

## APPELLATE CIVIL

Before Kapur, J.

SOSHIL CHAND AND OTHERS,—Defendants-Appellants

versus

MANGAT RAM AND OTHERS,—Respondents

Regular Second Appeal No. 265 of 1951

*Hindu Law—Succession—Widow of the nearest reversioner—Whether entitled to succeed in preference to distant collaterals—Right of representation—Extent of—Right of widow to succeed—Theory of.*

1953

July, 23rd

In this case the sole point for decision was as to who is a preferential heir to the estate of Mst. Kako's husband, Baru, the widow of Matu Ram, who was the nearest reversioner or the plaintiffs who are more distant collaterals than Matu Ram.

*Held*, that according to the Mitakshara the wives of Sagotra Sapindas are included in the term 'Gotrajah' but while the wives of ancestors are recognised by Mitakshara to be heirs, nothing is said about the wives of descendants and collaterals and they have, therefore, no right of succession.

*Held also*, that a widow can succeed to her husband's estate which is actually vested in him. It may be either in title or in possession at the time of his death. She takes at once at his death or not at all. No fresh right according to Hindu Law accrues to her as a widow on the subsequent death of some one to whom her husband would have succeeded if he had lived. The theory on which a widow succeeds is not the right of representation but because she was the partner of her husband during his life and is believed to become his partner in the next world. She is called 'ardhangi'.

*Held further*, that under Hindu Law there is a line of named heirs who succeed one after the other and unlike other systems of law, there is no representation in Hindu Law except in the case of a son, grandson and great grandson. The principle of representation is not applicable to widows who take on a different principle and that is, that the *patni*, wife, acquires from the moment of her marriage a right to everything that belongs to her husband so as to become a co-sharer.

*Balamma v. Pullayya* (1), *Soorendronath Roy v. Mus-sammut Heeramonee Burmoneah* (2), *Gauri Sahai v. Rukko* (3), *Ananda Bibee v. Nownit Lal* (4), *Jamna v. Machal Sahu* (5) and *Sanatan Bysack v. Juggat Soondery* (6), relied on.

Regular Second Appeal from the preliminary decree of *Shri Tirath Dass Sahgal, Senior Sub-Judge, with enhanced appellate powers, Karnal, dated the 2nd January, 1951, affirming that of Sub-Judge, 1st Class, Karnal, dated the 3rd March, 1950, granting the plaintiffs a preliminary decree under Order 34, Rule 7, C.P.C., for redemption of  $\frac{1}{2}$  share in the property in dispute on payment of Rs. 500 on or before 31st August, 1950, failing which their right to redeem would be deemed to have been fore-closed and leaving the parties to bear their own costs, the lower appellate court allowed costs in his court.*

H. L. SARIN, for Appellants.

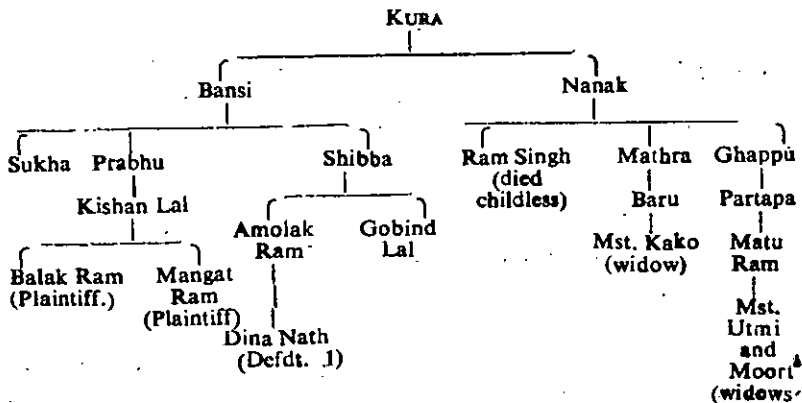
TEK CHAND, for Respondents.

#### JUDGMENT

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KAPUR, J. This is defendants' appeal against an appellate decree passed by Mr. Tirath Dass Sehgal, Senior Subordinate Judge, Karnal, dated the 2nd of January, 1951, confirming the decree passed by the trial Court whereby the plaintiff's suit was decreed.

In order to understand the facts of this case it is necessary to refer to the following pedigree-table:—



(1) I.L.R. 18 Mad. 168

(2) 12 I.A. 81

(3) I.L.R. 3 All. 45

(4) I.L.R. 9 Cal. 315

(5) I.L.R. 2 All. 317

(6) 8 M.I.A. 66

Matu Ram and Mst. Kako, on the 9th November, 1916, mortgaged the property in suit for a sum of Rs. 1,000 in favour of Mukand Lal and Parma Nand. On the 3rd April, 1917, Matu Ram sold his share and that of Mst. Kako in favour of Gokal Chand predecessor-in-interest of defendants 2 to 4. Matu Ram died on the 8th December, 1923, and Mst. Kako died in November, 1924. Mst. Utmi and Mst. Moorti, widows of Matu Ram sold their one-half share in the property in dispute to Dina Nath, defendant No. 1, who filed a suit for redemption against Mukand Lal and Parma Nand, but his suit was dismissed. Defendants 2 to 4 then brought a suit for redemption against the heirs of Mukand Lal and Parma Nand and succeeded in getting the land redeemed. Thus defendants 2 to 4 became the mortgagees of the property in suit.

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Mangat Ram and Balak Ram, on the 19th February, 1949, brought a suit for redemption in regard to the share of Mst. Kako. The defendants pleaded that the plaintiffs had no right to redeem in the presence of the widows of Matu Ram, who were preferential heirs, but the suit was decreed and the first appeal against that decree was also dismissed and the defendants have come up in second appeal to this Court.

The sole point for decision in this case is as to who is a preferential heir to the estate of Mst. Kako's husband Baru, the widows of Matu Ram, who was the nearest reversioner or the plaintiffs Mangat Ram and Balak Ram, who are more distant collaterals than Matu Ram but claim to have preferential right to succeed under Hindu Law to that of Mst. Utmi and Mst. Moorti.

According to the Mitakshara, the wives of *sagotra sapindas* are included in the term 'gotrajah', but while the wives of ancestors are recognised by Mitakshara to be heirs, nothing is said about the wives of descendants and collaterals. It is not necessary to mention with regard to the widows of other *sapindas*. The only question that we are concerned with is the widow of the son of a first cousin on the paternal side. As stated by

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Mayne on Hindu Law, eleventh edition, at page 605, "logically there does not seem to be any insuperable objection why wives of descendants and collaterals within seven degrees should not come in after all the male *sapindas* are exhausted and before the *samanodakas* (Mit. II, v. 6). But the decisions of all the Courts, except in Bombay, have refused to recognise their rights." Thus widows of *gotrajah sapindas* have been recognised only in Bombay and have not been recognised in any other part of India.

A widow can succeed to her husband's estate which is actually vested in him. It may be either in title or in possession at the time of his death. Again as stated by Mayne at page 606, she takes at once at his death, or not at all. No fresh right according to Hindu Law accrues to her as a widow on the subsequent death of some one to whom her husband would have succeeded if he had lived. See *Balamma v. Pullayya* (1). A cousin's widow has no right to succeed on the death of her husband's cousin. In *Soorendronath Roy v. Mus-samut Heeramonee Burmoneah* (2), it was held that according to the Mitakshara, a first cousin is entitled to succeed to the estate to the exclusion of his deceased cousin's childless widow. It has been held in cases of contest between the widow and some *sapindas* and some other heirs that she does not succeed on the general principle that she does not come within the line of heirs at all. In *Gauri Sahai v. Rukko* (3), it was held that according to the Mitakshara Law none but females expressly named can inherit and the widow of the paternal uncle of a deceased Hindu, not being so named, is therefore not entitled to succeed to his estate. The same rule was laid down in *Ananda Bibee v. Nownit Lal* (4), a case from Behar, where it was held that under the Mitakshara a daughter-in-law, whose husband has predeceased his father, is not

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(1) I.L.R. 18 Mad. 169

(2) 12 I.A. 81

(3) I.L.R. 3 All. 45

(4) I.L.R. 9 Cal. 315

in the line of heirs of her father-in-law. This was before the Hindu Women's Rights to Property Act.

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Under Hindu Law, there is a line of named heirs, who succeed one after the other and unlike other systems of law there is no representation in Hindu Law except in the case of a son, grandson and great grandson and what has been engrafted into that law by the usages of this State as was laid down by a Bench of this Court in *Mahant Hem Raj v. Bawa Methara Dass* (1), but that principle is not applicable to widows, who take on a different principle and that is that the *patni*, wife, acquired from the moment of her marriage a right to every thing that belongs to him so as to become a co-sharer. Sastri Hindu Law, p. 370 (7th Edition), *Jamna v. Machal Sahu* (2), *Sanatan Bysack v. Juggat Soondery* (3).

I would like to point out that the learned Senior Subordinate Judge, has taken an erroneous view when he went into the question of inheritance by widows by right of representation. The theory on which a widow succeeds is not the right of representation but because she was the partner of her husband during his life and is believed to become his partner in the next world. She is called *ardhangi*. See p. 727 of Sastri Hindu Law.

I am, therefore, of the opinion that the Courts below have rightly decreed the plaintiffs' suit and I would, therefore, dismiss this appeal with costs throughout.

(1) 54 P.L.R. 112

(2) P.L.R. 2 All. 317

(3) 8 M.L.A. 66