APPELLATE CIVIL.

Before Mr. Justice Innes and Mr. Justice Forbes.

1879. November 6.

SRI'NIVA'SA A'YYANGAR (DEFENDANT), APPELLANT, *v.* RENGASA'MI A'YYANGAR AND OTHERS (PLAINTIFFS), RESPONDENTS.*

Hindú law—Sister's son, succession by.

A sister's son does not succeed as a Sapinda.

IN this case Sámi Áyyangar having died without issue in 1862, his estate was inherited by his widow and mother in succession. Upon the death of the latter the defendant, who was her grandson, being the son of Sámi's sister, was left in possession of the estate.

The plaintiffs claimed to inherit before the defendant on the ground that they were nearer heirs.

Sámi was the great-grandson of the original ancestor Virarágava through his second son Shésha, and the plaintiffs were the sons of Appana, the great-grandson of Virarágava through his eldest son Venkatésa.

The Múnsif holding that a sister's son stands in the line of heirs next after a brother's son, dismissed the suit, but this decision being reversed on appeal, and the case remanded for trial of the other issues in the suit, finally held that plaintiffs were Sapindas of Sámi and decreed in their favor.

The defendant appealed to the Subordinate Court and then to the High Court.

V. Bháshyam Áyyangar and *S. Gopalachári* for the Appellant.

M. Parthasáradi Áyyangar for Respondents.

The Court (INNES and FORBES, JJ.) delivered the following

JUDGMENT.—We reserved judgment in this case both because the question was one of Hindú law in which it was necessary to refer to the authorities, and because there was another judgment in an important case in this Court pending at the date of the

* S.A. 480 of 1878 against the decree of the Subordinate Judge of Cuddalore confirming the revised decree of the District Múnsif of Chellambaram, dated April 17, 1878.

argument which it was thought might have a bearing upon some of the points raised by the vakíl for the appellant (the defendant) in the second appeal.

It was admitted before us as it was admitted by the defendant in his examination as a witness that the plaintiffs are related as Sapindas to the deceased Sámi Áyyangar, as heirs to whose property they claim to succeed in priority to Srínivása Áyyangar, the defendant, who is the son of the sister of the deceased.

The old argument founded on the alleged meaning of the word 'brothers' in Section 4, Chapter II of the Mitákshará was again addressed to us and the 118th and 212th slokas of the 9th Chapter of Menu were quoted in support of the view that 'brothers' includes 'sisters.'

It was urged that the decision in *Thakoorain Sahiba* v. *Mohan Lal*,(1) which was delivered by the Judicial Committee of the Privy Council in 1867, ought not to be pressed against the defendant because the case was decided without argument. That is a direct decision that a sister's son is not a Sapinda, and it is a mistake to say that the appeal as to that point was decided without argument. What was decided without argument in that case was that a sister's son could not succeed as a Bandhu. The learned Counsel who then argued the case of the appellant gave up the point of the claim to succeed as a Bandhu, but maintained the right of a sister's son to succeed as a Sapinda. After the decision in appeal to the Privy Council from the High Court of Calcutta in *Girdari Lal* v. *The Government of Bengal*,(2) which was founded in part upon the decision of a division of Bench of the High Court of Calcutta in the case of *Amrita Kumari* v. *Lakhi Narain*, a case which afterwards received a still fuller discussion before a Full Bench and is reported in 2 B.L.R.F.B., 28, the view that a sister's son could not succeed as a Bandhu could no longer be maintained, and in a case reported at Vol. VI, p. 278 of the Madras High Court Reports, it was distinctly held that a sister's son does inherit as a Bandhu in the Madras Presidency.

But the case of *Thakoorain Sahiba* v. *Mohan Lal*(1) is still an authority for the position that a sister's son does not succeed as a Sapinda, and the view taken in that case by the Judicial

(1) 11 M.I.A., 386. (2) 12 M.I.A., 448.

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Committee after argument receives support from the more recent expressions of opinion of the learned Mr. Justice Devarkanath Mitter in the cases of *Girdari Lal* v. *The Government of Bengal*(1) and *Amrita Kumari* v. *Lakhi Narain*,(2) already referred to, that though he is a Sapinda for certain special purposes, he does not succeed as a Sapinda. We must treat the question, therefore, as one which is already concluded by authority and must hold that plaintiffs are the nearer heirs according to Hindú law, and must therefore affirm the decision of the Lower Appellate Court and dismiss the appeal with costs.

APPELLATE CIVIL.

Before Mr. Justice Innes and Mr. Justice Forbes.

1879. November 7.

KRISHNAMMA (PLAINTIFF), APPELLANT, *v.* ACHAYYA AND ANOTHER (DEFENDANTS), RESPONDENTS.*

Suit for land—Order of Demarcation Officer—Grant of pattá by Collector—Limitation.

Plaintiff in 1877 claimed possession of land which had been demarcated as poramboke in 1860, and of which a pattá had been granted to defendant in 1875 by the Collector.

Held, that this suit was not governed by Article 16, Schedule II of Act IX of 1871, as it was not necessarily a suit to set aside an official act.

IN this case plaintiff sued in 1877 to establish his title to 1·82 acres of land, which fell to his share on partition with his uncle Vencata Reddi, and to recover possession thereof.

The defendant contended that the land sued for was not included in Vencata Reddi's pattá, but was classed as poramboke at the time of demarcation in 1860, and in 1875 was assigned by the Collector to the defendant.

The Collector was made second defendant in the suit.

The Múnsif decreed for the plaintiff.

The first defendant appealed.

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(1) 12 M.I.A., 448. (2) 2 B.L.R.F.B., 28.

* S.A. No. 99 of 1879 against the decree of J. Kelsall, District Judge of Kistna, reversing the decree of the District Múnsif of Guntúr, dated 28th October 1878.