

(1909) 12 CAL CK 0044
In the Calcutta High Court

Tahaldai Kumri

APPELLANT

Vs

Gaya Pershad Sahu

RESPONDENT

Date of Decision : 22-12-1909

Acts Referred:

Citation : (1910) ILR (Cal) 214

Hon'ble Judges : Sharfuddin, J; Brett, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Brett and Sharfuddin, JJ.—The present appeals are directed against a judgment of the District Judge of Bhagalpur dealing with two applications for letters of administration to the estate of two minors, Raghu Sahu and Chamru Sahu. The applicant in one of the applications was the step-mother of the two deceased minors, and the applicants in the other were the father's sister's sons of the deceased. The minors also left a half-sister by the same step-mother, but she is not a party to either of the two applications. The learned District Judge held that letters of administration could only be issued to the persons entitled to succeed to the property, and, on a consideration of the authorities, he was of opinion that under the Mitakshara system of the Hindu Law as interpreted in Bengal in the Full Bench case of *Lala Joti Lal v. Durani Kower* (1864) B.L.R. Sup. . 67. the step-mother was not entitled to succeed in preference to the other applicants, the sister's sons of the father, who were admittedly the own bandhus of the deceased. Against this decision two appeals in respect of the two applications have been preferred to this Court by the step-mother.

2. In support of the present appeals, the learned pleader who has appeared on behalf of the appellant has contended that, in deciding this question of Hindu Law alluded to above, we should be guided by certain decisions of the Bombay High Court, and he suggests that, so far as the province of Bengal is concerned, the matter has not been decided by the Full Bench case (1864) B.L.R. Sup. . 67. on which the learned "District Judge has relied. He has contended that, in the

Full Bench case referred to above, all that was decided was that in a divided family a step-mother could not come in as an heir of her step-son, as she was not included in the term "mother" as used in the Mitakshara when specifying the female heirs entitled to succeed. The opinion expressed in that decision does not, however, appear to us to be confined to that point alone; for the judgment runs as follows: "For the above reasons, we are of opinion that a step-mother cannot take by inheritance from her step-son." The argument advanced by the learned pleader with reference to the right of the step-mother to succeed to the estate of her step-son is to the effect that as a gotraja-sapinda she is entitled to succeed in preference to the father's sister's sons, who are only bandhus. In support of this view, he has relied on the case of *Kesserbai v. Valab Raoji* I.L.R (1879) .4 Bom. 188 in which it has been held that a step-mother is not excluded from the inheritance, but comes in as a gotraja-sapinda. He next relies on the case of *Lallubhai Bapubhai v. Cassibai* I.L.R (1880). 5 Bom 110 in support of the same view that, on marriage, the wife and the husband become sapinda relations to each other, and, therefore, the step-mother becomes, gotraja-sapinda of the step-son; and he also relies on the case of *Russoobai v. Zoolekhabai* I.L.R (1895). 19 Bom. 707 in which it was held that a step-mother succeeds to the property of her step-son in preference to the step-son's paternal uncle's son. He has further referred us to the opinions of Nanda Pandit as given in the principles of the Hindu Law of Inheritance by Sarbadhikary at page 480, and of Balam Bhatta as given at page 482 of the same book, and has contended that, on the basis of these authorities, we should hold in the present case that a stepmother is entitled to succeed to her step-son.

3. The learned pleader for the appellant has admitted that, in the case of *Kumaravelu v. Virana Goundan* I.L.R (1879) . Mad. 29 it has been held that neither a half-sister nor a step-mother can succeed to the estate of the step-brother or the step-son according to the Mitakshara system of the Hindu Law, and that in the same volume of the Indian Law Reports, Madras Series, in *Muttammal v. Vengalakshmi* I.L.R(1882) Mad. 32, it has been held that a step-mother is not entitled to succeed to a deceased step-son before the maternal grand mother. He has, however, suggested that the last-mentioned decision does not go so far as to exclude the step-mother from succession altogether, as seems to have been the opinion of Mr. Mayne as expressed in his work on Hindu Law and Usage, Seventh Edition, page 730, but merely to lay down that she cannot succeed as a sapinda, though she may possibly succeed as a bandhu. The learned pleader has also admitted that, so far as the Allahabad High Court is concerned, the authorities are all in one direction and are contrary to the view which he wishes to maintain, that a step-mother can succeed to the estate of her deceased step-son. The case of *Rama Nand v. Surgiani* ILR (1894) All. 221 is a direct case in point, in which, in that Court, it has been held that a step-mother cannot so succeed.

4. The argument, therefore, of the learned pleader in support of the present appeals amounts to this that, in dealing with the question before us, we should

ignore the decisions arrived at by the High Courts of Madras and Allahabad and the Full Bench decision of this Court, and should be guided in our decision by the decisions of the Bombay High Court. We are not prepared to adopt the course which the learned pleader suggests and which is entirely opposed to the principle which the Privy Council have laid down in the case of *The Collector of Madura v. Moottoo Ramalinga Sathupathy* (1868) 12 Moo. I.A. 397. In determining the question before us, it is necessary for us to be guided by the law as it has been accepted and administered in this Province. The authorities on which the learned District Judge relies seem to us to support fully the decision at which he has arrived, that, so far as this province is concerned, under the interpretation of the Mitakshara Law as accepted in the districts governed by that law, a step-mother is not entitled to succeed to the estate of her step-son either as a gotraja-sapinda or in preference to the father's sister's son. In arriving at this conclusion, we do not wish to lay down that the step-mother and the half-sister will not be entitled to maintenance out of the estate of the deceased. In our opinion the learned pleader has entirely failed to establish his contention that the stepmother is a gotraja-sapinda at all, the balance of authority being, so far as this side of India is concerned, distinctly against him, and he has also failed to show to us that, as a bandhu, the appellant has preferential rights to succeed to the estate of her step-son to those of the father's sister's sons.

5. The learned pleader has also discussed the rights of the half-sister; but, as we find that she is not a party to either of the applications, it is not necessary for us to consider her position. The result, therefore, is that both the appeals are dismissed. In the circumstances of the case, we direct that each party do bear her or their own costs.