Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Debi Mangal Prasad Singh v. *Mahadeo Prasad Singh and others, from the High Court of Judicature for the North-Western Provinces, Allahabad; delivered the 2nd February* 1912.

PRESENT AT THE HEARING:

LORD MACNAGHTEN.
LORD ROBSON.
SIR JOHN EDGE.
MR. AMEER ALI.

[DELIVERED BY LORD ROBSON.]

The question to be determined in this case is whether immoveable property, obtained by a Hindu widow on partition of the joint family property under the Mitakshara law, is part of her stridhan in the narrow sense of that word, indicating her separate property or *peculium* which passes on her death to her own heirs; or is merely part of her stridhan in the wider sense in which the word is sometimes used, as indicating any property in which she may have some right of proprietorship.

The property in question originally belonged to one Gaya Parshad, who, with his three sons, formed a Hindu joint family governed by the Mitakshara law. He died leaving three sons and a widow, Dulhan Sahibzad Kunwari. One of his sons, Sheo Partap Singh, died in 1889, leaving a widow and his son, the Plaintiff-Appellant. In 1894 a partition of the joint family property took place, at the suit of the Plaintiff, under the guardianship of his mother, and in that suit the Court apportioned one-fourth share of the family

property to Dulhan Sahibzad Kunwari, who remained in possession thereof until her death on the 19th November 1900.

The Plaintiff claims possession of one-third of the property thus held by her, on the ground that it passed, under the Mitakshara law, to the heirs of her husband, of whom he is one.

The first two Defendant-Respondents are the two surviving sons of Dulhan Sahibzad Kunwari, and their contention is that the property acquired by their mother on the said partition was her stridhan or *peculium* so as to descend to her heirs.

This raised the further question as to whether the Plaintiff, whose father had predeceased Dulhan Sahibzad Kunwari, was one of her heirs or was excluded from her inheritance by her surviving sons. The Subordinate Judge decided both these issues in favour of the Defendants, and that judgment was affirmed by the High Court at Allahabad.

The sections of the Mitakshara dealing with the property of a woman have given rise to much controversy and some conflict of decisions. In Chapter 2, Section 11, para. 1, of that treatise, Vijnanesvara sets forth Yajnyawalcya's classification or description of woman's property as follows :—

" What was given to a woman by the father, the mother, " the husband, or a brother, or received by her at the " nuptial fire, or presented to her on her husband's marriage " to another wife, as also any other [separate acquisition] " is denominated a woman's property."

In paragraph 2 of the same Section, Vijnanesvara repeats in substance the six-fold classification given in paragraph 1, and then in place of the general words " as also any other " he substitutes a further enumeration as follows :—

" And also property which she may have acquired by " inheritance, purchase, partition, seizure, or finding, are " denominated by Menu and the rest, ' woman's property.' "

This reference to Menu is not borne out by the quotation from that authority given in paragraph 4 (Section 11). Menu is there cited as making the same classification of the different kinds of "woman's property" as that above given by Yajnyawalcya, and saying that they "are "denominated the six-fold property of a woman."

This six-fold enumeration of the sources of a "woman's property," as given by Yajnyawalcya and Menu, corresponds with the technical or narrow signification of stridhan indicating property which is under her absolute control during life and on her death is descendible to her heirs. Do the same characteristics attach to a woman's property derived from the additional sources specified by Vijnanesvara, viz., inheritance, partition, &c.? The words "any other" with which Yajnyawalcya concluded his enumeration are a translation of the word "adi" or "adya," which, according to Mr. Mayne (Hindu Law, 7th Ed., page 823) means "and the like." In that view, Yajnyawalcya meant to limit his description of "woman's property," or stridhan, to property acquired in any of the six modes he had just specified, or in any other manner *ejusdem generis* with those modes. Vijnanesvara's additional enumeration goes beyond that. When read with Yajnyawalcya's description, it constitutes a practically complete statement of the means by which a woman can acquire property rights. Dealing with this extended signification of the term "woman's property" Vijnanesvara says in paragraph 3 of the same Section that it "conforms in its import with "its etymology and is not technical." In paragraphs 2, 3 and 4, therefore, he is speaking of stridhan in the wider sense. In paragraphs 5, 6, and 7, Vijnanesvara cites the description of "woman's property" given by Katyayana, which does not expressly profess

to be exhaustive, but which closely approximates in character to that given by Yajnyawalcya and Menu, and does not include any of the heads (inheritance, partition, &c.) added to the list by Vijnanesvara in paragraph 2. Then comes paragraph 8, which gives rise to the difficulty. It runs thus:—"A woman's property has been "thus described. The author next propounds "the distribution of it. 'Her kinsmen take it "'if she die without issue.'"

The rule of devolution prescribed by the author (Yajnyawalcya), to whom Vijnanesvara refers, was, so far as that author himself was concerned, no doubt intended to apply only to stridhan in the narrow signification defined in paragraph 1, and not to the enumeration as expanded by the commentator in the concluding words of paragraph 2. It is, indeed, possible to read paragraph 8 as applying only to the more limited enumeration of Yajnyawalcya. When Vijnanesvara says "a woman's property has "been thus described," he may have been referring to the description given by his author and by Katyayana, and have intended to confine Yajnyawalcya's rule of devolution to Yajnyawalcya's classification. His language, however, in paragraph 8, when read with what he says in paragraphs 2, 3, and 4, is open to the meaning that a woman's property, of whatsoever kind, descends always to her own heirs. It is difficult to adopt the latter construction in view of the undoubted fact that, as Sir Arthur Wilson said in delivering the judgment of their Lordships' Board in *Sheo Shankar Lal* v. *Debi Sahai* (30 I. App. 206), "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."

So far as a woman's acquisition of property by inheritance is concerned the matter is now clearly concluded by authority, and a consideration of the cases decided with regard to that item in Vijnanesvara's additional enumeration will facilitate the task of dealing with the item of "partition" in the same enumeration.

In the case of *Mussumat Thakoor Deyhee* v. *Rai Baluk Ram and others* (11 Moore's I. App., page 139) it was contended that, in the provinces governed by the Mitakshara, the widow's estate in her husband's property was absolute, and that she had full power to dispose of it. In support of that argument reliance was placed on the concluding words of the second paragraph of Section 11, Chapter 2, of the Mitakshara above dealt with, viz., "also property which she may "have acquired by inheritance." Their Lordships, however, rejected the view that those words included such property as part of a woman's stridhan so as to make it descendible to her heirs. They quoted, with approval, the proposition laid down by Sir William Macnaghten in his "Principles and Precedents of Hindu "Law," vol. 1, page 38, where he says :—

"In the Mitakshara, whatever a woman may have "acquired, whether by inheritance, purchase, partition, "seizure, or finding, is denominated woman's property, but it "does not constitute her *peculium*."

It was therefore held that a widow has no power of alienating any immoveable property which she has inherited from her husband, and that, on her death, such property will pass to the next heirs of her deceased husband. Similarly, in *Bhugwandeen Doobey* v. *Myna Baee* (11 Moore's I. App., page 487) it was held that, by the Hindu law prevailing in Benares (the Western School), no part of the husband's estate, moveable or immoveable, forms portion of his widow's stridhan, and she has no power to alienate the estate inherited from her husband, to the

prejudice of his heirs, which, at her death, devolves on them. Sir James Colville, in delivering the judgment of their Lordships' Board, says : " Both " the Vivada Chintamani and the Mayukha " confine stridhan within the definitions of Menu " and Katyayana. They exclude property in- " herited, and the other acquisitions which are " comprehended in the last clause of the para- " graph in the Mitakshara, but are excluded by " Sir William Macnaghten."

This observation puts partition on the same footing as inheritance, so far as the rights of a widow are concerned.

In *Chotay Lall* v. *Chunno Lall and others* (6 I. App., p. 15) it was held that, under the law of the Mitakshara, a daughter's estate inherited from the father is a limited and restricted estate only and not stridhan, so that upon her death the next heirs of the father succeed thereto.

The cases on the question of a woman's inherited property came under review by their Lordships' Board in *Sheo Shankar Lal and another* v. *Debi Sahai* before referred to and *Lal Sheo Pertab Bahadur Singh* v. *Allahabad Bank, Limited, and another* (30 I. App., p. 209). The construction of the Mitakshara was again considered, and it was held that, under the Hindu law of the Benares school, property which a woman has taken by inheritance from a female is not her stridhan in such sense that on her death it passes to her stridhan heirs in the female line to the exclusion of males.

Each of these authorities is inconsistent with the wide scope which the Respondents, on their construction of the Mitakshara, seek to give to the definition of stridhan.

The question now arises whether there is any substantial difference in principle between a woman's property acquired by inheritance and that acquired by partition. It is a question

attended with some difficulties, especially in the construction of the Mitakshara, whatever view of it may be taken. While a family remains joint a woman has no right under the Mitakshara to a specific share of the family estate. She is only entitled to maintenance, or in due course to her customary inheritance, and if a partition takes place a mother gets a share equal to that of a son. If the share given to a widow on partition is given to her as a substitute for that to which she would be entitled upon inheritance, then, according to the foregoing authorities, it would seem reasonable that it should follow the same rule of descent and revert on her death to her husband's heirs. If, on the other hand, it is given to her by way of provision for her maintenance, it seems equally reasonable that when the necessity for her maintenance has ceased the property should revert to the estate from which it was taken. Of course, the members of a joint family effecting a partition may agree that a portion of the property shall be transferred to the widow by way of absolute gift, as part of her stridhan, so as to constitute a provision for her stridhan heirs; but, in the absence of any such intention, their Lordships do not feel justified in putting property acquired by a widow, on a partition of the joint estate, upon a footing different from that on which property coming to her by way of inheritance has been placed. The contrary view was taken by the High Court at Allahabad in *Chhiddu* v. *Naubat* (24 Allahabad, p. 67). The learned Judges in that case laid great stress upon Chapter 1, Section VI., paragraph 2, of the Mitakshara. Vijnanesvara there deals with the rights of a son born after the partition, and says that on the demise of his parents he obtains both their portions,—

"His mother's portion, however, only if there be no "daughter, for it is declared that 'Daughters share the "'residue of their mother's property after payment of "'her debts.'"

Again Chapter I., Section III., paragraph 8, runs as follows -—

"It has been declared that sons may part the effects "after the death of their father and mother. The author "states an exception in regard to the mother's separate "property: 'The daughters share the residue of their "'mother's property, after payment of her debts.'"

This paragraph refers only to the mother's separate property or *peculium* whatever that may be. But it is by no means certain that either in that paragraph or in Section VI., paragraph 2, the property coming to her by way of partition is necessarily included in that *peculium*.

That there is a distinction in the rules of descent between different kinds of a woman's property, according to the mode in which it has been acquired, is beyond question, but the Mitakshara does not always discriminate between these different kinds of property, and in the doubt that arises as to its precise intent and construction in reference to this point, the principle upon which the cases relating to inheritance have been decided appears to be a safe guide in dealing also with cases of partition.

In this view, it is unnecessary to discuss the second question as to whether the Plaintiff was entitled to share in his grandmother's estate as one of her heirs equally with his uncles.

Their Lordships will therefore humbly advise His Majesty that this Appeal should be allowed; the decrees of the Courts below set aside with costs; and in lieu thereof a decree made in favour of the Appellant for the one third of the share with mense profits which came to Dulhan Sahibzad Kunwari on partition and was held by her.

The Respondents will pay the costs of the Appeal.

In the Privy Council.

DEBI MANGAL PRASAD SINGH

v.

MAHADEO PRASAD SINGH
AND OTHERS.

DELIVERED BY LORD ROBSON.

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