

CALCUTTA HIGH COURT

Harish Chandra Roy

Vs

Sheikh Atir Mahmud

(Holmwood and Chapman, JJ.)

07.02.1913

JUDGMENT

Holmwood, J.

1. This appeal arises out of a suit for possession of property which the plaintiff had purchased from one Brojo Nath Das, who in his turn had purchased it from one Ram Krishna Das. Admittedly, the decision of the appeal turns upon the question whether Ram Krishna Das was entitled to this property at the time when he sold it. He was so entitled unless he was excluded from the inheritance to his family estate by the fact of his having become a baishnab.

2. The learned Subordinate Judge held that Ram Krishna Das had totally renounced all connection with worldly affairs; that, therefore, he was excluded from the inheritance and had no title to the property which he sold. On this ground, he dismissed the plaintiff's suit. The learned Subordinate Judge, however, has overlooked the fact that Ram Krishna Das was a Sudra and, therefore, could not, if he wished, enter the orders of yati or sanyasi, the members of which alone are excluded from inheritance to their family estates under the Hindu Law. In the case of *Dharmapuram Pandara Sannadhi v. Virapandiyam Pillai*¹ Subramania Ayyar, J. pointed out that all authorities necessarily and clearly imply that a Sudra can not enter the order of yati or sannyasi and that, therefore, a Sudra who becomes an ascetic is not excluded from inheritance to his family estate unless some usage is proved to the contrary. No sufficient authority has been shown to lead us to the conclusion that the Hindu Law on the subject is otherwise. No doubt, the lower castes have been allowed to enter the monastic orders founded by Ramananda and others in more recent times, and it may be that baishnabs of those orders have adopted customs of inheritance under which although they may have been Sudras by caste, they lose the right to succeed to their own family estates and the inheritance to property left by them devolves according to the rules of the particular order; but no custom of that kind has been proved in the present case.

3. We are of opinion that the Hindu texts applicable to the disinheritance of ascetics do not apply to Sudras and, therefore, had no application in this case.

4. That being so, the plaintiff had a good title. The appeal is allowed. The decree of the Subordinate Judge is set aside and the decree of the Munsif is restored with costs in all Courts.

Cases Referred.

122 M. 302