

(1934) 07 CAL CK 0036
In the Calcutta High Court

Bhaba Kanta Pachani

APPELLANT

Vs

Kerpai Chutia and Others

RESPONDENT

Date of Decision : 17-07-1934

Acts Referred:

Citation : AIR 1935 Cal 144

Hon'ble Judges : Henderson, J

Bench : Division Bench

Judgement

Henderson, J.—The land which is the subject-matter of the suit out of which this appeal has arisen formed part of the holding covered by pota No. 79 and originally belonged to one Sisuram. Sisuram left a widow Bhakuli and two daughters Lundari and Lengari. Lundari eloped with a certain Ahmad, and lived with him as his mistress for many years. Bhakuli died in 1916 and Lengari in 1926. The plaintiff purchased the property from Lundari in 1927. Defendant 1 claimed the property on the strength of a Will executed by Lengari. The plaintiff made an alternative prayer that he might obtain a refund of the purchase money from Lundari; this was decreed by the Munsiff. The plaintiff appealed to the lower appellate Court without success and now appeals to this Court. Three points have been taken on behalf of the appellants: (1) that in Hindu law a daughter is not debarred from inheritance on account of unchastity; (2) that any event Lundari was not guilty of unchastity within the meaning of the law and (3) that the Courts below were wrong in holding that the suit was barred by limitation.

2. With regard to the first point reliance is placed by the appellant upon Mr. G.C. Sarkar Sastri's work on Hindu law. The learned author deals with this subject at p. 662, Edn. 7. He distinguishes between unchastity in the wife and unchastity in other female relations. He expresses the opinion that except in the case of a wife mere unchastity while not followed by conception would not justify exclusion from the inheritance. But in this case the unchastity of Lundari was followed by conception and resulted in the birth of two children. Thus the case of the appellant is not really supported by this treatise. On the other hand, it is now

well settled in this Court that unchastity in a daughter does exclude her from the inheritance. The case reported in *Ramananda v. Rai Kishore* (1895) 22 Cal 347 is the leading authority on the point. This decision was followed in *Aiti Kochuni v. Aidew Kochuni* 1920 Cal where the learned Judges observe that the law is now settled and unchastity would prevent a daughter from inheriting. Mr. Ghose has argued that it cannot be said that Lundari was guilty of unchastity in the legal sense inasmuch as she remained associated with one man for a period of about 40 years. There is no authority for the proposition that a Hindu female who lives with a man as his mistress is not guilty of unchastity in the legal sense. The case reported in *Aiti Kochuni v. Aidew Kochuni* 1920 Cal to which I have already referred is an authority to the contrary. In my judgment, the Courts below were correct in holding that Lundari did not inherit anything.

3. If the determination of the appeal had rested on the point of limitation I would have felt bound to remand the appeal for a further hearing. Lengari sold a portion of the property in June 1916, The learned Subordinate Judge disposes of the question merely by a reference to this fact; but it cannot be properly determined without an examination and appreciation of the evidence as a whole. The mere fact that a cosharer sells a portion of the joint property would not amount to adverse possession; it would have to be shown that the title asserted was inconsistent with that of a cosharer and that it was brought to the knowledge of the cosharer. In the present case the evidence of Lundari and the plaintiff is to the effect that Lundari obtained possession of the property on the death of Lengari and made it over to the plaintiff; if this is true the suit could not be barred by limitation. There is other evidence to the effect that Lundari never mutated her name, that she was summoned to sign Lengari's sale-deed and that she did not join in the transaction. There is also evidence to the effect that Lundari knew of this sale; but no attempt was really made to show on what date she obtained this knowledge. Without a proper examination and consideration of all this evidence it could not be said that the point of limitation was properly dealt with The appeal fails and is dismissed with costs to defendant 1.