

Bombay High Court

Chamanlal Chakubhai vs Bai Parvati on 7 August, 1933

Equivalent citations: (1934) 36 BOMLR 152, 150 Ind Cas 854

Author: Tyabji

Bench: Tyabji

JUDGMENT Tyabji, J.

1. The question in this appeal is what rule governs (under the Mayukha) the power of disposition over moveable property acquired by a Hindu widow in partition with her sons.

The arguments before me had reference mainly to the decision in Debi Mangal Prasad Singh v. Mahadeo Prasad Singh (1912) L.R. 39 I.A. 121 : s. c. 14 Bom. L.R. 220.

2. Their Lordships were also concerned with property received by a widow in partition. They had to consider what rule should be adopted in regard to the line of descent with respect to immoveable property : not, as I have to do, what rule should be applied in regard to the power of disposal in respect of moveable property. The question before me differs in two respects. I have to consider the rule applicable to powers of disposal, not the rule of inheritance; and I am concerned with move-able, not with immoveable property.

3. There is no rule in the texts directly applicable to the inheritance of immoveable property acquired by a widow in partition. For, although the Mitakshara contains a rule of inheritance in general terms applicable to all property howsoever acquired by a woman, yet most of the old commentators recognise with regard to the property of a woman that there may be room for differences in its line of descent according to the mode of its acquisition : Chotay Lal v. Chunno Lal (1878) L.R. 6 I.A. 15, 30 and Sheo Shankar Lal v. Debi Sahai (1903) L.R. 30 I.A. 202 : s. c. 5 Bom. L.R. 828.

4. Accordingly, all the property styled in the Mitakshara as woman's property is not subject to the same rules of inheritance. The original text does not afford any foundation for such uniformity, though Vijnaneshwara's interpretation does : Chotay Lal v. Chunno Lal.

5. Woman's property thus falls under two heads. First, there is what is sometimes called the six-fold property of a woman, or the stridhan pro-I per, or what their Lordships call her peculium. This is the property mentioned as stridhan by Manu and Katyayana : viz., "(1) what was given to a woman by the father, (2) the mother, (3) the husband, or (4) a brother, or (5) received at the nuptial fire, or (6) presented to her on her husband's marriage to another wife": Mitakshara, Chap. 2, Section 11, paragraph 1.

6. Secondly, there is the property which in the text of Yajnavalkya is referred to as ' adya ' ("and the like"). This word has been expanded by Vijnaneshwara as " also property which she may have acquired (1) by inheritance, (2) purchase, (3) partition, (4) seizure, or (5) finding."

7. The rule in respect of succession, under which the woman is to be considered as the stock of descent and under which a special line of descent is prescribed by making property primarily descend to females, is restricted in its application to the firstly mentioned six-fold property or strict stridhan. The passages in the Mitakshara, chap. 1, Section 6, paragraph 2, and chap. 1, Section 3, paragraph 8, apply only to the strict stridhan or the six-fold property of a woman: Bhugwandeem Doobey v. Myna Baee (1867) 11 M.I.A. 487, 511; Mussumat Thakoor Deyhee v. Rai Baluk Ram (1866) 11 M.I.A. 139, 173; and Debi Mangal Prasad Singh v. Mahadeo Prasad Singh (1912) L.R. 39 I.A. 121.

8. The rules of inheritance and the line of descent in regard to partitioned property need not be the same as the rules of descent in regard to strict stridhan, inasmuch as property acquired by a woman in partition does not fall under strict stridhan, but under 'adya' stridhan, if I may call it so, under property acquired in one of the additional modes of acquisition referred to in the Mitakshara and not mentioned by Yajnavalkya or Katyayana or Manu. It is established that property inherited by a daughter from her father does not follow the line of descent of strict stridhan but devolves on the heirs of the father: Chotay Lal v. Chunno Lal; and that property inherited from a female by a woman is not her strict stridhan: Sheo Shankar Lal v. Debi Sahai. That as a mode of acquisition (in the case of women) partition is closely analogous to inheritance, is stated by Lord Robson in considering whether the rule applicable to partitioned property should be the rule applicable to strict stridhan or the rule applicable to property acquired by women through inheritance. Those were the only two alternatives considered to be open.

9. Their Lordships first refer (Debi Mangal Prasad Singh v. Mahadev Prasad Singh (1911) L.R. 39 I.A. 121, 131 : s. c. 14 Bom. L.R. 220) to three circumstances: (1) "While a family remains joint a woman has no right under the Mitakshara to a specific share of the family estate. (2) She is only entitled to maintenance, or (3) in due course to her customary inheritance, and if a partition takes place a mother gets a share equal to that of a son."

10. The share given to a widow on partition may then (it is stated ) be considered in one of two ways :

(a) that it is "given to her as a substitute for that to which she would be entitled upon inheritance. "In that case" 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"; or

(b) it may be considered that the share given to a widow on partition is given to her by way of provision for her maintenance. In this view of the origin of the widow's share in partition, "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."

11. Two alternative hypotheses are thus considered. The rules applicable under the two hypotheses are stated in language that is somewhat different. The two hypotheses are : that the share in partition (1) is a substitute for that to which she would be entitled upon inheritance, (2) is by way of provision for her maintenance. The corresponding rules are that it should revert on her death (a) to her husband's heirs and (b) to the estate from which it was taken.

12. The context shows that (a) and (b) mean the same. The same rule is intended. The argument of Mr. Dave for the appellants proceeded on the basis that there is a distinction : that in the former case the property is supposed to be taken from and to revert to the husband : and in the latter from and to his sons. There is in reality no distinction. The husband being dead at the time, the estate is already that of the husband's heirs. The argument thus starts with a distinction that does not exist. It also ends with a non-existent distinction. For, assuming that the property acquired in partition is taken as a provision for maintenance (*Mutta Vaduganadha Tevar v. Dorasinga Tevar* (1881) L.R. 8 I.A. 99,108, *Sheo Shankar Lal v. Debi Sahai* (1903) L.R. 30 I.A. 202, 208, 209, 217 : s. c. 5 Bom. L.R. 718, and *Munni Lal v. Phula* (1927) I.L.R. 50 All. 22) and that therefore it must revert to the husband's estate, and not to her husband's heirs, how does the rule governing powers of disposal in regard to property that must revert to the estate become different from the rule applicable to property that must revert to her husband's heirs?

13. In the, their Lordships decided that in regard to immovable property acquired by a woman in partition, the rule of inheritance should be the same as the rule in regard to immovable property acquired by her by inheritance. Acquisition by partition was considered so closely analogous to acquisition by inheritance, that the same rule was held to govern the descent of property acquired in either way: *Debt Mangal Prasad Singh's case*.

14. That these propositions are to be taken as general principles, appears from the remarks throughout the judgment. There is a distinction between (1) the six-fold property (which is classed as strict stridhan or peculium), and (2) property acquired in the additional modes mentioned by *Vijnaneshwara*. The mode of acquisition by partition is most nearly analogous to the mode of acquisition by inheritance, both of them falling under the additional 'adya' modes of acquisition. Since the line of descent varies according to the mode of acquisition, the line of descent in regard to partitioned immovable property must be analogous to the line of descent in regard to inherited immovable property.

15. Their Lordships did not hold that when the property is partitioned and the widow takes a share therein, the mode of acquisition approximates to any one of the six-fold modes : for instance, to a gift by her husband or by her brother or to a present at the time when the husband makes a new marriage. Had they come to such a conclusion it might have been held that inasmuch as the mode of acquisition affects the line of descent and this particular mode of acquisition is similar to the mode of acquisition falling under one or other of the six-fold modes, therefore, the rules in regard to the devolution of property acquired by partition should be the rules applicable to strict stridhan. Nor did they hold that the five 'adya' modes of acquisition referred to in the *Mitakshara* do not all stand on the same footing, and that a rule applicable to property acquired by inheritance may be inapplicable to property acquired on partition.

16. Their Lordships were dealing with immovable property. I have to deal with moveable property. It cannot be disputed that the powers of disposition over moveables differ widely from those over immovable property. I must, therefore, in accordance with the principles adopted by their Lordships, hold by analogy that the law as regards the powers of disposal over moveable property acquired in partition must be similar to the law governing moveables acquired by inheritance.

17. Mr. Coyajee suggests a consideration why the power of disposition over moveables acquired by partition must if anything be larger than over inherited moveables. He points out that partitioned property is closely related to stict stridhan in one respect, viz., the share to which a widow is entitled in partition is liable to be diminished to the extent to which she has received separate property from her husband or father-in-law. In regard to separate property so received it is admitted that she would have an absolute power of disposal, because it would fall under strict stridhan: and as property acquired in these two modes is put on the same footing in determining the quantum she has to receive, it is suggested that there should be parity also in regard to powers of alienation : see Jodoonath Dey Sircar v. Brojonath Dey Sircar (1874) 12 Beng. L.R. 385 and Kishori Mohun Ghose v. Moni Mohun Ghose (1885) I.L.R. 12 Cal. 165. This argument is interesting, but it is not necessary to rely upon it.

18. In effect Mr. Dave's argument for the appellants is that a new rule, not to be found elsewhere in the Mayukha, must be devised for determining the widow's powers of disposal over moveables acquired by her in partition. It is admitted that in no other case governed by the Mayukha is moveable property fettered with any such restrictions in regard to its disposal during life, as are now sought to be imposed. The widow has the power of disposal during her life over inherited moveables: Bechar Bhagvan v. Bat Lakshmi (1863) 1 B.H.C.R. 56, Pranjivandas Tulsidas v. Devkuvarbai (1859) 1 B.H.C.R. 130, Rahi v. Govind valad Teja (1875) I.L.R. 1 Bom. 97, 117, and Bhikabai v. Manilal (1930) I.L.R. Bom. 780 : s. c. 32 Bom. L.R. 1217. She was held at one time to have powers even of testamentary disposition over inherited moveables (Damodar Madhowji v. Purmanandas Jeewandas (1883) I.L.R. 7 Bom. 155), though that is not now contended in view of the full bench decision in Gadadhar Bhat v. Chandrabhagabai (1892) I.L.R. 17 Bom. 609, F.B. (where the cases are reviewed ), and Chaman-lal v. Ganesh Motichand (1904) I.L.R. 28 Bom. 453 : s. c. 6 Bom. L.R. 460. The decision in Pandharinath v. Govind (1907) I.L.R. 32 Bom. 59 : s. c. 9 Bom. L.R. 1305 denying her power of gift has not been uncriticised, but it deals with the Mitakshara law; whereas the present case is under the Mayukha. It has not been relied upon before me. Bhikabai v. Manilal (1930) I.L.R. 54 Bom. 780 : s. c. 32 Bom. L.R. 1217 is clear.

19. It seems to me that only one line of reasoning is open to me, that the widow must have the same powers of disposal over moveables acquired in partition as she has over moveables acquired by inheritance; and it is admitted that this leads to the decision that she has power of dealing with moveable property during her lifetime unrestricted by any rights vested in other persons.

20. The appeal is, therefore, dismissed with costs.