

Manki Kunwar Vs. Kundan Kunwar

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Court : Allahabad

Decided On : Jan-07-1925

Reported in : AIR1925All375; 87Ind.Cas.121

Appellant : Manki Kunwar

Respondent : Kundan Kunwar

Judgement :

1. This was a suit of a rather unusual but quite interesting character. It was a suit between two sisters, and the plaintiff claimed that she was entitled to a share to the extent of one-half of the entire property left by her father. In ordinary circumstances that claim was undoubtedly a good one in law, there being only herself, the plaintiff, and her sister, Kundan Kunwar, as the survivors of the father at the time of the claim. The defendant set up the plea that the plaintiff was a wealthy woman whilst she, the defendant, was very poor. She thereby invoked the statement of law recorded in the Mitakshara to the effect that the sister who is 'unprovoked for,' shall take precedence over the sister who is 'enriched.' The learned Subordinate Judge took the view that the action should fail on the ground that the plaintiff was a rich woman; that the defendant was a very poor woman and that the authority of the Mitakshara gave to the defendant the right to succeed to the whole of the father's estate. This appeal raises two questions, one is a question of fact, the other is a question as to whether on the text of the Mitakshara the defendant has correctly described her sister as a wealthy one. We have been taken through the evidence of the means of the defendant, and we are of opinion

that she has correctly described herself. Compared with the position of the defendant, the position of the plaintiff is rightly described as that of a wealthy woman. It was suggested in argument to us that you must construe the text of the Mitakshara and the words 'enriched daughter' as meaning a daughter definitely provided for either by a document, such as a will, or by having been definitely invested with property in her own right by some other method, gift or something in the nature of a settlement. We have been referred to several cases, the first one of which was that of *Oudh Kumari v. Chandra Dai* (1880) 2 All. 561. In that case it was held that the only criterion was the comparative poverty. But it has been pointed out to us that in that case the rich daughter had at the time of marriage a valuable estate made over to her and, therefore, she was an enriched daughter in the sense that she had acquired property in her own right as apart from her general expectations of property and generally rich surroundings. A few years later that was followed by *Danno v. Darbo* (1882) 4 All. 243. There the rich daughter had acquired nothing by will, had acquired nothing by gift or conveyance, but she was in comparison to her sister a woman who had married into a wealthy family. In that case the Court said, 'the expression' unprovoked for, in contradistinction to the term 'enriched,' must be construed in the sense of 'indigent,' as opposed to 'possessed of means,' irrespective of the sources of provision or non-provision.' Other cases were cited to us, but we need only refer finally to the case of *Totawa v. Basawa* (1899) 23 Bom. 229. That case is a definite authority, which shows that all that has to be regarded is this. If you find a marked difference in the financial position of these sisters, and one of those sisters in straitened circumstances, that is sufficient to bring into operation the authority of the Mitakshara. This case, as all the other ones, has to be looked at from the point of view of comparative poverty of the plaintiff and defendant, and it is not essential that the poor sister should be bound to point some definite acquisition of property by the rich sister. It is sufficient to say that her surroundings are such that she would be regarded as a rich woman. The ordinary case, of course, is that she has married into a family of position and wealth. Taking that as a criterion we are of opinion that the claim of the plaintiff was rightly dismissed, and we dismiss this appeal with costs.