
(1885) 08 CAL CK 0009
In the Calcutta High Court

Kishori Mohun Ghose

APPELLANT

Vs

Moni Muhun Ghose and Others

RESPONDENT

Date of Decision : 12-08-1885

Acts Referred:

Citation : (1885) ILR (Cal) 165

Hon'ble Judges : Norris, J; Ghose, J

Bench : Division Bench

Judgement

Norris and Ghose, JJ.—This was a suit for an account, discovery and partition.

2. The plaintiff is one of the sons of one Ramdhon Ghose, who died leaving him surviving, besides the plaintiff, three other sons and a widow, and the suit is against those three sons and the widow, for the relief mentioned above, in respect to the estate left by the said Ramdhon Ghose.

3. As regards the first two of these reliefs both the Courts below have concurrently found that the plaintiff is not entitled to them, and we are of opinion that there are no sufficient grounds in this appeal for interfering with their decision in those respects.

4. As regards the claim for partition, both the lower Courts have held that the property should be divided into live equal parts or shares, of which the widow and the four sons were each to get one, the widow getting her's in lieu of maintenance.

5. The learned Counsel for the appellant has argued that, as it has been found by the Judge of the lower Court that Ramdhon Ghose had, before his death, made a gift of taluk No. 1520 in favour of his wife as stridhan, and had moreover, by his will, given her a legacy of Rs. 1,000, she was not entitled under the Hindu law to get any share upon a partition amongst the sons.

6. The learned Counsel further argued that Ramdhon Ghose in his will, by implication excluded the widow from any share on a partition; and that assuming

that she was entitled to such a share, the decree of the lower Court was not correct because she gave no evidence showing what was the real value of the taluk No. 1520, which had been given to her as stridhan.

7. The first contention of the learned Counsel is not supported by any authority; and we are of opinion that under the Hindu law, upon a partition taking place amongst the sons of a deceased person, his widow is entitled to get a share equal to that of each of the sons; and that if she had received any property by gift or legacy from the father, she is entitled to so much only, as with what she has already obtained, would make up her proper share see *Shama Churn's Vyavasta Durpana*, pp. 516 and 517, and the authorities referred to therein; and *Jodoonath Dey Sircar v. Brojonath Dey Sircar* 12 B.L.R. 385.

8. But it is said that in his will, Ramdhon Ghose, by implication, excluded his widow from getting such a share. We have carefully examined the will, but we are unable to put such a construction upon it, as is contended for by the appellant. There was no bequest to the sons: the will simply laid down certain directions as to how the estate was to be dealt with and managed after the testator's death; and in the 6th paragraph the testator provided that after his death, and after his youngest son had attained majority, the executors should divide the estate amongst the sons in accordance with the shastras.

9. This provision, we are of opinion, had not the object, nor can we give it the effect, of excluding the widow from that share which she would be entitled to under the Hindu law. The right of the widow to demand a share does not accrue until the sons divide the father's property; and as it is settled law, that when such a division takes place the widow is entitled to a share, we are of opinion that in the present case the Courts below were right in allowing her a share.

10. The next question that arises is, whether in view of what the plaintiff's mother has already received, the decree which has been made in this case by the lower Courts is right.

11. It appears to us that the decree, though somewhat loosely worded, is substantially correct, and fully meets the requirements of the case. The portion that relates to this subject is in these words: "After giving the mother a fifth share including the sum of Rs. 1,000 and the taluk No. 1520, a fourth share of the residue of the moveables and immoveables as per schedule, referred to under the 4th issue."

12. What the Subordinate Judge really meant to decree was, that the widow was to get a one-fifth share of the estate upon partition, and that the value of the taluk No. 1520, and the legacy of Rs. 1,000 should be taken into account in making up this one-fifth share. We have no doubt that this was his intention, and that accords with the directions of the Hindu law in the matter and what was laid down by Mr. Justice Macpherson, after a careful consideration of the texts bearing upon the question, in *Jodoonath Dey Sircar v. Brojonath Dey Sircar* 12 B.L.R. 385. Of course, if it turns out at the time of partition that the mother has

already obtained her proper share, she will be entitled to nothing more.

13. We are, therefore, of opinion that the decree of the Court below is right, and that the appeal should be dismissed with costs.