Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Sheo Shankar Lal and another v. *Debi Sahai, from the High Court of Judicature for the North-Western Provinces, Allahabad; delivered the 24th June* 1903.

Present at the Hearing:

LORD MACNAGHTEN.
LORD LINDLEY.
SIR ANDREW SCOBLE.
SIR ARTHUR WILSON.
SIR JOHN BONSER.

[*Delivered by Sir Arthur Wilson.*]

The property which is the subject-matter of this Appeal formerly belonged to two brothers, Bhawani and Basant, and on the death of the former to the latter alone. Basant's two widows succeeded him, but by arrangement amongst themselves the property was divided between them and the widows of Bhawani. Both the widows of Basant died in 1861, and the title then passed to Hanwant and Hanuman, somewhat distant cousins of Bhawani and Basant, as the nearest male heirs of Basant. Of these, Hanwant died in 1865, leaving a son, Debi; and on the 8th September 1866, Hanuman and Debi executed a deed of gift by which they gave the property absolutely to Jadonath, the daughter of Bhawani by his elder widow, who was then living. Dilla, the younger widow of Bhawani, was likewise alive, and claimed rights in the property or part of it.

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There were also male relatives who claimed to be nearer heirs than Hanwant and Hanuman. Much litigation naturally ensued, but it is not now necessary to trace its course. Jadonath died in 1879, and her daughter Jagarnath succeeded to her rights. Jagarnath died in 1896, leaving sons, the present Plaintiffs, and a married daughter.

The Plaintiffs brought the present suit in the Court of the Subordinate Judge of Gorakhpur, claiming to have become entitled to the property in dispute on the death of their mother in 1896. The Defendant, who is a brother of Dilla, the younger widow of Bhawani, acquired whatever rights he ever had by virtue of a transfer to him from Dilla; and as she died in 1895, any right of his then came to an end. Apart, however, from any right in himself, the Defendant was entitled to rely upon any defect he could find in the Plaintiffs' title. Many issues were raised, all of which were disposed of in India in such a manner as to entitle the Plaintiffs to succeed, except one upon which the High Court dismissed their suit.

The point referred to is this. The Defendant raised the objection that, as a sister of the Plaintiffs' was in existence, she, not they, was the heir of their mother's property. The Plaintiffs met this by saying that "the Plaintiffs do "not deny the existence of a married sister, but "her existence does not prejudice their claims." On this admission an issue, which was wholly one of law, was raised, "whether the Plaintiffs are "entitled to maintain the present suit while "the daughter of Jagarnath Kunwari exists." Upon this issue the Courts have differed, the Judge of First Instance having decided it in the Plaintiffs' favour and given them a decree, while the High Court on Appeal took a different view of the law, and dismissed the suit. Against that dismissal the present Appeal has been brought.

It is clear upon the above statement that Jadonath acquired the property by gift, and that on her death her daughter Jagarnath succeeded to it by inheritance. The precise question therefore arising for decision is whether, under the Hindu law of the Benares school, property which a woman has taken by inheritance from a female is her *stridhan* in such a sense that on her death it passes to her *stridhan* heirs in the female line to the exclusion of males.

Their Lordships regret that they are called upon to decide this question upon an appeal heard *ex parte*. But Mr. Mayne, in his able and exhaustive argument, for which their Lordships are much indebted to him, called their attention to the authorities and arguments bearing upon the matter, upon one side and the other, so fully as greatly to relieve their Lordships from the difficulty which they would otherwise have felt. And since that argument they have had an opportunity of considering the judgment of the Judicial Commissioners of Oudh upon a very similar question, in a case in which judgment is about to be delivered. It is however to be regretted that the question has to be decided in a suit to which the Plaintiffs' sister, in whom the preferable right is alleged to exist, is no party.

During the voluminous discussions, ancient and modern, which have arisen with regard to the separate property of women under Hindu law, its qualities, its kinds, and its lines of descent, the question has constantly been found in the forefront, what is *stridhan*? The Bengal school of lawyers have always limited the use of the term narrowly, applying it exclusively, or nearly exclusively, to the kinds of woman's property enumerated in the primitive sacred texts. The author of the Mitacshara and some other authors seem to apply the term broadly to every kind of property which a woman can possess,

from whatever source it may be derived. Their Lordships do not propose to dwell upon this particular question. It may perhaps be regarded as one mainly of phraseology, not necessarily involving, however it beanswered, much distinction in the substance of the law; for most of the old commentators recognise with regard to the property of a woman, whether called *stridhan* or by any other name, that there may be room for differences in its line of descent according to the mode of its acquisition.

The question of substance is how the property descends in a case like the present. As to this the decision of the High Court was based upon the text of the Mitacshara, which seems to make all property taken by a woman by inheritance her *stridhan* with all the incidents which belong to that kind of absolute property, and to make it descend as such, primarily to females, and in the special line prescribed for *stridhan* strictly so-called.

It cannot now be contended that the rule thus derived from the Mitacshara is law as to inherited property generally. The cases of *Thakoor Deyhee* v. *Rai Baluk Ram*, 11 Moo I. A. 139; *Bhugwandeen Doobey* v. *Myna Baee*, 11 Moo I. A. 487, and *Cholay Lall* v. *Chunno Lall*, 6 I. A. 15, all of them Benares cases, as well as *Mutta Vaduganadha Tevar* v. *Dorasinga Tevar*, 8 I. A. 99, and *Raja Chelikani Venkayyamma Garu* v. *Raja Chelikani Venkataramanayyamma*, 29 I. A. 156, place it beyond doubt that property inherited by a woman from a male is not her absolute property, and passes on her death not to her *stridhan* heirs, but to the heirs of the male person from whom she inherited it.

As to the descent of property inherited by a female from a female, there has not been any such conclusive ruling of this Committee. There has been, however, a remarkable

concurrence of opinion in India among judges, text writers, and pure scholars, to the effect that no distinction can be drawn, consistently with the text of the Mitacshara, between what has been inherited from a male and what has been inherited from a female; a suggestion to the contrary made by Mr. Mayne has not been received with favour. On this point it is sufficient to refer to the judgments of West, J., 8 Bom. H. C. (O.J.) at p. 272, Telang, J., I.L.R., 17 Bom. 761, and Best and Ayyar, JJ., in I.L.R., 19 Mad. 118; Banerjee's Tagore Lectures, 1878, p. 286; West and Bühler, 3rd edit., p. 272; Jolly's Tagore Lectures, 1883, p. 243.

In Bengal it is well settled law that property inherited from a woman by a woman does not on the death of the latter pass as her *stridhan*. The rule has often been expressed by saying that what has once descended as *stridhan* does not so descend again. The authorities have been collected and reviewed in *Huri Doyal Singh Sarmana* v. *Grish Chunder Mukerjee*, I. L. R., 17 Cal. 911, at p. 916.

In Madras, where the Mitacshara is approved, but also other treatises (especially the Smriti Chandrika, which differs much from the text of the Mitacshara with regard to woman's property), the view has been accepted that what a woman has inherited from a woman is not *stridhan* for the purposes of inheritance: *Venkataramakrishna Rau* v. *Bhujanga Rau*, I. L. R., 19 Mad. 107; *Virasangappa Shetti* v. *Rudrappa Shetti*, I. L. R. 19, Mad. 110.

With regard to Bombay, wherever the Mayukha is accepted, it is held that its rules govern the descent of woman's property. And those rules differ widely from the text of the Mitacshara, and exclude the idea that what has passed by inheritance from a woman to a woman goes on the death of the latter to the special

line of heirs, with a preference for females, who would succeed to it if it were her *stridhan* proper. *Vijiarangam* v. *Lukshuman*, 8 Bom. L. R. 244, at p. 260; *Bai Narmada* v. *Bhagwantrai*, I. L. R., 12 Bom. 505; *Manilal Rewadat* v. *Bai Rewa*, I. L. R., 17 Bom. 758.

Under the Benares law their Lordships are not aware of any direct judicial decision on the precise question now to be disposed of. But they do not feel any hesitation as to the answer which ought to be given to it. On the one hand stands the text of the Mitacshara, which taken literally seems to make all property inherited by a woman a part of her *stridhan*, inheritable from her according to the rules applicable to her *stridhan* in the strictest sense of the term. On the other hand it has already been decided that the rule seemingly laid down in the Mitacshara as to the descent of property taken by inheritance is not the Benares law so far as concerns property inherited from males. The decisions to that effect were based upon no narrow grounds. Their Lordships examined the primitive texts upon which the Mitacshara purports to be based; they considered the fundamental principles of the Hindu law; they reviewed the judicial decisions bearing upon the questions before them; they gave such weight as could properly be given to the very conflicting opinions of numerous pundits, and they arrived at their conclusions without hesitation. And it is difficult to see how any other rule can be applied to what has been inherited from females. Reference has already been made to the striking concurrence of opinion in India against the admissibility of any distinction between the two cases.

What authority there is bearing directly upon the question points in the same direction. Macnaghten in his Hindu Law, vol. I., p. 38, applies the

rule that what has once passed by inheritance as *stridhan* does not so pass a second time, to the Mitacshara law as well to that of Bengal. And as his work was based upon an exhaustive examination of the cases which had actually come before the Courts in Bengal and of the opinions of pundits given with reference to those cases, it is valuable evidence of the law as it was actually understood and applied at the time to which it relates. Moreover, the Mitacshara law with which he was brought into contact was necessarily that of the Northern schools. In *Chotay Lall* v. *Chunno Lall*, 14 Beng. L. R., at p. 235 (the Benares case subsequently affirmed by this Committee in 6 I.A. 15), Pontifex, J., stated the law in the same way.

Their Lordships are therefore unable to agree with the High Court in thinking that the property now in question was the *stridhan* of Jagarnath devolving as such upon the Plaintiffs' married sister in preference to them. And this is sufficient to dispose of the present case.

Their Lordships will humbly advise His Majesty that the Decree of the High Court be set aside with costs, and that of the Subordinate Judge affirmed.

The Respondent will pay the costs of the Appeal.