
(1891) 03 CAL CK 0006
In the Calcutta High Court

Nobo Sunderi Dasi and Another	APPELLANT
Vs	
Charu Chunder Pal Guardian for Satish Chunder Pal	RESPONDENT

Date of Decision : 03-03-1891

Acts Referred:

Citation : (1891) ILR (Cal) 327

Hon'ble Judges : Norris, J;Beverley, J;Banerjee, J

Bench : Full Bench

Judgement

Norris, J.—Mehal Bildiha was the stridhan of one Haripriya, given to her by her father at the time of her marriage. Haripriya died on 16th July 1881, leaving three daughters, viz., Koermoni, Nobo Sunderi, the plaintiff No. 1, and Tunimoni, the plaintiff No. 2. At the time of Haripriya's death, Koermoni's husband was alive, and they had an adopted son, Satish Chunder, the defendant No. 1; Nobo Sunderi was a widow with a son, Shoshi Bhusan; Tunimoni was a childless widow. Shoshi Bhusan is now dumb and partially deaf, and has been so since 1879; he was not born dumb, but could speak for some years at least in his boyhood. After Haripriya's death, Koermoni got into possession of the mehal and had her name registered; she remained in possession down to the time of her death in February 1885, since when the defendant No. 1 has been in possession.

2. The plaintiffs sued for possession of the mehal and for mesne profits; they alleged that they were the preferential heirs to their mother's stridhan; that Koermoni had no title thereto; that if she had any title it was extinguished by her death, and that defendant No. 1 had no title. The plaint asked that if the Court should be of opinion that the plaintiff No. 2 had no title by reason of her being a childless widow when the succession opened out on Haripriya's death in 1881, a decree might be passed in favour of the plaintiff No. 1 exclusively.

3. The Munsif decreed the suit in favour of the plaintiff No. 1, and the Subordinate Judge affirmed the Munsif's decision.

4. The plaintiff No. 2 does not appeal, and it is clear that the decision as regards

her inability to inherit is correct.

5. The defendant No. 1, complaining that the Subordinate Judge's decision is erroneous in point of law, has come to this Court in second appeal. The appeal was first argued before my brother, BEVERLEY and myself on the 16th ultimo, and as it raised an important point of Hindu law, we arranged that it should be re-argued to-day, when we have had the assistance of our learned colleague Mr. Justice BANERJEE.

6. The case has been very ably argued on both sides; for the appellant by Baboo Umakali Mukerjee, and for the respondent by Baboo Mohini Mohun Roy. At the first hearing Baboo Umakali contended that Koermoni was the sole heir to her mother's stridhan. This contention was based upon the construction which the learned pleader sought to put upon the words "married daughter" in verso 9, Section II., chapter IV of the Dayabhaga. The verse runs as follows: "But for the cause above stated, the son and maiden daughter have a like right of succession. On failure of either of them the goods belong to the other. On failure of both of them, the succession devolves with equal rights on the married daughter who has a son and on her who may have male issue. For by means of their sons they may present oblations at solemn obsequies". It was contended that "married daughter" meant a daughter whose husband was alive, to the exclusion of a widowed daughter. The contention has not been pressed to-day, and I think it is sufficient to say that it is not tenable.

7. The learned pleader's second contention at the first hearing, which he has again strenuously urged to-day, was of a two-fold character.

8. In the first place, it was urged that Nobo Sunderi's right to succeed to her mother's stridhan depended upon her having a son capable of conferring spiritual benefits on her behalf on Haripriya in existence at the time the succession opened out. In the second place, it was contended that Shoshi Bhusan, being dumb at the time the succession opened out, was incapable of conferring spiritual benefits on his mother's behalf on Haripriya. It will be convenient to consider the second branch of the argument first.

9. In support of it the learned pleader relied on the following authorities: The Code of Manu, Chapter IX, verse 201; the Dayabhaga, Chapter V, verses 6, 7, 9, 10, 11, 17 and 18; the Dayakrama Sangraha, Chapter III; the Dayatatwa, Chapter 14, verse 8; and Dr. Jolly's Tagore Law Lectures pages 274 and 275.

10. I only propose to refer to certain passages in the Dayabhaga relied on by Baboo Umakali, for the law there laid down is stated in almost precisely the same terms by the other authorities.

11. Verse 7 of Chapter V of the Dayabhaga says: "So" (the same author i.e., Manu) "impotent persons and outcastes are excluded from a share of the heritage; and so are persons born blind and deaf; as well as madmen, idiots, the dumb and those who have lost a sense (or a limb)." Verse 9 says: "The term

"born" is connected in construction with the words "blind" and "deaf." One who is incapable of articulating sounds is dumb.

11. The exclusion from the inheritance is based upon the incapability of performing religious ceremonies; and upon the authority of these verses supported as they are by the other authorities, Baboo Umakali contended that dumbness to render the person afflicted therewith incapable of performing religious ceremonies, and therefore of inheriting, need not be, as in the case of blindness and deafness, congenital; that if a man was dumb when the succession opened out, he was ipso facto excluded from the inheritance as being a person incapable of performing religious ceremonies, and thereby conferring spiritual benefits on the deceased owner of the property. In the view I take of the first branch of the learned pleader's contention, I think it is unnecessary to express any opinion upon this point. If we had to decide it, we should also have to decide the much more difficult point, whether, admitting that a son who is dumb when the succession opened out, though not congenitally so, is excluded from the inheritance, the mother of such a son is thereby excluded from the inheritance to her mother's stridhan--a point which, as remarked by my brother Banerjee in his Tagore Law Lectures, page 358, is at present undecided.

12. I now proceed to consider the learned pleader's contention that Nobo Sunderi's right to succeed to her mother's stridhan depended upon her having a son in existence at the time the succession opened out capable of conferring spiritual benefits on her behalf on her mother.

13. It was argued that the words "for by means of their sons they may present oblations at solemn obsequies" at the end of verse 9 of Section II, chapter IV of the Dayabhaga, conclusively showed that the existence of such sons at the time the succession opened out was the reason for allowing the mothers of such sons to inherit. I am of opinion that this contention cannot prevail. Not only do not these words by themselves show that the capability to "present oblations at solemn obsequies" must be a capability in existence at the time the succession opens out, but a careful consideration of the whole verse points conclusively to a contrary conclusion.

14. The preferential heirs to a woman's stridhan are according to the verse declared to be the son and "the maiden daughter." The fact that the maiden daughter succeeds as joint tenant with her brother is alone sufficient to dispose of this argument. But let us look a little further: "The married daughter who has a son "and" she who may have male issue," are on failure of "the son and the maiden daughter" entitled to succeed as joint tenants. "She who may have male issue" means "a married daughter who may have male issue," for the rights of the "maiden daughter" have been already declared. Now "a married daughter who may have male issue" is a married daughter not past child bearing, whose husband is alive. I am not in a position to say whether the words "for by means of their sons they may present oblations at solemn obsequies" are connected in construction with "maiden daughter" as well as with "the married daughter who

has a son," and" her who may have male issue," but I think it is clear that the existence of a son and the potentiality of conceiving a son are, supposing that either is necessary, equally recognized. The son of the married daughter may be only an hour old when the succession opens out; such married daughter would be clearly entitled to succeed upon the above supposition, because he may at some future time be able to "present oblations at solemn obsequies." So also the married daughter who may have male issue succeeds, upon the above supposition, because such male issue if born of her may at some future time be able to "present oblations at solemn obsequies."

15. In this case it is not found that Shoshi Bhusan is incurably dumb; for all that appears to the contrary, he may recover and at some future time may be able on his mother's behalf to confer spiritual benefits on Haripriya by the performance of religious ceremonies. Therefore he seems to me to stand in the same position as the son of the married daughter only an hour old, and as the potential son of the married daughter who may have male issue. For these reasons I am of opinion that this appeal fails, and must be dismissed with costs.

Beverley, J.

16. I concur.

Banerjee, J.

17. I entirely concur in the judgment which has been just delivered by my learned brother.

18. The question argued before us is whether under the Bengal law a widowed daughter having a son who is dumb at the time the succession opens out is entitled to succeed to her mother's stridhan in preference to a daughter's son; and the learned vakil for the appellant contends that that question ought to be answered in the negative, because the reason why a daughter having or being likely to have male issue is entitled to a certain place in the order of succession is her ability to confer spiritual benefit on her mother by means of oblations presented by her son; and that reason cannot hold good in a case like this, where the son is dumb.

19. A good deal of argument was addressed to us on behalf of the appellant to show that dumbness in order to disqualify a person from inheriting need not be congenital; and if it were necessary to decide that question in this case, I should have felt inclined to answer it in favour of the appellant's contention. But I do not think it necessary to go into that question here, because the real question that we have to decide is not whether this dumb son, Shoshi Bhusan, is himself entitled to inherit, but whether his dumbness disqualifies his mother from inheriting. Upon that question most of the authorities referred to in argument do not throw any light. All that is necessary to entitle the plaintiff, Nobo Sunderi, to succeed in this case is that she should have a son by means of whom she may present oblations at solemn obsequies. That is the only qualification required of

her by the Dayabhaga (see chapter IV, Section II, paragraph 9). That provision of the Hindu law, as I understand it, does not require any present capacity in the daughter's son to confer spiritual benefit by means of oblations at solemn obsequies. It only requires the existence of the possibility to confer such benefit; and the question is whether such possibility exists in the present case.

20. Now there is nothing to show that the dumbness of Nobo Sunderi's son is absolutely incurable, and that he may not in future be able to present oblations at solemn obsequies. That being so, I think the condition required by the Hindu law of the Bengal school to entitle Nobo Sunderi to succeed to the stridhan of her mother in preference to a daughter's son has been fully satisfied. Indeed, it would be importing into this provision of the law something that is not implied by it, if we were to hold that because the son of Nobo Sunderi, if now the succession opened out to him, would not be entitled to succeed, that would be a reason for excluding his mother from inheriting as a daughter having male issue. This being my view of the Hindu law governing this case, it is unnecessary to consider the question whether the rules of exclusion from inheritance in the case of property left by males are applicable to succession to stridhan.