

APPELLATE CIVIL.*Before Holmwood and Chapman JJ.*

HARISH CHANDRA ROY

v.

ATIR MAHMUD.*

1913

Feb. 7*Hindu Law—Inheritance—Ascetics—Sudras—Rules relating to ascetic persons of the Sudra caste.*

A *Sudra* cannot enter the order of *yati* or *samyasi*, and therefore a *Sudra* who becomes an ascetic is not excluded from inheritance to his family estate unless some usage is proved to the contrary.

Dharampuram v. Virajandiyam (1) followed.

SECOND APPEAL by Harish Chandra Roy, the plaintiff.

This appeal arose out of a suit for recovery of *khas* possession of a third share of the lands in suit with mesne profits. The facts are these: the lands were the properties of one Sananda Ram Dass, who died leaving his widow, Droupodi Dassi, and his nephews (brothers' sons) Alak, Guru Dayal and Ram Krishna, as reversioners. The widow died in Jait 1308, B. S., when the properties devolved upon the said three reversioners in equal shares. One of them, Ram Krishna Dass, sold his share to the defendant No. 8, Brojo Nath Dass, in Bysak 1311, B. S., who again sold it over to the plaintiff along with other properties in Magh of the same year.

* Appeal from Appellate Decree, No. 3621 of 1910, against the decree of Ashwini Kumar Bose, Subordinate Judge of Sylhet, dated July 27, 1910, reversing the decree of Shashi Kumar Ghose, Munsif of Habiganj, dated Feb. 17, 1910.

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The plaintiff, being wrongfully kept out of possession thereof by the principal defendants, brought this action for *khas* possession of the disputed one-third share with mesne profits.

The defendant No. 1 contended that Ram Krishna Dass, having become a *Baishnab* prior to the death of Droupadi Dassi, could not legally inherit the properties of Sananda Ram Dass, and hence the plaintiff had no title to the disputed lands. The learned Munsif decreed the suit. The defendant No. 1, thereupon, appealed from this decision of the Munsif of Habiganj to the Subordinate Judge of Sylhet, who discharged the decree of the lower Court and dismissed the plaintiff's suit with costs. Against this order of the Subordinate Judge the plaintiff appealed to the High Court.

Babu Jyoti Prasad Sarbadhikari, for the appellant.

Maulvi Nuruddin Ahmed and *Babu Rajendra Prasad*, for the respondents.

HOLMWOOD AND CHAPMAN JJ. This appeal arises out of a suit for possession of property which the plaintiff had purchased from one Brojo Nath Das who, in his turn, had purchased it from one Ram Krishna Dass. Admittedly the decision of the appeal turns upon the question whether Ram Krishna Das was entitled to this property at the time when he sold it. He was so entitled unless he was excluded from the inheritance to his family estate by the fact of his having become a *Baishnab*.

The learned Subordinate Judge held that Ram Krishna Das had totally renounced all connection with worldly affairs ; that, therefore, he was excluded from the inheritance and had no title to the property which he sold. On this ground he dismissed the

plaintiff's suit. The learned Subordinate Judge, however, has overlooked the fact that Ram Krishna Das was a *Sudra* and, therefore, could not, if he wished, enter the orders of *yati* or *sannyasi*, the members of which alone are excluded from inheritance to their family estates under the Hindu law. In the case of *Dharmapuram v. Virapandiyam* (1), Subramania Ayer J. pointed out that all authorities necessarily and clearly imply that a *Sudra* cannot enter the order of *yati* or *sannyasi*, and that therefore a *Sudra* who becomes an ascetic is not excluded from inheritance to his family estate unless some usage is proved to the contrary. No sufficient authority has been shown to lead us to the conclusion that the Hindu law on the subject is otherwise. No doubt the lower castes have been allowed to enter the monastic orders founded by Ramanand and others in more recent times, and it may be that *Baishnabs* of those orders have adopted customs of inheritance under which, although they may have been *Sudras* by caste, they lose the right to succeed to their own family estates, and the inheritance to property left by them devolves according to the rules of the particular order; but no custom of that kind has been proved in the present case.

We are of opinion that the Hindu texts applicable to the disinheritance of ascetics do not apply to *Sudras* and, therefore, have no application in this case.

That being so, the plaintiff had a good title. The appeal is allowed. The decree of the Subordinate Judge is set aside and the decree of the Munsif is restored with costs in all Courts.

S. K. B.

Appeal allowed.

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