

CALCUTTA HIGH COURT

Sumrun Thakoor

Vs

Chunder Mun Misser

(Mitter and Maclean, JJ.)

19.07.1881

JUDGMENT

Mitter, J.

1. The only question which we reserved for consideration is, whether, under the Mitakshara law, a share is allotted to a wife in a partition of an ancestral property between a father and a son.
2. The question we find is no longer an open one, having been decided on several occasions: see *Mahabeer Persad v. Ramyad Singh*¹ *Laljeet Singh v. Raj Coomar Singh*² *Jodoonath Dey Sircar v. Brojonath Dey Sircar*³ and *Pursid Narain Singh v. Honooman Sahoy*⁴
3. Upon an examination of the Mitakshara itself, we have come to the conclusion that though there is no express text upon the point yet the decisions are in accordance with the principle upon which express texts upon kindred subjects are based. In some of the cases cited above, v. 8 Section 1 chap. I and vv. 1 and 2 Section 7 chap. I are relied upon in support of this proposition of law. ut the first text refers to paternal or father's self-acquired property, and the other texts apply to the case of a partition after the death of the father. But if the mother is entitled to a share in the partition of ancestral property after the death of the father, there is no valid reason why, upon the same principle, she should not get a share when the ancestral property is divided between the father and the son. Moreover v. 2 Section 6 chap. I which applies to the partition of paternal as well as of ancestral property, shows by implication that the proposition of law laid down in these cases is quite in accordance with the view of the author of the Mitakshara. Speaking of the rights of the posthumous son, he says--"The sons being separated from their father, one who shall be afterwards born of a wife equal in class, shall share the distribution. What is distributed, is distribution, meaning the allotments of the father and mother: he shares that; in other words, he obtains after (the demise of) parents, both their portions: his mother's portion, however, only if there be no daughter; for it is declared, that daughters share the residue of the mother's property after payment of her debts."

4. It is clear from this text, that, on the distribution of the ancestral property, a share is allotted to the mother also.

5. The appeal is therefore dismissed with costs.

Cases Referred.

112 B.L.R. 90

212 B.L.R. 373

312 B.L.R. 385

4I.L.R. 5 Cal. 845