

(1937) 10 AHC CK 0017
In the Allahabad High Court

Mt. Jaiwanti

APPELLANT

Vs

Mt. Anandi Devi through Johari Lal

RESPONDENT

Date of Decision : 27-10-1937

Acts Referred:

Citation : AIR 1938 All 62 : 173 Ind. Cas. 356

Hon'ble Judges : Collister, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Collister, J.—This is a plaintiff's appeal. the plaintiff is Mb. Jaiwanti and she is the daughter of one Mt. Kapuri, who died in July 1921, leaving certain stridhan property. The defendant Mt. Anandi Devi, is another daughter of Mt. Kapuri. The plaintiff's case was that she as one of the daughters of Mt. Kapuri, deceased, was entitled to a half share in the latter's stridhan and she prayed for a declaration to the above effect. She alleged that at the death of her mother she was unmarried; but alternatively she claimed that even if the contrary were held to be proved, she would have an equal right with her unmarried sister under the law applicable to Jains, to which community the parties belong. The defence to the suit was that Mt. Kapuri was alive at the date of the plaintiff's marriage, that there is no such custom among the Jains as is alleged in the plaint and that the ordinary ruins of Hindu law are applicable. Certain other pleas were also taken which need not be considered. Both the Courts below have found against the plaintiff who has accordingly come to this Court in second appeal.

2. The finding that the plaintiff was already married when her mother died is a finding of fact which could not be and has not been challenged in this Court. The plea which is taken before us is that under the law applicable to Jains a married daughter has an equal title with an unmarried daughter to property left by their mother. For this proposition, learned Counsel for the plaintiff-appellant quotes as his authority a book entitled "The Jaina Law" by a gentleman named Champat Rai Jain. From pp. 109 to 142 the author quotes texts from a Digest by an

unknown author known as "the Bhadrabahu Samhita". At p. 117 he reproduces a text in Sanskrit which is translated thus : "The mother's property goes to the daughter, whether she be married or unmarried". Dr. Gour at p. 476 of his Hindu Code, Edn. 3, comments as follows upon this Digest:

The Jains acknowledge the authority of a Digest of their laws contained in a work known as the "Bhadrabahu Samhita" stated to have been compiled in the third century B.C.

3. Learned Counsel for the plaintiff-appellant however has not been able to show us that this Digest has ever been referred to or recognized in any reported or unreported case. But even assuming that it is authoritative and is entitled to the respect which learned Counsel for the plaintiff, appellant claims for it, it seems to us that the text quoted at p. 117 of Mr. Champat Rai's book is of somewhat dubious meaning and does not clearly and definitely lay down the proposition that in competition between a married and an unmarried daughter, they shall each have an equal right to the stridhan of their mother.

4. In any case the production of this single text from the "Bhadrabahu Samhita" will not suffice to establish the plaintiff's claim even if its meaning is as is contended by her learned Counsel. It is an established principle that the ordinary rules of Hindu law shall apply to the Jain community in the absence of a special custom or usage varying the Hindu law; and the onus of proving such custom or usage lies heavily upon the plaintiff. There is abundant authority for this proposition but we will content ourselves by referring to a case decided by their Lordships of the Privy Council, *Chotay Lal v. Chammoo Lal* (1879) 4 Cal. 744 in which their Lord, ships laid down in dear terms that in the absence of proof of special custom varying the ordinary Hindu law of inheritance, that law is to be applied to Jains. It is a matter of admission that in the case before us the plaintiff has been unable to prove a single instance in which the custom alleged by her has been recognized in any Court of law. It is also conceded before us by learned Counsel for the plaintiff, appellant that if the ordinary Hindu law be held applicable, then the plaintiff's suit must fail. For the reason given above, we are of opinion that the view taken by the Courts below is correct. This appeal therefore fails and is dismissed with costs.