

SIVABANKARA
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expend any part of the temple moneys on the maintenance of his mother and sister or for any other purposes than those of the temple, and further that, if within one month from the same date, the appellant do pay the sum of Rs. 110 into the District Court, this appeal be allowed and the decree of the District Court be reversed except as to costs, and the suit dismissed. On the appellant's making default in filing the abovementioned undertaking or paying the money into Court as required, the appeal will stand dismissed. In either event, the appellant must pay the costs of this appeal.

APPELLATE CIVIL.

Before Mr. Justice Wilkinson and Mr. Justice Shephard.

NARASIMMA (DEFENDANT), APPELLANT,

v.

MANGAMMAL (PLAINTIFF), RESPONDENT.*

Hindu law—Inheritance—Mother's brother—Father's sister.

According to the Hindu law current in the Madras Presidency, the father's sister is not entitled to inherit in preference to the mother's brother.

Semle: per Wilkinson, J.—The father's sister is a bandhu.

APPEAL against the decree of G. D. Irvine, Acting District Judge of Coimbatore, in original suit No. 25 of 1887.

Suit to establish the plaintiff's right as heir to one Ellama Naik (deceased) and to recover from the defendant the amount collected by him under an heirship certificate. The plaintiff was paternal aunt and the defendant was maternal uncle of the deceased. The Acting District Judge held that the plaintiff was a nearer heir than the defendant, on the ground that she was a bandhu *ex parte paterna*, and accordingly passed a decree in favor of the plaintiff.

The defendant preferred this second appeal.

Bhashyam Ayyangar and *Ramachandra Ayyar* for appellants.

The plaintiff has obtained a decree on the ground that she is a bandhu *ex parte paterna*. If she could be entitled to inherit, it would be as a sapinda and not a bandhu; but, in the right view of the law, she is not an heir at all, and in any case she cannot come

* Appeal No. 169 of 1888.

in before the defendant or until the male heirs are exhausted. In the enumeration of bandhus in Mitakshara, chap. 11, s. 6 (see Mayne's Hindu Law, 4th edition, § 472), a son of either the plaintiff, the father's sister, or the defendant, the mother's brother would have been expressly included as "own cognate kindred." Neither paternal aunt nor maternal uncle comes within the terms of that enumeration, but the latter is really included and elsewhere he appears as a specified bandhu.

In *Lakshmanammal v. Tiruvengada* (1) the contest was between a sister and sister's son; but the decision, which was in favor of the latter, did not involve a decision that a sister was in the line of heirs: the Court said if that matter had to be decided, a reference to the Full Bench would have been necessary. But in any view that decision is inapplicable here, for the sister being mentioned in certain texts, and some commentators including "sister" in "brother," and Manu, chap. IX, 211, 212, giving her certain special rights, there are indications that she has a right to inherit (though not so clear as those with regard to a widow or daughter), whereas there are none as to the father's sister.

In the scheme of the Mitakshara—*sagotras* come first, then *samonadakas* who are still of the same *gotra*, and then *bandhus* who are not of the same *gotra*. Among *sagotra sapindas* are inserted some female relations—wife (regarded in Bombay as a *sagotra*, because the wife of a *sapinda*), mother and great-grandmother. Then among the *bandhus* (who are enumerated in the Mitakshara by way of illustration merely) appear the offspring of a female *sapinda* with a male of a different *gotra*. The father's *gotra* is of course the *gotra* of the son, who is accordingly called *binna gotra sapinda*, because he is the offspring of persons of two *gotras*, and this would appear to be the true definition of a *bandhu* and explains his being postponed as such to *samonadakas* of fourteen degrees of remoteness.

(*Shepherd, J.*—Your conclusion then is that the maternal uncle is a bandhu, because the mother's mother is a *sapinda* who marries into a different *gotra*?)

Yes; and it is also a fact to be noticed with reference to the enumeration in the Mitakshara that it gives only the extreme limits of the relationship—mentioning the sons, not the father.

(1) I.L.R., 5 Mad., 241.

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But the maternal uncle is specified as a bandhu in the *Vira-nitrodaya*, translated in *Amrita Kumari Debi v. Lakhinarayan Chuckerbutty*(1).

As to the claims of the father's sister, see *Mari v. Chinnammal*(2), where, after discussing the Bombay rule that a mother is a *gotraja sapinda* because of her marriage into the *gotra*, the Full Bench decided practically that a stepmother is not a bandhu or an heir at all, because "mother" does not include "stepmother," and *Mattusami Ayyar, J.*, said he did not think that all female *sapindas* are to be recognized as heirs in this Presidency. The exclusion of females to its full extent is exemplified and explained in that case and also in *Krishnayya v. Pichamma*(3), *Gauri Sahai v. Rukko*(4). The Judge is wrong in attaching so great importance to the fact that the plaintiff is related through the father and the defendant through the mother; the maternal uncle comes under "own kindred" and so would the paternal aunt if she could come in at all.

Subramanya Ayyar and *Mahadeva Ayyar* for respondent.

Neither party comes under the expressions employed in the *Mitakshara* enumeration of bandhus, and there is no decided case precisely in point, but *Amrita Kumari Debi v. Lakhinarayan Chuckerbutty*(1) proceeds on the view that it would be absurd to hold that where sons are bandhus the parents would not be bandhus. It is admitted that a sister is a bandhu, and by parity of reasoning a paternal aunt would be one too; and as she is among paternal kindred, she would necessarily be a preferable heir to any maternal kindred. See also Stokes' *Hindu Law Books*, p. 447, as to *Mitakshara*, chap. II, s. 5, cl. 5.

WILKINSON, J.—The question for determination in this appeal is—who is entitled to succeed to the property of the deceased minor, his father's sister (plaintiff), or his mother's brother? The Lower Court has decided in favor of the paternal aunt, on the ground that she is a bandhu, and that the father's kindred have in Hindu Law a preference over the kindred of the mother.

On appeal it is argued (1) that the paternal aunt is not a bandhu; (2) that if it be held that the father's sister is a bandhu and in the line of heirs, she will come in only after all male heirs

(1) 2 B.L.R., F.D., 42.

(3) I.L.R., 11 Mad., 297.

(2) I.L.R., 8 Mad., 167.

(4) I.L.R., 3 All., 45.

are exhausted; and (3) that the maternal uncle, being a specified bandhu, comes in before the paternal aunt.

The position of the maternal uncle as a bandhu was recognized by the Privy Council in the case of *Gridhari Lall Roy v. The Bengal Government*(1). Their Lordships relied on a passage written by the author of the *Mitakshara*, though not to be found in that portion of the *Treatise* translated by Colebrooke, and on a passage of the *Viramitrodaya*, and were of opinion that the enumeration of bandhus in the text of *Mitakshara*, chap. II, s. 6, is illustrative and not exhaustive. The passage in the *Viramitrodaya*, with reference to the said enumeration, is as follows:—

“The term cognate (bandhu) in the text of *Yagnavalkya* “must comprehend the maternal uncles and the rest, otherwise “the maternal uncles and the rest would be omitted, and their “sons would be entitled to inherit and not they themselves “though nearer in the degree of affinity, a doctrine highly objectionable.”

The words “and the rest” must, I think, apply to “father’s sister,” “mother’s sister,” and the others whose sons are enumerated in the passage in the *Mitakshara* together with the maternal uncle. It follows, therefore, that the same passages, which are an authority for classing the maternal uncle among the bandhus, support the claim of the maternal aunt to be recognized as a cognate or bandhu. But then we must hold on the authority of *Lakshmanammal v. Tirucengada*(2) that, in virtue of the rule excluding the females in favor of preferential male heirs, the claim of the maternal uncle is superior as bandhu to that of the father’s sister.

The decree of the Lower Court must be reversed and the suit dismissed with costs throughout.

SHEPHERD, J.—The question in this appeal is—who is the nearer heir to one Ellamma Naik deceased: his father’s sister, the plaintiff, or his mother’s brother, the defendant? There is no doubt that the latter being maternal uncle of the deceased has a place among his heirs. The maternal uncle and his nephew stand in the relation of bandhus to each other, and, as such, either inherit to the other in the absence of preferable heirs, *Gridhari Lall Roy v. The Bengal Government*(1), *Amrita Kumari Debi v.*

(1) 12 M.L.A., 448.

(2) I.L.R., 5 Mad., 241.

NAFASIMMA *Lakhinarayan Chuckerbutty*(1), *Krishnayya v. Pichamma*(2). The
 F. question here is whether the father's sister is a preferable heir?
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The District Judge has ruled that she is entitled to inherit as a bandhu, and that, as the father's kindred are to be preferred to the mother's, she ranks as an heir above the maternal uncle. There is no doubt that in this Presidency the father's sister cannot, any more than a man's own sister, claim a place as his heir among his samanagotra sapindas. Any distinction that may be made between a man's own sister and his father's sister, must be in favor of the former, for, whereas there is a text recognizing the former, no text expressly recognizing the father's sister has been cited. *Rayaningaru v. Venkata Gopala Narasimha Rau*(3), *Lakshmanammal v. Tiruvengada*(4). It has been decided in this Court that while a sister had some place in the line of inheritance, she should be postponed to a sister's son (*Lakshmanammal v. Tiruvengada*(4)) and the principle on which this decision is rested is that in the Mitakshara, except where females are specially mentioned, the rule is that priority is given to male heirs. There is authority for the larger proposition that succession under the Mitakshara is not open to any females other than those specially mentioned (*Gauri Sahai v. Rukko*(5), *Mari v. Chinnammal*(6), *Mandlik*, p. 365). It was suggested that as a son of a father's sister is mentioned among the cognates related to the man himself (Mitakshara, chap. II, s. 6), his mother must equally be a bandhu of the same class. Not to mention the circumstance that the enumeration of bandhus, although not exhaustive, includes no females, this argument is obviously fallacious as there are numerous cases in which the offspring of a female parent has rights which that parent would not have. *Rayaningaru v. Venkata Gopala Narasimha Rau*(3) and Mayne's Hindu Law, 4th edition, §. 492. Adopting the principle mentioned above (*Lakshmanammal v. Tiruvengada*(4)), I think that as it cannot be shown either by texts or decided authority that the father's sister has a place in the line of succession above that of a man's own bandhu, the right of the latter being an undoubted male heir must prevail.

For these reasons I think the plaintiff's claim has failed and would dismiss the suit with costs.

(1) 2 B.L.R., F.B., 28.

(2) I.L.R., 11 Mad., 287.

(3) G.M.H.C.R., 278.

(4) I.L.R., 5 Mad., 241.

(5) I.L.R., 3 All., 45.

(6) I.L.R., 8 Mad., 107.