

(1875) 08 AHC CK 0001
In the Allahabad High Court

Ghasita	Vs	APPELLANT
Musammat Ganga Jati		RESPONDENT

Date of Decision : 23-08-1875

Acts Referred:

Citation : (1875) ILR (All) 46

Hon'ble Judges : Turner, O.C.J.;Spankie, J;Pearson, J;Oldfield, J

Bench : Full Bench

Judgement

Turner, Officiating C.J.

1. It appears to me immaterial whether the property in suit was or was not the stridhan of the grandmother. In either case, I am of opinion that the daughter is not deprived, by her unchastity, of her right of succession under the law administered by our Courts.

2. The objection to her succession is only based on the general rule embodied in the text of Narada cited in the Mitakshara (ch. ii, Section 10), and again in the Dayakrama Sangraha (ch. iii), and in Dayabhaga (ch. v., Section 13), that a person addicted to vice does not inherit. No doubt this rule is cited and treated as well established by the author of the Mitakshara, but for many years it has not been enforced in our Courts.

3. I was myself a party to a decision in which it was held that want of chastity in a mother does not defeat her right of inheritance, and the same rule which, it is contended, deprives a daughter of a right of succession, would also operate to deprive the mother of succession.

Pearson, J.

4. The question which arises in this case is whether Musammat Ganga Jati is precluded, on account of her unchastity, from keeping possession by right of inheritance, of the estate left by her maternal grandmother. If we are to understand that she is leading a vicious life, she might appear to be so precluded

by a strict and literal application of the Hindu Law. Among those described as excluded from inheritance is "one who is addicted to vice." Mr. Colebrooke, however, says, in regard to the causes of disinheritance mentioned in the tenth section, ch. ii, of the Mitakshara, that, while he is not aware that any have been abrogated or become obsolete, he does not think that any of our Courts would go into proof of one of the brethren being addicted to vice, or profusion, or being guilty of neglect of obsequies and duty towards ancestors. Since this remark was recorded by Mr. Colebrooke more than half a century has elapsed, and it may perhaps be doubted whether such causes of disinheritance as those indicated by him have not become obsolete in practice. It is less probable now than it was then that our Courts would recognize any one of those causes as a sufficient ground for declaring any man incapable of inheriting property; and if this be so, one would hardly be justified in depriving the (defendant) respondent in this case of her maternal grandmother's estate.

5. As to the text which says that "a woman, who acts maliciously and is shameless, and a destroyer of property, and addicted to immorality, is unworthy of wealth," I have had occasion in another case to observe that it cannot, without violence, be construed to mean that she is to be deprived of property which has come into her possession; and there is reason to believe that the text refers only to property received by her from her husband.

6. I am therefore disposed to answer in the negative the question which has been put to us as it arises in the case in appeal.

Spankie, J.

7. I agree entirely with this opinion.

Oldfield, J.

8. There is no passage to be found in the Mitakshara or other authority followed in the Benares school, debarring a woman living in unchastity from inheriting stridhana.

9. It is not expressed among the causes of exclusion from inheritance in ch. ii, Section 10, Mitakshara, and whether it would become so when accompanied by deprivation of caste is not the question before us.

10. There is a text of Narada cited in Mitakshara, ch. ii, Section 10, v. 3, to the effect that one who is addicted to vice takes no shares of the inheritance, but the Courts would not give effect to a text of this nature, vague in itself and obsolete in practice.

11. The only other passages to be found in authorities recognized in the Benares school, from which such exclusion from inheritance can in any way be inferred, are certain passages in the Viramitrodaya of Mitra--Misra in the chapter treating of stridhana in West and Bidder's Digest of Hindu Law Cases, Bk. ii, Appendix, Section 1, para. 17. The author, after stating that, on a wife's supersession by

her husband taking a second wife, he must restore to her the property she may have given him, and that she may exact maintenance, confines the operation of this rule to the case in which she is blameless, and remarks:-- "A wicked wife receives no separate property whatever," and goes on to cite the text of Catyayana:-- "A wife who acts unkindly towards her husband, who is shameless, who destroys his effects, and who takes delight in being faithless to his bed, is unworthy of separate property." But this passage refers to a particular kind of property, that which the wife has given to her husband for his use, or which she is entitled to receive from him on his taking another wife. The same passage from Catyayana is cited in the Smriti Chandrika, ch. ix, Section 11, para. 24, referring to the same description of stridhana. It cannot be inferred from such passages that a woman is excluded from inheriting stridhana, from her female relations.

12. It was argued before us that the right of succession to stridhana, equally with the succession to other property, is inseparable from the capacity to confer benefits on the ancestors, and that this capacity is lost by reason of unchastity. It may be that the right of succession to stridhana is intimately connected with such a principle by the law current in Bengal, as would appear from the Dayabhaga, Dayakrama Sangraha, Vyavastha Darpana, but it is also certain that, even by that law, the right of succession to this kind of property does not rest exclusively on such a principle. This appears from the permitted succession of barren and widowed daughters, notwithstanding they confer no direct benefits through the medium of sons; and the note to cccxcviii, Colebrooke's Digest, vol. 2, page 612, gives the general opinion that the advantages afforded are not principally considered in treating of separate property held by women. Under the law of the Mitakshara this is still more the case, and throughout that work, and the commentators, no allusion is made to the principle of succession to stridhana resting on a capacity to benefit the ancestors by offering funeral oblations. In Macnaghten's Hindu Law it is stated that "this description of property is not governed by the ordinary rules of inheritance: it is peculiar and distinct, and the succession to it varies according to circumstances." In fact a woman succeeds to stridhana rather by reason of consanguinity and in order to afford her some provision. This is shown to be so from the fact that those persons who are worst provided for, or least capable of providing for themselves, are the first in the order of heirs. The argument must, therefore, I think, be dismissed, which rests the exclusion from inheritance on the incapacity to confer benefits on the deceased. Nor does the fact that the unchaste widow is excluded from inheriting her husband's separate estate afford any argument in the case before us, as the widow's exclusion rests on express texts and with reference to grounds inapplicable to the case of a woman's succession to the stridhana of her female relations; and the same may be said of the rule which imposes chastity as a condition on the claim of dependent female members of a family to be supported from the estate in the hands of the male members.

13. No decided cases on the point have been brought to our notice. There is only

the case in vol. 2, Macnaghten's Hindu Law, p. 132, where, in answer to the question,--Can a daughter who lives in a state of prostitution take her parent's property by right of inheritance, the reply is given,--"a daughter who has given herself up to prostitution, or one who is unchaste, is wholly incompetent to inherit the property left by her parents." But it is not clear if this refers to stridhana, or if the exclusion is by reason of unchastity entailing loss of caste.

14. In the absence of any express law, or of any custom handed down or supported by a course of decisions of the Courts, the answer to the reference should, I apprehend, be that unchastity will not disqualify a woman from inheriting the stridhana of her female relations.