

Kali Parshad Vs. Ram Charan

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Court : Allahabad

Decided On : Dec-31-1969

Reported in : (1875)ILR1All159

Judge : Robert Stuart, C.J., ;Pearson, ;Turner and ;Oldfield, JJ.

Appellant : Kali Parshad

Respondent : Ram Charan

Judgement :

1. The answer to the question referred to us is, it appears to us, supplied by express texts of the Mitakshara. The fifth section of the first chapter of that work treats of the rights of father and son in property ancestral, and in the fifth paragraph the author declares that for or because the right is equal or alike, therefore partition is not restricted to be made by the father's choice; and having explained in the seventh paragraph that the texts which he had discussed in the second section referred to property which had been acquired by the father himself, in the eighth paragraph he distinctly announces the rule in the following terms:--' Thus, while the mother is capable of bearing more sons, and the father retains his worldly affections and does not desire partition, a distribution of the grandfather's estate does nevertheless take place by the will of the son.' In the ninth and tenth paragraphs he treats of the son's right of interference in the father's dealings with ancestral property as the consequence of their indiscriminate right, and in the eleventh paragraph, in support of his position that 'the father, however reluctant,

must divide with his sons, at their pleasure, the effects acquired by the paternal grandfather,' he deduces the authority of Menu from the text--'if the father recover paternal wealth not recovered by his co-heirs, he shall not, unless willing, share it with his sons, for in fact it was acquired by him.' In which text the nature of the father's interest in the property so recovered is declared to be the same as would have been the interest of any one member of a joint family in such property so recovered, that is to say, he would have the right to treat it as his own.

2. The author of the Mitakshara himself reconciles what seeming discrepancy there may be between the rules as to partition expounded in Section 2 and the rules expounded in Section 5 By the statement that the texts cited in the former section refer to the father's property, and not to the ancestral property.

3. In the Vyavahara Mayukha, ch. iv, Section 4, v. 4, it is declared that the unqualified right of the sons to insist on the partition of ancestral property against the father's will has also the sanction of Brhaspati :--'The father and sons are equal sharers in houses and lands derived regularly from ancestors, but sons are not worthy (in their own right) of a share in wealth acquired by the father himself, when the father is unwilling.' --'From which,' says the author, 'it results that sons are worthy of a share in property acquired by the grandfather or other (ancestor), even though the father do not wish it.'

4. Seeing that the language of the Mitakshara is free from reasonable doubt, and that in cases governed by the Mitakshara the right of the son to demand partition invito patre has been recognized in Beer Kishore Suhye Singh v. Ilur Bullut Narain Singh 7 W.R., 502; Raja Ram Tewary v. Luchmun Pershd 8 W.R., 15; S.C. B.L.R, Sup. Vol., 731; Deo Bunsee Kooer v. Dwarkanath 10 W.R., 273; Nagalinga Mudali v. Subbiramaniya Mudali 1 Mad. H.C. Rep., 77; also in Laljeet Singh v. Rajcoomar Singh 12 B.L R., 373, and that if there be no reported cases in this Court it has been accepted hitherto as well established law in this Court, we would answer that, in the case of ancestral immoveable property, the son has, under the Mitakshara law, an unqualified right to demand partition. It is unnecessary for us in the present reference to express an opinion whether the same rule applies to ancestral moveable property. *

*With regard to the plaintiff's share, under Hindu law, in the ancestral immoveable property, and to the question of possession, the Division Court (Sturat, C.J., and Oldfield, J.), when the case was returned to it, in delivering judgment, said;- ' There appears to us to be no doubt that the Judge (lower Appellate Court) has erred, the extent of the share in ancestral property to which a son is entitled being equal to that of the father, and he is entitled to such equal share at partition--Mitakshara, ch. i, Section 5. v. 8, and other texts. In the present case the family interested in the partition consisted of the father and two sons, each of those three being entitled to one-third of the ancestral estate, and that is the extent of the share for which the plaintiff is entitled to a decree in this suit....

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