

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Srimati Rani Parbati Kumari Debi v. Jagadis Chunder Dhabal and Another, from the High Court of Judicature at Fort William in Bengal; delivered the 22nd February 1902.

Present at the Hearing :

LORD MACNAGHTEN.

LORD ROBERTSON.

LORD LINDLEY.

[*Delivered by Lord Robertson.*]

The questions raised by this Appeal relate to the succession of Raja Purna Chunder, who died on 23rd August 1886. He left no issue but was survived by two widows and a half brother. One of the two widows Rani Badha Kumari Debi granted a release, and although appearing as a Defendant in this suit raised no claim adverse to the interest of the half brother, and does not appear in this Appeal. The half brother has died since this suit was instituted and is now represented by his son the minor Respondent. The present controversy is between the Appellant, who is the other widow, on the one hand, and the son of the brother on the other hand and relates to two subject matters of very different values. Those are (1) the ancestral estates of the deceased Purna Chunder which are situate in the jungle Mehals of Midnapore and are claimed by the Appellant on the ground that the succession is governed by the Daya Bhaga law which would give it to her; and (2) four mouzahs, bought by the Court of Wards with the savings of Purna Chunder's estate while it was under their management,

which the Appellant claims even assuming the Mitakshara law to govern the succession. The Respondents' answer to the claim to the ancestral estates is that the Mitakshara and not the Daya Bhaga law rules and under the Mitakshara law he is the undoubted heir; but he says further that, even if the Daya Bhaga law governed, the right to compete with him would lie not in the Appellant but in the other widow who has renounced her rights in his favour. On the question of the four mouzals he maintains that the conduct of Purna Chunder in dealing with this property showed his intention that it should go with the ancestral properties. By much the most important and complicated question thus raised is as to which system of law governs this succession, the Mitakshara or the Daya Bhaga.

The suit was brought by the Appellant, whose plaint was filed on 14th April 1893, the lands in dispute having by this time been taken possession of by the half brother. The Defendants were Iswar Chunder (the half brother) and Radha Kumari the other widow. The Appellant prayed for a declaration that she was entitled, either jointly with the other widow or exclusively, to the whole estate, movable or immovable, of the deceased Purna Chunder, or for a similar declaration as regards his self-acquired property; or to maintenance. The Appellant alleged that upon the death of her husband who (as she averred) like his ancestors had lived under and was governed by the Bengal School of the Hindoo law, she and the other widow, as his coheiresses, became entitled to the Jamboni Raj which was the ancestral estate and also to his self-acquired properties. It was further averred that the Second Defendant (the other widow) had granted to the First Defendant a release and declaration, which transaction was characterised as fraudulent and collusive. The plaint (and by consequence

all the proceedings) were greatly inflated and complicated by a number of questions, now extinct, which it would be superfluous to rehearse.

Written statements were filed on behalf of both Defendants. The First Defendant Iswar Chunder claimed the Raj as heir under the Mitakshara law and also the long standing custom and usage of the family. He explained that his ancestors were originally inhabitants of Dharanuggur in the North-West Provinces, where the Mitakshara Shastra was in force; that they came from there and took possession of the lands now in question; that since then and to the present time their family ceremonies have been performed according to the Mitakshara; and that the right of inheritance is determined according to it.

As to the Second Defendant (*i.e.* the other widow) Iswar Chunder alleged that the release granted by her was executed in good faith and because she knew and thereby acknowledged that the Mitakshara law governed the succession that any rights she had were vested in the First Defendant and could not be held to be acquired by the Plaintiff. As regards the four mouzals the First Defendant (Iswar) alleged that the right to them had been acquired by the Court of Wards (when the Raja Purna was under that Court in minority) out of the profits of the Raj Jamboni and must be "taken as a . . . part of " the joint original impartible estate."

A written statement was also filed for the Second Defendant, the other widow, in which she made no claim adverse to the First Defendant and took his side in denying the Appellant's claim. Her fourth and sixth statements set out a further obstacle in the Appellant's way strongly insisted on in argument by the Respondent, the representative of the First Defendant

but which only arises for consideration if the Daya Bhaga law applies :—

“ 4. This Defendant further submits, that if the Court holds
 “ that the family of this Defendant’s husband was governed by
 “ the Dayabhaga Shastra, this Defendant, by reason of her
 “ being the Pat-Mohisi and of the zemindari being impartible,
 “ is alone entitled to get the said zemindari, &c., and the
 “ Plaintiff cannot acquire any right therein, and the said right
 “ cannot at all be taken to have been extinguished in connection
 “ with or in favour of the Plaintiff, and no right can accrue to
 “ the Plaintiff.”

“ 6. This Defendant is the elder wife, *i.e.*, the first married
 “ Pat-Mohisi of her husband, and she is older than the Plain-
 “ tiff. The statement made by the Plaintiff in paragraph 12 of
 “ the plaint that she is older than this Defendant, is not
 “ true.”

Her fifth statement also must be noted, having regard to eventualities :

“ 5. If the Court holds that the movable and immovable
 “ properties mentioned in Schedule C., were the self-
 “ acquired properties of my late husband, and that the
 “ Plaintiff and this Defendant both were our husband’s heirs
 “ with regard to the same, this Defendant submits that this
 “ Defendant is entitled to get an eight annas share of the said
 “ properties and the said right cannot be taken to have been
 “ extinguished or relinquished in favour of the Plaintiff by
 “ the deed of release mentioned above executed by this Defen-
 “ dant. Accordingly, the Plaintiff’s claim with regard to the
 “ 16 annas of the same, is wholly improper.”

Various issues were settled and tried ; but of these the fourth (as to the law governing the succession), the ninth (as to the effect of the Defendant widow’s release), and the eleventh, whether the four mouzals were self acquired state the only questions argued under the present Appeal.

After much procedure, the examination of many witnesses and the production of several documents, the first Subordinate Judge of Midnapore on 26th February 1895 gave judgment. He held that the Daya Bhaga law governed the succession and ordered that the Plaintiff (Appellant) do recover possession of all the properties in suit. This order was qualified by a declaration (not satisfactory to the Appellant and not very clearly explainable) that instead

of being full owner the Plaintiff should recover possession as manager. Against this Decree appeals were taken both by the present Respondents (for Iswar was now dead) and the present Appellant; and on 17th May 1897 the High Court at Fort William set aside the decision and dismissed the suit as regards possession of movables and immovables, and ordered an allowance of maintenance. The main ground of judgment was that the Mitakshara law governed the succession; and this superseded the question as to the rights of the Appellant in relation to the other widow, even assuming the Daya Bhaga to prevail. The question of the four mouzahs is not discussed in the judgment.

In comparing the judgment of the Subordinate Judge, which was in favour of the Appellant, on the main question between the Mitakshara and the Daya Bhaga with the judgment of the High Court, which was for the Respondents, their Lordships take note of two facts. The first and most important is that the Subordinate Judge fell into the grave error of holding that the origin of this family was unknown and its original place of residence unascertainable; that there was no evidence worthy of reliance to show whether they were originally governed by the Mitakshara or by the Daya Bhaga; and, "that being so, the Defendant is not entitled to the benefit of the presumption laid down in *Soorendra Nath Roy v. Mussamat Hiru Moni Burmani* 10 W. R. P. C. 35 and in the other cases cited by the defence." So far are the facts on this matter (which the High Court has justly treated as of primary importance) from being uncertain, that it was not disputed at their Lordships' Bar that this family came originally from the North-West, where the Mitakshara undoubtedly prevailed, and that the only question was

whether it was not to be inferred from the facts that they had divested themselves of their original customs and adopted the rule of the Mitakshara. The other criticism to be made on the judgment of the Subordinate Judge is that, holding himself to be thus exempt from any presumption in favour of the Respondents, he has not merely based himself upon testimony which has been handled with great caution by the party whom it purports to support, but he has accepted as credible and rejected as incredible large numbers of witnesses with a freedom and on grounds which would have commanded more confidence if the learned Judge had had the advantage of seeing the witnesses. As matter of fact the great majority of the witnesses were examined before his predecessor and very few before himself. Accordingly the High Court have felt justified in forming their own conclusions as to the effect and quality of the evidence; and after careful examination their Lordships see no ground for disputing the soundness of their appreciations. This necessarily goes far towards deciding the case, once the broader conditions of the controversy are fully realised.

The question of succession now in dispute depends upon the custom of the family; and in families observing the Mitakshara Shashtra the brother and not the widow of a childless man takes an ancestral estate. The tenacity of such customs, even under the strain of migration, has been repeatedly recognised by the law, in questions such as the present. Accordingly the question being primarily one of personal as distinguished from geographical custom, it is of the first importance to inquire of the origin of the family. Now, amid a mass of contradiction on almost everything else, it is undisputed that these people came from the North-West. Tradition names Dharanaggur as

their original home ; but the precise place is of no moment for it is not suggested that in any place in the North-West does the Daya Bhaga prevail. The presumption therefore is that the family continued to observe the Mitakshara and it remains to see whether the contrary has been proved.

The occasions which afford the most direct evidence are successions. Now, with the doubtful exception of the succession of Gobindmomi about a century ago, the Appellant has no such case to point to, while as regards Gobindmomi it is not satisfactorily proved that her competitor had any genuine right such as would have brought him under the Mitakshara rules of succession. On the other hand, in at least two more recent instances, widows have been passed over in favour of brothers, where none but conjectural explanations can be offered, consistent with the Daya Bhaga rule.

When, turning from successions, regard is had to the evidence relating to ceremonies at marriages, births and scrads, it cannot be disputed that there is a strong body of affirmative evidence in support of the continuance and against the relinquishment of the Mitakshara in this family. The High Court, in a careful analysis, have stated their reasons for preferring the Respondents' evidence to that adduced for the Appellant, and the able arguments at their Lordships' Bar have satisfied them of the soundness of this conclusion. Nor do their Lordships see that the most abundant caution need restrain them from accepting as authentic the several documents which have been relied on by the High Court and the import of which is unmistakeable.

The learned Counsel for the Appellant placed before their Lordships an elaborate argumentative demonstration of the history and geographical

application of the name Orissa. The bearing of this upon the present question is only that the estate in dispute being (according to the argument) in a district where the Daya Bhaga prevailed, the family would be more likely to fall in with the customs of their neighbours and adopt the Daya Bhaga. Their Lordships, satisfied on the evidence bearing directly on the family in question, do not require to pronounce on a matter relating to a district on which they have not complete materials and their opinion on which might needlessly affect other interests.

On the question of the four mouzahs their Lordships regret that they have not the assistance of the High Court's judgment; but they find themselves unable to reject the Appellant's claim. The property in dispute was bought for Purna Chunder by the Court of Wards, out of savings of the zemindari and must be considered as Purna Chunder's savings. All that the Respondents can point to as indicating Purma's intention to deal with them as part of the Raj is that the rents were collected by the same servant, and the collection papers kept with the papers of the Raj. Their Lordships do not find in these meagre facts adequate ground for holding that the Raja intended to incorporate the four mouzahs with the ancestral estate for the purposes of his succession. The four mouzahs must therefore follow the rule of the Mitakshara law as to self-acquired property.

The argument addressed to their Lordships about the four mouzahs was confined to the question whether they were self-acquired, and it might perhaps be inferred that the success of the Appellant on that issue involved her right to possession of the mouzahs. But, in face of the claim made by the Respondent Rani Radha Kumari Debi in the 5th article of her written statement, their Lordships deem it well, before reporting

to His Majesty, to give the parties an opportunity, if they so desire, of being heard on the disposal of the four mouzahs, on the footing that they are held by their Lordships to be self-acquired property, and on the High Court's order for maintenance, which was made on a footing now displaced.

The following addendum to Their Lordships' Judgment was delivered by Lord Robertson on the 19th March 1902.

Their Lordships have further considered this Appeal with reference to the points raised in the last paragraph of their Judgment of the 22nd February and the observations of Counsel thereon on the 1st March and they will humbly advise His Majesty that, subject to the Recommendation below, the Decree of the High Court of the 17th May 1897 ought to be affirmed and this Appeal dismissed. And they will further humbly recommend His Majesty to make a Declaration that the four mouzahs in question are self-acquired property and to remit the Suit to the High Court with directions to try or cause to be tried any issues which may be raised by the parties to the suit or any one or more of them for the purpose of having determined any question consequent on the Declaration, more especially as to the right to the four mouzahs or to maintenance out of the impartible estate.

The Appellant will pay the first Respondent (who alone appeared in England) three fourth parts of his costs of the Appeal.

