

Ananta Vs. Ramabai

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Court : Mumbai

Decided On : Feb-01-1877

Reported in : (1877)ILR1Bom554

Judge : Michael Westropp, C.J. and ;Nanabhai Haridas, J.

Appellant : Ananta

Respondent : Ramabai

Judgement :

Michael Westropp, C.J.

1. We think that we must regard the Assistant Judge as having found that the land, the subject of this suit, was undivided at the time of its sale by Nagu, (November 17th, 1868), to the plaintiff Ramabai, and that fact does not now seem to be in controversy.

2. The contention of the appellant (the second defendant) Ananta is that an issue ought to have been directed to ascertain whether the leprosy, with which it is admitted he is afflicted, is congenital. His learned pleader has referred in support of that view to Manu, Ch. IX, pl. 201, 'Eunuchs and out-castes, persons born blind or deaf, mad men, idiots, the dumb, and such as have lost the use of a limb, are excluded from heritage,' but neither that text nor Calluca Bhatta's Commentary upon it applies to the case of leprosy. The word Nirindriya' rendered, as we think rightly, by Sir W. Jones, as in that passage meaning 'such as have lost the use of

a limb,' I.L.R. 1 Bom. 185 could not, even in its more extended sense of the loss of a sense, organ, limb or member, be properly applied to leprosy. We must, therefore, regard Manu as silent upon the subject and not an authority upon either side of the question. The Mitakshara treats 'a person afflicted with an incurable disease' as disqualified: Ch. II, Section X, pl. 1, which disease it explains (pl. 2) as 'an irremediable distemper such as marasmus or the like,' and some classes of leprosy have been regarded as coming within that description: Muttuvelayuda Pillai v. Paraskti, (Mad. S.D.A., Rep., 1859-1862, p. 239) decided on the 31st October 1860, Janardhan Pandurung v. Gopal and Wasudeo Pandurung 5 Bom. H.C. Rep. 145, and in neither of these cases does it appear to have been so much as contended that leprosy to disqualify must be congenital. And if pl. 6 of the Mitakshara, Oh. II, Section X., be, as we are inclined to think it is, applicable to leprosy when incurable, it tends to show that if it supervenes at any time before partition, the person so afflicted would be excluded from a share. The case of Murarji Gokuldas v. Parvatibai I.L.R. 1 Bom. 177, which has been mentioned in the argument, does not apply here. It was a case of blindness, and is applicable to the infirmities comprised in the text of Manu to which we have referred as not dealing with leprosy or such like diseases. The reply of the Pandits of the Benares Sanskrit College (who, as a rule, were strongly influenced by the Mitakshara doctrines), to the case put to them, and which is mentioned in the note by Mr. Sutherland to the case of Lakshmi Narayan Singh v. Tulshi Narayan Singh (5 Beng., Cal., S.D.A. Rep., 285), clearly implies, in what they have said as to the right of the son of a leper to succeed if he were born before his father was afflicted with the leprosy which they considered to disqualify the father, that leprosy supervening after birth disqualified the leper. Sir [357] Thomas Strange distinguishes between infirmities, such as blindness, deafness, dumbness, etc., which to disqualify must be coeval with birth, (Vol. 1., 152), and disqualifying diseases such as leprosy, etc., (Vol I, pp. 154, 155, 156), which the Hindu religion regards as visitations not only for sins committed in a preceding state, but also for sins committed in this life; and, therefore, such visitations are not necessarily congenital in order to disqualify. See also Clause 2, pl. cccxx, 3 Dig., p. 303, where the condition of congenitality is applied to insanity, blindness, or lameness by Narada, and not to obstinate or agonizing disease. He lays it down, as we

deem correctly, as the result of the Hindu authorities, (see especially 3 Dig. pp. 303 to 322, Ed. of 1801), that the leprosy to disqualify, must be of the sanious or ulcerous kind, which, was, we think, the virulent or aggravated type of leprosy required by the Bombay and Madras cases already cited by us. We direct the Assistant Judge to try the following issue, viz.:

1. Whether the leprosy of Ananta was of the sanious or ulcerous type generally regarded as incurable; and, 2nd, if the Assistant Judge shall determine the first issue in the affirmative but not otherwise, what is a proper maintenance for Ananta having regard to his condition of life and the nature of the property. Such maintenance should not exceed one moiety of the land sued for; but, in so saying this Court does not intend to express any opinion whether or not the maintenance allotted ought to be equal in extent to such moiety.

3. The Court reserves all other questions in the cause, including the question of costs.

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