
(1908) 02 CAL CK 0034
In the Calcutta High Court
Case No : Appeal from Order No. 83 of 1907

Krishna Pada Dutt

APPELLANT

Vs

The Secretary of State for India in Council and another

RESPONDENT

Date of Decision : 28-02-1908

Acts Referred:

Citation : (1908) 02 CAL CK 0034

Final Decision : Dismissed

Judgement

Doss, J.—This appeal arises out of an application under the Succession Certificate Act VII of 1889 for a certificate to collect the debts due to the estate of one Ishan Chandra Mitter. The Petitioners are (1) the daughter of the sister of the deceased and (2) the son of that daughter. The Secretary of State opposed the petition on the ground that under the Dayabhaga school of Hindu law, by which the deceased Ishan Chandra Mitter was governed, the Petitioners are not heirs at all. The brother of the wife of the deceased raised a similar objection. He raised another objection also, to which, however, it is not necessary to refer. The District Judge has rejected the application on the ground that under the Dayabhaga law, the Petitioners are not heirs, as they offer no funeral oblations to the ancestors of the deceased.

2. The Petitioners have appealed. We agree with the learned District Judge in his conclusion. It is unquestionable that under the Dayabhaga, sister is not an heir. The father's daughter's son, i.e., the sister's son is, by the author of the Dayabhaga, declared to be an heir on account of his competency to offer oblations to the father of the deceased, in which oblations the latter participates (see Dayabhaga, Chap. XI, sec. 6, para. 9). The claim of the daughter of the sister who offers no such oblations cannot be placed upon a higher footing than that of the sister herself and indeed such a claim has not been advanced before us at all.

3. But it has been contended that, as the sister's daughter's son has been held in the case of Umaid Bahadur v. Uday Chand ILR 6 Cal. 119 (1880) to be an heir

under the Mitakshara, he ought similarly to be held to be an heir under the Dayabhaga law, because as has been further argued, wherever the Dayabhaga is silent the law is to be taken from the Mitakshara; and in support of this latter contention reliance has been placed upon some observations of the Privy Council in the case of *The Collector of Madura v. Moottoo Ramalinga* 12 M.I.A. 397 (1868) and that of *Moniram Kolita v. Kerry Kolutani* L.R. 7 IndAp 115: s.c. ILR 5 Cal. 776 (1880).

4. We do not think that the passages cited bear out the broad proposition formulated before us nor have they any reference to any question of inheritance.

5. A sister's daughter's son has been held to be an heir under the Mitakshara law on the ground of community of corporal particles between him and the propositus. But if, competency to offer funeral oblations if, as indeed it has been declared by the author of the Dayabhaga, the principal ground for the succession of the father's daughter's son, i.e., the sister's son, we fail to see how the son of the daughter of the sister can claim inclusion in the category of heirs upon any other ground. It is conceded that he does not offer any oblations to the ancestors of the propositus. Under the Dayabhaga law, a sister's son succeeds before the grandfather, and it is somewhat strange that her daughter's son should be postponed till after all the Samanodaks, that is, after all the ascendants and the descendants up to the fourteenth generation have been exhausted, and indeed no nearer position has been claimed on his behalf. No such anomaly arises under the Mitakshara, because under that law, both the sister's son and the sister's daughter's son come in after the Samanodaks.

6. We are of opinion therefore that prima facie a sister's daughter's son is not an heir under the Dayabhaga law. Moreover, the entire absence of any decided case directly in point, affirming the right now set up on behalf of the sister's daughter and sister's daughter's son, despite the fact that they are such near relations, is very significant and tells strongly against the validity of such a claim.

7. Having regard to the summary character of the present proceedings we refrain from expressing a final opinion on the question. All that we need say at present is that we are not satisfied by the arguments that have been advanced before us that they are heirs under the Dayabhaga law. They are therefore not entitled to the certificate they have asked for. For these reasons the appeal must be dismissed with costs, 4 gold mohurs payable to the Secretary of State and 1 gold mohur to Bhagabat Chunder Ghose.