
(1950) 06 CAL CK 0024
In the Calcutta High Court
Case No : A.F.O.D. No. 256 of 1949

Sm. Charu Bala Dasi

APPELLANT

Vs

Province of West Bengal

RESPONDENT

Date of Decision : 12-06-1950

Acts Referred:

Constitution of India, 1950 — Article 296

Citation : AIR 1950 Cal 473 : (1950) 1 CALLT 409 : 54 CWN 940 : (1951) 2 ILR (Cal) 186

Hon'ble Judges : Guha, J;G.N. Das, J

Bench : Division Bench

Advocate : Hiralal Chakravarty and Syamadas Bhattacharya, for the Appellant;Jajneswar Majumdar, for the Respondent

Final Decision : Dismissed

Judgement

G.N. Das, J.—This appeal is directed against a decision of Mr. B.C. Nandy Majumdar, Sub-ordinate Judge, 2nd Court, Alipore, dated 12th November 1949, revoking the grant of letters of administration to the appellant.

2. The facts are not in controversy and are as follows : The appellant Charubala and Santamani were sisters. They belonged to the Kaibarta caste. They were widows and subsequently lapsed into prostitution. The said Santamani died on 15th January 1946. At the time of her death she owned and possessed premises No. 6A Nabu Roy Lane, Calcutta. On 6th April 1946 the appellant made an application for the grant of letters of administration to the estate of Santamani. This was registered as Letters of Administration case No. 51 of 1946.

3. Thereafter Butto Krishna Saha and Atul Krishna Saba, set up a Will alleged to have been executed by Santamani. This was registered as Letters of Administration case No. 54 of 1946. Charu Bala filed an objection. The application was dismissed on 2nd June 1947 on the finding that the Will was a forgery. But Krishna and Atul filed an appeal to this Court, being F. A. 296 of

1947. In the meantime Letters of Administration Case No. 51 of 1946 had been stayed. This was proceeded with, as a result of the dismissal of Letters of Administration case No. 54 of 1946 and an order for the grant of letters of administration was made on 18th June 1947 and the letters of administration were issued to the appellant.

4. The aforesaid First Appeal No. 296 of 1947 was dismissed on 21st January 1949. In the course of the hearing (EX. C-3) this Court directed the issue of a notice on the Senior Government Pleader so that he might appear and take note of the proceedings in view of the fact that Charubala could not be the heir of her sister and the estate may go to the Crown by escheat. Accordingly the respondent Province of Bengal claiming title to the estate of Santamani, initiated proceedings u/s 263, Succession Act, for revocation of the grant of letters of administration to the appellant on the ground that the grant had been obtained by a false suggestion that Charubala was an heir of Santamani, suppressing the fact that Santamani was a prostitute and on the further ground that the proceedings to obtain the grant were defective in substance because no citation was issued to the respondent, the latter being entitled to the estate of Santamani by way of escheat.

5. The appellant filed an objection on the ground that the respondent, the applicant for revocation of the grant, had no locus standi to make the application inasmuch as the appellant was an heir to the estate of Santamani, and the respondent could not take by way of escheat.

6. The principal issue which arose was whether the appellant succeeded to her sister Santamani.

7. The Court below held that the appellant was not an heir to her degraded sister Santamani and on this finding, revoked the grant. The present appeal is directed against the order revoking the grant.

8. Mr. Hiralal Chakravarty appearing for the appellant ultimately limited his contention to the sole ground that under the Dayabhaga law a degraded sister inherits the stridhan of her degraded sister, the parties not belonging to the twice-born class and that accordingly the Crown could not take by way of escheat and had no locus standi to apply for revocation of the grant of letters of administration, to the appellant.

9. The right of the Crown to take by escheat the property of a Hindu subject, though a Brahmin, dying without heirs was firmly established in the case of the Collector of Masulipatam v. Cavely Venkata Narrainapah 8 M. I. A. 500 : (2 W. R. 59 (P. C.)). An attempt to curtail the right of the Crown by limiting its application only to cases of entire absence of blood relations was put down by this Court in Satish Chandra Sarkar and Another Vs. Haridas Mitra, .

10. The question, therefore, remains whether the appellant is an heir to her degraded sister Santamani under the Dayabhaga School of Hindu law.

11. The Assistant Government Pleader who appeared for the Province of Bengal, submitted that the point was covered by the decision in *Sarnamoyee Bewa v. Secy. of State* 25 Cal. 254 : (2 C. W. N. 97).

12. Mr. Chakravarty fairly admitted that the point now raised was directly decided in that case. He, however, submitted that the decision in that case proceeded on a concession made by Mr. Golap Chandra Sarkar, learned vakil appearing for the appellant.

13. It may be conceded that the decision, if it had been based merely on the concession of the learned vakil, would not have been binding on us: *Omrit Koomaree v. Luckhee Narain* 10 W. R. 76 : (2 Beng. L. R. 28 (F.B.

14. Turning however, to the decision itself, it appears that it did not proceed merely on concession of the learned vakil. Reference may be made to the following passages in the judgment:

"It is conceded, as it must be, that if the Hindu Law governs this case, It must be the Hindu Law of the Bengal School; and that according to the law of that school the sister is no heir" (p. 255).

"Moreover it would be a strange anomaly, that though the sister is no heir to a female proprietor under the Bengal School of Hindu Law, if they remain undegraded, yet If they both lapse into prostitution, the one becomes an heir to the other, quite apart from custom" (p. 256).

15. We are, therefore, bound by the decision and this appeal must be dismissed unless we hold that the view taken in that case is wrong and that the matter should be referred to a Full Bench.

16. We have, therefore, to consider whether the view taken by Maclean C. J. and Banerji J. in *Sarnamoyee's* case (25 Cal. 254 : 2 C. W. N. 97) was wrong.

17. The parties in the present case are admittedly governed by the Bengal School of Hindu Law. It is now settled that the mere fact that a Hindu woman has adopted the life of a prostitute does not sever the tie which connects her to her kindred by blood, and that consequently, the stridhan property of a Hindu woman who has adopted the life of a prostitute passes upon her death to her heirs under the Bengal School of Hindu Law. *Harilal v. Tripura Charan* 40 Cal. 650 : (19 I. C. 129).

18. The question, therefore, is whether under the Bengal School of Hindu Law a sister is an heir to the stridhan property of her sister.

19. I shall begin my discussion of the question by a reference to the texts of the Bengal School.

20. Dayabhaga, chap. IV, deals with succession to woman's property. Section 2 deals with succession of a woman's children. Section 3 then deals with the succession to the separate property of a childless woman.

21. The author then deals with the claims of certain specified relations, and concludes as follows:

"Again, on failure of these six, it must be understood, that the succession devolves on the father-in-law, the husband's elder brother and the rest, according to their nearness of kin (the nearest sapinda being the heir)" Section 39 (Colebrooke's translation).

22. Paragraph 42 then says: "Thus has succession to the separate property of a childless woman been explained." The enumeration of heirs in Jimutvahan's Dayabhaga thus stops with the sapindas of the woman.

23. The same is the case with Raghunandan's Dayotottwa, Ch. X, Section 38.

24. Srikrishna Tarkalanbar in his Dayakrama Sangraha Ch. II, Section VI ? 11 to 13 carries the line a little forward. I may quote the translation of the said paragraphs by F. M. Wynch except in regard to an omission made in paragraph (II) which is added in italics.

Paragraph (II)

In default of all sapindas, those allied by common oblation of water, and those descended from the same patriarch in the male line, succeed in the same order as in the case of the property of males.

Paragraph (12)

Failing all these, in the case of the property of a Brahmin woman, Brahmanas, inhabitants of the same village, exceedingly learned in the vedas, are entitled to the succession.

Paragraph (13).

But in the case of the property of a woman of the Chatriya and other tribes, the king is exclusively entitled to the inheritance.

25. It may be noted in passing that para. (12) must now be held to be inapplicable in view of the decision of the Lords of the Judicial Committee in the Collector of Masulipatam v. Cavely Venkata Narrainapah 8 M. I. A. 500 : (2 W. R. 59 P. C.).

26. Srikrishna, therefore, extends the line to sakuloyas, samanodakas, and samanoprobaras of the woman's husband. How far the paragraphs quoted above extended the line also to sapindas, sakulyas, samanodakas and samanoprabaras of the father of the woman is doubtful.

27. Texts of Brihaspati and of Katyayana, both quoted in Raghunandan's Institutes (Udba-watattam) vol. II, p. 72 take opposite views, the former text negatives the right while the latter recognises the same. In Jagannath Tarcapanchanan's Digest translated by H.T. Colebrooke (1874 Ed.) Vol. II, Section 513 at p. 624, after setting forth the line of succession upto the fourteen persons

ascending and descending from her husband (samanodaka) it is stated as follows:

"After these, her kindred on her father's side, as far as the tenth person; after them the family of her mother; and lastly, the King takes the estate, except the property of a Brahmani woman. This brief exposition may suffice."

28. The above are all the texts bearing on the point. I shall now deal with the opinions of the text-book writers. Commenting on Jagannath's Digest, Sir Gooroodas Banerji in Hindu law of Marriage and Stridhan (Tagore Law Lectures 1878) 5th sdn., Lecture XI, p. 500 observes :

"Considering how anxiously the Hindu law tries to prevent escheat to the Crown, and bearing in mind the other reasons stated in the last lecture, I think it may be safely affirmed, on the authority of Jagannath, that on failure of other heirs, a woman's kinsmen on the father's and mother's side succeed to her stridhan according to the Bengal School."

29. Shyama Charan Sarkar in Vyavastha Darpan Vol. I (3rd Edn.) 255, Sections. 306-309 limits the line to husband's samanodakas and does not extend the same to the woman's sapindas.

30. In Cowell's Hindu law (Tagore Law Lectures 1871) Lecture X the line of succession to stridhana has not been traced beyond the children.

31. In Mayne's Hindu law, 10th Ed. Section 639 p. 761 the line of inheritance to stridhana according to Dayabhaga school is thus carried forward:

"Failing them, her husband's sokulyas and samanodakas. Lastly according to Jagannatha, the father's Kinsmen come in as heirs, and after them, the mother's kinsmen."

32. In West, Buhler and Majid's Hindu law of Inheritance etc. 4th Ed. Book I Ch IV B. Section 7 pp. 507-508 the inclination of the authors seems to be in favour of conceding the right to the woman's own kinsmen.

33. In Mulla's Hindu law 9th Ed. Section 155, and Section 157 p. 149, p. 151 succession to Stridhana according to Dayabhaga has been extended to (11) Husband's Sapindas, Sakulyas, Samano-dak as (12) Father's kinsmen.

34. Traveyan's Hindu law, 2nd Ed., p. 461 takes the same view.

35. In Golap Chandra Sarkar's Hindu law 8th Ed. Ch. XIII Section 6, p. 616, succession to both classes of Stridhana, according to Dayabhaga, goes upto (7) Husband's Sapindas (8) Father's kinsmen.

36. The text writers who have conceded the right to a woman's blood relations (kinsmen) as regards her own stridhan property base their opinion entirely on Jagannath's Digest. The authority of Jagannath's Digest (also spoken of as Colebrook's Digest), on questions of Hindu law is well established. It ranks only next to Jimutavahana, Raghunandan and Srikrishna, Katki v. Lakpati Pujant, 20 C. W. N. 19 , Kerry Kolutari v. Moniram Kolita, 19 W. R. 367 : 13 E. L. R. 1 F.B.).

37. The Judicial decisions in this Court have however taken a view different from that of Jagannatha. In Sarnamoyee's case 25 Cal. 254 : (2 C. W. N. 97) a Division Bench, of which Sir Gooroodas Banerji J. was a member a view contrary to that of Jagannath was taken.

38. The view so taken was followed in other cases in this Court. Thus in Sundari Dossee v. Nemye Charan. 6 C L. J. 372 the claim of a sister's daughter to inherit the stridhana of her maternal aunt was negatived. Again in Satish Chandra Sarkar and Another Vs. Haridas Mitra, the right of a sister's son's son to inherit the stridhana of a woman was negatived. Thus all the decisions in this Court take a view of the law which is contrary to the opinion expressed in Jagannath's Digest and do not recognise the right of inheritance of the father's relations of a woman in respect of her stridhana.

39. Mr. Chakravarty referred us to the case of Narayan Pundlik Valanju Vs. Lakshman Daji Sirsekar, where a sister was held to be an heir to the stridhana property of a prostitute. The reasoning of Patkar J. who delivered the judgment of the Court was that the prostitute might be regarded as a lower class than the Sudras, and that as the order of succession to the estate of a deceased prostitute was not laid down in the texts, the Courts ought to act according to rules of justice, equity and good conscience. Such rules for purposes of succession might be found in Manusmriti Chap. IX verse 187 i.e. "To the nearest sapinda the inheritance shall belong" and that as the particles of the mother's body abound in the daughters applying the principle of analogy the sisters should be regarded as sapinda of each other and of the mother.

40. The above line of reasoning is inapplicable to cases governed by the Dayabhaga school of law for the following reasons : (1) In determining the succession to the stridhana property of a woman, the more accepted view is that it is regulated by the doctrines of spiritual efficacy except in certain specified cases, covered by express texts, Banerjee's Hindu Law of Marriage and Stridhan (Tagore Law Lecture 1878 Edn. 5 pp. 476 477, the claim of the sister cannot be supported on this principle. (2) The texts of the Dayabhaga which deal at length with succession to the stridhana property of a woman use the word Stri which, according, to the Sabdakal, adruma applies equally to un-degraded and degraded relations. As such the texts of the Dayabhaga would be applicable. The result would then, be that a sister would not be entitled to succeed to her sister. (3) Sir Gooroodas Banerjee in Hindu Law Marriage and Stridhana (Tagore Law Lectures 1878) Edn. 5 pp. 458 459 opined that the texts of Dayabhaga would not apply to degraded woman. This is contrary to the observations of Mookerjee J., in Hiralal's case 40 Cal 650 : (19 I. C. 129 F.b.). Even if we adopt the view of Sir Gooroodas Banerjee, the position would be that the case of succession to the stridhana property of a degraded woman would be unprovided for in the texts. In such a contingency, the Court would be justified in applying the analogous provisions of Hindu law. Mayne on Hindu Law Edn. 10 Section 634 p. 763. In this view also the sister would not be heir to her sister.

41. It is unprofitable to discuss cases governed by ether schools of Hindu law, on the ground that they are founded on theories wholly divergent from those which underlie the Bengal School of Hindu Law.

42. Even if we assume that Jagannath's view would apply, it is problematical whether the expressions "father's or mother's kindred include a widowed and degraded sister under the Dayabhaga School.

43. The foregoing discussion does not induce us to dissent from the view taken in Swarnamoyee Bewa's case 25 Cal. 254 : (2 C. W. N. 97) which has been consistently followed in Bengal for about half a century. 44. In my opinion, a degraded woman does not inherit the stridhana property of her de-graded sister, under the Bengal School of Hindu Law.

45. The appellant was, therefore, not an heir to her sister Santamoni. Accordingly the Province o? Bengal had locus standi to apply for revocation of the grant of letters of administration to the appellant. The sole contention of the appellant must accordingly be overruled.

46. The result, therefore, is that the appeal fails and must be dismissed with costs. Hearing fee 5 gold mohurs.

Guha J.

I agree.