

*Judgment of the Lords of the Judicial Committee of the Privy Council on the ex parte Appeals of Ghasiti (under guardianship) and Nanhi Jan v. Umrao Jan and another, and Ghasiti (under guardianship) and Nanhi Jan v. Jaggu and Sannu, from the Chief Court of the Punjaub ; delivered the 22nd July 1893.*

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Present :

LORD HOBHOUSE.

LORD MACNAGHTEN.

SIR RICHARD COUCH.

[*Delivered by Lord Hobhouse.*]

These suits relate to the inheritance of a woman named Bando Jan who died in August 1879 leaving a substantial property. Her father Ali Bakhsh and his children professed the Mahomedan religion. She had no issue and she survived her parents. Her heirs according to Mahomedan law were her two brothers, Jaggu and Sannu, who are Respondents in the second appeal, and her four sisters, Amir Jan (now represented by Umrao Jan) and Ilahi Jan, who are Respondents in the first appeal, Nanhi Jan who is one of the Appellants in both appeals, and Banno Jan; and as between them the inheritance would be divided into eight shares, each brother taking two shares and each sister one.

Banno brought a suit and obtained a decree in February 1880 for one-eighth share; and she is no party to the present litigation.

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In the year 1882 the two brothers, Jaggu and Sannu, the two sisters Amir and Ilahi, and a woman called Imaman, sued the remaining sister Nanhi who had got into possession of the property. They alleged that, Banno being satisfied, the remaining property was divisible into six shares, of which Nanhi was entitled to one, and each of the five Plaintiffs to one. They made out their claim as follows. All the parties to the dispute belong to the people (in the translated plaint it is called the tribe) of Kanchans. In that tribe the business of brothel-keeping and prostitution is carried on by families or communities who are recruited by adoption. Bando left her own family to be adopted by one Dildara who was the head of another establishment of the same kind. She succeeded to Dildara's property; and as Dildara was dead, and her brothel had ceased to have any members except Bando herself, on Bando's death her estate was distributable according to the custom of the Kanchans, which, it was alleged, would carry it to the family heirs of Bando, and to Imaman the sister of Dildara in equal shares. It is obvious that such a claim is full of difficulty and apparent inconsistencies in itself, but it was made.

After a while the brothers reconsidered their position. They determined to assert a claim under the common law of Mahomedans, by which they would take larger shares than under the custom of Kanchans. Thus their interests became adverse to those of their sisters, and they could no longer be co-plaintiffs. They procured orders under which they were made defendants instead of plaintiffs. And they instituted a suit of their own, to enforce their claim against their three sisters. That is the second suit in which an appeal is brought. These matters of procedure have no importance except for the reason that the institution of the brothers'

suit is objected to as irregular. The Chief Court have held it to be regular, and their Lordships have declined to hear the appeal on this point argued. The decree complained of can be made as properly in the suit where the brothers are defendants as in that where they are plaintiffs, and the objection is based on a technicality without any practical bearing.

The substantial defences of Nanhi were, first that Ghasiti was the adopted daughter and also the legatee of Bando; and secondly that as Bando had been adopted by Dildara, no right of inheritance could devolve on the plaintiffs either by Mahomedan law or by custom (Rec. p. 136). The allegations respecting Ghasiti were negatived by both Courts; so that the only questions which remained for them were whether the plaintiffs could claim any inheritance, and if so in what shares. Imaman was discharged from the suit, and died before the hearing. The contest therefore was between the two sisters claiming customary shares, the two brothers claiming shares by common law, and the third sister contending that none of her father's family had any claim at all.

It is quite clear that there was no adoption under any general Indian Law. Adoption is not known to the general law of Mahomedans, and adoption of girls is not known to the general law of Hindoos. If there was adoption, it could only have been under some local, tribal, or family custom, which must be proved by those who allege it. Accordingly a great deal of evidence was given to prove the customs of the Kanchans. The two Courts are in accord as to the result, a portion of which their Lordships will now re-state (Rec. pp. 103, 104, 121.)

It appears that each family or community live a cenobitical, quasi-corporate, life in what the learned Judges call the family brothels. All

the members, including males, are entitled to food and raiment from the business, the males living a life of idleness at the expense of the females. There is no such thing as separate or individual succession upon death. All the members succeed jointly. No division or partition is allowed, for that would break up the establishments, and the witnesses say that the lamp should be kept burning in the house. A member of a family brothel who leaves it does so with only her clothes on her back and nothing more. The body is recruited by adoption. A girl is brought in as the adopted daughter of a female member of the institution, and the girl thus adopted is regarded as having ceased to belong to her own family.

That Bando was adopted by Dildara according to the custom, there seems to be no doubt, if indeed there was any dispute. Whether she thereby acquired a right of inheritance according to the custom is a question which does not arise in this suit. She joined Dildara's establishment, and on Dildara's death became its head, took the property there, and increased it by her own earnings. But the suit relates entirely to the succession from Bando, it raises no question as to the succession from Dildara to Bando, nor has anybody made any claim adverse to Bando in respect of property belonging to Dildara, or in respect of any property possessed by Bando at her death. The question is how that property is to devolve, and how Bando got it is immaterial.

The two Plaintiff sisters contend that Bando held the property as head of the brothel into which she had been adopted. By what process they claim that it passed to them and the other Plaintiffs is, as above intimated, not easy to understand. The Defendant sister is more logical. Agreeing that Bando was adopted by Dildara, she says that the adoption severed Bando

completely from her own natural family. That certainly is the effect of adoption by Hindu law, and the evidence shows that it is the same according to Kanchan custom. A distinct issue on the point was settled and decided by the First Court.

On this issue the District Judge found as follows:—" Upon the custom as above stated " no question can arise as to Mussammat Bando " Jan having ceased to be a member of her " natural family by being adopted by Mussammat " Dildara. The adoption (if proved) really was " for the purpose of succession to Dildara's family " brothel, and in this way Mussammat Bando " Jan ceased to be a member of the brothel of " her natural family, and ceased to have any " claim therein." But he stated his view of the law to be that all these rules and customs of the Kanchans aim at the continuance of prostitution as a family business, that they have a distinctly immoral tendency, and should not be enforced in Courts of Justice. He therefore held that the whole transaction was null and void, that there was no severance of Bando from her family, and that her property must be distributed according to Mahomedan law.

The Chief Court expressly abstain from pronouncing any opinion on the question whether the adoption of a girl by a prostitute at the head of a brothel gives that girl any legal rights in the property of the institution. They sum up the case thus:—" As to the custom of " inheritance, there is none applicable. It is " clear that Mussammat Bando Jan left the " family brothel of Ali Bakhsh, and no question " arises as to succession to Mussammat Bando Jan " as a member of that institution. She was " the last survivor of the brothel of which she " became a member under Mussammat Dildara, " and no question arises of succession to her as a " member of that brothel."

Their Lordships are disposed to think that is a sound conclusion ; and if so, it would suffice to settle the controversy between the Plaintiff sisters and their brothers. But it does not cover the whole ground. If the custom is valid, what answer is there to the Defendant sister's contention that Bando's natural family could not inherit from her after her adoption by Dildara ?

13. Their Lordships have no hesitation in affirming the law as laid down by the District Judge. In the case of Hindoos there are stronger grounds for maintaining that practices of prostitution are related to worship in the temples, and meet with countenance from the law. But even in the case of Hindoos great difficulties have been felt by Courts of Justice in admitting the validity of transactions intended for the furtherance of prostitution. See the case of *Mathura Naikin v. Esu Naikin* (I. L. R. 4 Bombay, 545), and the authorities there referred to. And as regards Mahomedans, prostitution is not looked on by their religion or their laws with any more favourable eye than by the Christian religion and laws.

Mr. Baillie's valuable Digest of Mahomedan Law opens thus:—"The intercourse of a man with a woman who is neither his wife nor his slave is unlawful, and prohibited absolutely. When there is neither the reality nor the semblance of either of these relations between the parties, their intercourse is termed *zina*, and subjects them both to *hudd*, or a specific punishment for violating the laws of Almighty God." The statement is quite justified by the authority of the Hedaya, Lib. VII., caps. 1, 2, and 3, according to which the practice of *zina* is held up to reprobation, and is punishable in ways which would now be considered as savage and cruel. Indeed the most venerable of all authorities, the Koran itself, though not going

so much into detail as the Hedaya, forbids harlotry under severe penalties, see caps. 4 and 24 of Sale's Translation. It seems to their Lordships impossible to say that such customs as are proved in this case to exist among the Kanchans are not contrary to the policy of the great religious community to which the Courts have found that all the parties belong.

A minor point in the case relates to certain moveable property which appears to have been stolen after the commencement of litigation by Banno. The Courts below have concurred in thinking that Nanhi had the property in her possession, and therefore is responsible for the loss, and their Lordships consider that it would not be proper to disturb concurrent decisions on such a point. The result is that both appeals should be dismissed, and their Lordships will humbly advise Her Majesty to this effect.

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