
(1913) 02 CAL CK 0020
In the Calcutta High Court

Nilmadhab Mitra and Others

APPELLANT

Vs

Jotindra Nath Mitra

RESPONDENT

Date of Decision : 03-02-1913

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 1

Citation : 18 Ind. Cas. 764

Hon'ble Judges : Imam, J

Bench : Single Bench

Judgement

Imam, J.—One Khetra Mohan Mitter was murdered in 1888 by his son, Nilmadhab Mitter, the first plaintiff, who after serving his period of transportation had returned to this country and claims, with the other plaintiffs, maintenance from his son the defendant, Jotindra Nath Mitter. At the time of Khetra Mohan Mitter's death, his survivors were his widow, Sreematy Nobin Kishori Dasi, two sons Nilmadhab Mitter and Raj Kristo Mitter, and a grandson, the defendant Jotindra Nath Mitter by Nilmadhab Mitter. Nilmadhab was tried for the murder of his father and sentenced to transportation for life. In 1889, Sreematy Niroda Moni Dasse, the second plaintiff, as mother and next friend of Jotindra Nath Mitter, who was then an infant, instituted a suit for partition of the estate of the deceased Khetra Mohan Mitter wherein Jotindra Nath and his father's brother Raj Kristo Mitter were declared jointly entitled to the estate in equal shares, but partition of the estate was effected in three equal shares, a share each being allotted to Jotindra Nath and Raj Kristo, the third share going to Nobin Kishori Dasse, the widow, for her life by way of maintenance. In 1907, Jotindra Nath Mitter attained his age of majority, since when he is in possession of his share of the estate. In 1903, Nilmadhab Mitter returned to this country after serving his sentence and thereafter to him another son, the third plaintiff, Bishnu Madhab Mitter, was born in 1909. The claim in this suit is that the three plaintiffs individually are entitled to maintenance out of the estate of Khetra Mohan Mitter now is the hands of the defendant. The following issues have been raised:

- (1) Is the suit bad in law for misjoinder of parties and causes of action?
- (2) Is Nilmadhab Mitter's claim barred by res judicata.
- (3) Are the plaintiffs or any of them entitled to be maintained out of the estate of Khetra Mohan Mitter in the hands of the defendant?
- (4) What, if any, is the amount of maintenance that can be allowed to the plaintiffs or any of them?
- (5) To what reliefs, if any, are the plaintiffs entitled?

2. In respect of the first issue, it is contended on behalf of the defendant that Raj Kristo Mitter and Sreematy Nobin Kishori Dasi should have also been impleaded as party defendants and that each plaintiff has a separate cause of action distinct in itself. The necessity for impleading Raj Kristo Mitter and Nobin Kishoree Dasi is alleged on the ground of their having 2 out of the 3 shares of Khetra Mohan Mitter's estate in their possession. There is no substance in this contention as the disqualification of Nilmadhab Mitter to inherit could not affect the rights of his brother and mother and no claim for maintenance can stand against them. Nor do I think that the contention relating to separate causes of action is tenable. Rule 1, Order I of the CPC answers this part of this first issue. I, therefore, hold against the defendant on the first issue entirely. The second issue has been raised owing to Nilmadhab Mitter having been a party defendant to the partition suit of 1889. Explanation IV of Section 11 of the CPC enacts that "any matter which might and ought to have been made a ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit" and it is urged that in that suit the claim to maintenance might and ought to have been made a ground of defence for Nilmadhab Mitter. Even conceding that it might have been so, I cannot hold that it ought to have been so. But in "a suit for maintenance, this consideration does not arise at all inasmuch as the neglect to maintain gives a cause of action from day to day. I hold against the defendant on the second issue also.

3. I now proceed to consider the third issue. The claim for maintenance is based on certain texts of the Hindu Law. The parties to this suit are governed by the Dayabhaga but in all the schools of Hindu Law there is an unanimity on the subject under discussion. An enemy to his father, wherein is included patricide, takes no share of the inheritance but is entitled to be maintained out of the father's estate, and when the husband is excluded from inheritance on the ground of some disqualification, his wife is, if chaste, entitled to maintenance out of the property to which he would otherwise have succeeded.

4. The case of the third defendant, who born after succession had opened out to Jotindra Nath Mitter, rests on no express text but is covered by the spirit of the Hindu Law which provides for all dependent members of the family. The answer to the question raised by the third issue is that all the three plaintiffs are entitled to be maintained out of the estate of Khetra Mohan Mitter in the hands of the

defendant and I hold accordingly, and declare that their maintenance is a charge on the estate.

5. As regards the fourth issue, no amount for maintenance can be fixed without an inquiry into the value or income of the estate. I, therefore, direct an inquiry by the Assistant Referee for the purpose of finding out what should be the maintenance of each plaintiff separately, regard being had to their wants and the income or value of the estate.

6. This suit, therefore, is decreed with costs on scale No. 2.

7. Mr. A.K. Ghose.--I would ask your Lordship to direct the matter to be treated as an urgent reference so that the inquiry may be made without delay.

Imam, J.

8. Yes, inquiry should be made without delay.