given by him; and he remarks that the Bengal authorities are in conflict with each other with reference to succession to *stridhan*. Towards the conclusion of the Chapter to which reference is made, the learned author moreover cites apparently with approval the case of *Jadu Nath Sircar* v. *Bussunt Coomar Roy Chowdhry* (3). The first question raised in the case must, therefore, be answered in favour of the preferential right of the brothers.

As to the second contention, it is enough to say that the subsequent additions made to the ornaments, having regard to the nature of the additions, must be treated as being in the nature of gifts subsequent to marriage, and as not being governed by the law applicable to nuptial gifts.

The appeal, therefore, fails, and must be dismissed with costs.

S. C. G. *Appeal dismissed.*

(3) (1873) 19 W. R., 264.