

(1919) 08 BOM CK 0018
In the Bombay High Court

Manchharam Bhiku Patil and Another	APPELLANT
Vs	
Dattu and two Ors. who write Bhiku as their father's name	RESPONDENT

Date of Decision : 08-08-1919

Acts Referred:

Citation : (1920) ILR (Bom) 166

Hon'ble Judges : Norman Macleod, C.J;Shah, J

Bench : Division Bench

Judgement

Shah, J.—The plaintiffs in this case claimed to be the illegitimate sons of one Bhiku and sued to recover by partition their 3/5ths share in the moveable and Immovable properties left by Bhiku. The defendant No. 1 is the legitimate soil of Bhika, defendant No. 2 is his grandson, and defendant No. 3 , who died during the pendency of the appeal in this Court, was the widow of Bhiku. Bhiku died in July 1912.

2. The defence raised was that the parties belonged to the Lewa Patidar caste, and occupied the same status as the Lewa Patidars in Gujarat and that as such they were either Kshatriyas or Vaishyas, but not Sudras, for the purposes of inheritance. The other defence raised was that the mother was entitled to a separate share at the partition.

3. The First Class Subordinate Judge of Dhulia came to the conclusion that the parties were Sudras, and that according to the Hindu law the illegitimate sons were entitled to half the share of the legitimate son. He also came to the conclusion that the mother was not entitled to a share; and on the footing of these. he passed a decree in favour of the plaintiffs for the equitable partition. of the property awarding 3/5ths share as claimed, by them.

4. From this decree the defendants appealed to this Court. The defendant "No. "3, as i have said, died during the pendency of this appeal. Two points have been urged in support of the appeal; one is a question of law, and the other is a question of fact.

5. It is urged that the lower Court is wrong in holding that the mother is not entitled to a share when the illegitimate sons divide the property with a legitimate son and grand-son. It is clear, however, that the mother is entitled to a share, when the sons divide the property; and the fact that some of the sons dividing the property are the illegitimate sons of her deceased husband cannot make any difference in the application of the rule relating to the mother's share. The mother is entitled to a share when the sons divide the property, and it does not matter whether the sons are entitled to divide the property equally or unequally. In view of the fact that the mother is now dead, it is pointed out on behalf of the respondents that the point has no practical importance. There had been no actual division of the property at the time of her death : and the lower Court did not award any share to the mother. According to the decision in *Raoji Bhikaji v. Anant Laxman* (1918) 42 Bom. 535 it is clear that the extent of the shares of the three illegitimate sons would be the same now. That point, therefore, does not help the appellants in any way.

6. The second question is whether the lower Court is right in its conclusion that the parties are Sudras. The evidence on this point has been fully discussed on behalf of the appellants; and in view of the facts found by the lower Court as to the customs obtaining in the community to which the parties belong, it is not necessary to examine the oral evidence in detail. It is found by the lower Court that the members of the community to which the parties belong "have no Vedic rites and Sanskaras prescribed for the twice-born classes among them; that they have not the chief Sanskara, Munj, which makes a man Dwija; that they wear the sacred thread only occasionally; that this occasional wearing also is probably of a recent growth; that they have all the customs which one should expect among the Sudras, viz., adoption of a daughter's son, and of a sister's son, divorce, Pat marriage, widow-remarriage and non-tonsure of the widows which are all badges of an inferior or unregenerate caste as observed by the High Court in ILR 3 Bom. 273."

7. The fact that the members of this caste do not ordinarily wear any sacred thread and that all the rites which Dwijas may observe are not observed by them is indecisive. It may be said that many members of the Kshatriya and the Vaishya communities, to one of which the parties claim to belong, do not usually wear any sacred thread and that even they do not observe all the Brahminical rites. The manner in which the ceremonies are performed is also not very helpful in determining whether the parties are Sudras or not. But the finding as to certain customs obtaining among the Leva Kunbis of the place or the District to which the parties belong is far more important. The correctness of the finding is not questioned before us. The fact that the adoption of a daughter's son or a sister's son is prevalent in this community shows that parties are Sudras, for it is an established rule in this Presidency that the adoption of a sister's son or a daughter's son or a mother's sister's son is permissible, only among Sudras without any proof of a special custom in favour of such adoptions. It is not suggested that the practice is based upon any special custom in this case. It is

possible, however, to suggest that such a practice is attributable to a special custom. That could not be said of the practice of divorce, Pat marriage, and widow-remarriage, which supports the conclusion of the lower Court." It is clear that the caste, in which these customs are proved to obtain, can reasonably and properly be treated as Sudras, and the inference of the lower Court based on these facts appears to me to be right.

8. The oral evidence adduced by the plaintiffs goes to show that the parties are Sudras. In fact one witness, who is an elderly man and a Bhauband of the deceased Bhiku, admits that he considers himself a Sudra. The evidence of the schoolmaster (Exhibit 103), which appears to be reliable, helps the plaintiffs' case.

9. The parties are Leva Kunbis residing at Changdev in the East Khandesh District. The evidence led on behalf of the defendants does not appear to me to establish any fact of any real value which could afford a reasonable answer to the inference suggested by the evidence adduced on behalf of the plaintiffs. The important witnesses examined on behalf of the defendants are Leva Kunbis of other districts; and their evidence is not of much use. It is urged, however, that apart from the oral evidence historically the Leva Kunbis in the Khandesh District belong to the same stock as the Leva Kunbis of Gujarat, that they migrated from Gujarat some centuries ago, that they must be accorded the same status which the Leva Patidars occupy in Gujarat, and that the Leva Patidars in Gujarat are Kshatriyas or Vaishyas. Several passages from the Bombay Gazetteers, Vol. IX, Part I (Gujarat Population) and Vol. XII (Khandesh) have been cited to us to show the origin and history of the Leva Patidars in Gujarat and that the Leva Kunbis migrated to Khandesh some centuries ago. It is needless, in my opinion, to examine these passages in any detail, and to express any opinion as to the status of the Leva Patidars or Kunbis in Gujarat. Assuming for the sake of argument that the community to which the parties belong originally migrated from Gujarat several centuries ago and that the Leva Kunbis of Gujarat are not Sudras, it does not necessarily follow that they have retained in modern times the same customs and status as the Leva Kunbis in Gujarat, may have retained. The recent history of the caste, as disclosed in the evidence, shows the adoption of customs, which are indicative of their present status as Sudras, and that in my opinion, is sufficient for the purpose of this case. It is to be noted that the caste to which the parties belong" and which used to be described originally as Kunbi caste has recently been described according to the evidence as Leva Kunbis; and it seems to me that an attempt has been made on behalf of the defendants to show, if possible, a higher status with a view to escape the liability in the present suit. The description of the caste "Pajne Kunbis," which was originally given to this caste, has apparently been changed to "Leva Kunbis" during the last twenty years. It seems to me on the evidence that the caste to which the parties belong are Sudras, whatever may have been the real status of the ancestors who migrated from Gujarat.

10. It is no doubt true that the test of occupation may be applied in determining the status of a particular " caste. If that is applied in this case, it may be urged that the occupation of agriculture does not necessarily indicate that the parties are Sudras, as the occupation of agriculture is permissible to the Vaishya cast(c) according to the ancient texts. But according to those texts agriculture as an occupation was permitted to the Sudras also. It is a matter of common knowledge that among cultivating classes there are many Sudras and the fact that the Leva Kunbis are generally agriculturists is by itself not sufficient to establish that they are not or cannot be Sudras. The conclusion that the parties are Sudras is supported by the remarks in Steele's Law and Custom of Hindu Castes at pp. 100 and 101 relating to kunbis. I am satisfied that the conclusion reached by the lower Court that the parties in this case are Sudras is correct, and that the special rule laid down in the Mitakshara allowing illegitimate sons certain share in the property of their father must be applied to this case. I would, therefore, confirm the decree of the lower Court and dismiss the appeal with costs.

Norman Macleod, C.J.

11. I agree.