APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Shephard.

SETHURAMA (PLAINTIFF NO. 2), APPELLANT,

and

PONNAMMAL AND OTHERS (DEFENDANTS), RESPONDENTS.*

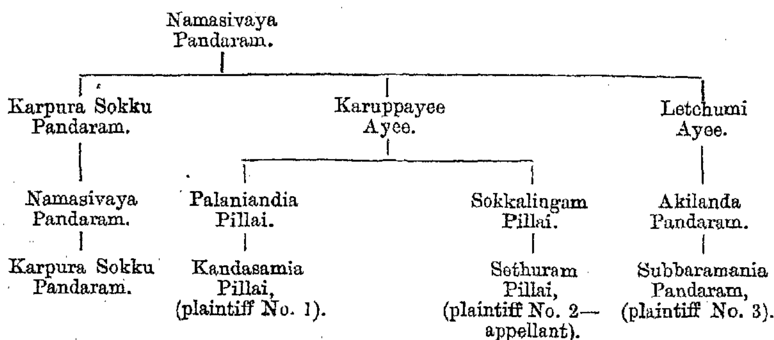
1888.
Dec. 4, 18.

Hindu Law—Succession—Bandhu—Paternal great aunt's grandson.

According to the Hindu Law of Succession in force in the Madras Presidency, the grandson of a paternal great aunt of the deceased inherits to him as a bandhu.

SECOND appeal against the decree of S. Gopalacharyar, Subordinate Judge of Madura (East), in appeal suit No. 139 of 1887, affirming the decree of P. S. Gurumurthi Ayyar, District Munsif of Madura, in original suit No. 77 of 1886.

This was a suit to declare the plaintiffs entitled to receive Rs. 2,300, the amount of compensation awarded under the Land Acquisition Act, Act X of 1870, on the assumption of certain land by Government. The plaintiffs claimed as heirs to one Karpura Sokku Pandaram the younger, with whom they were connected in the manner displayed by the following pedigree:—



The defendants set up title to the land in question on various grounds and pleaded, *inter alia*, that even if the plaintiffs were related to the last holder as alleged they could not succeed as his heirs under Hindu Law. The District Munsif adopted this

* Second Appeal No. 133 of 1888.

SETHURAMA v. PONNAMMAL.

view of Hindu Law and dismissed the suit. On appeal the Subordinate Judge affirmed the decree of the District Munsif, saying:

"The preliminary point argued before me is whether the plaintiffs are the heirs to the alleged last male-holder. As already stated, plaintiffs' relationship to him is that of son's son of father's paternal aunt. The father's paternal aunt's son is no doubt a *bandhu*, but his son is not. See Mayne on Hindu Law(1), West and Bühler's Digest of Hindu Law, p. 488; Sarvadhikari's Hindu Law of Inheritance (Tagore Law Lectures for 1880), pp. 696 to 706. *Kissen Lala* v. *Javallah Prasad Lala*(2). The plaintiffs have therefore no title."

Plaintiff No. 2 preferred this second appeal to the High Court.

Kalianaramayyar for appellant.

Subramanya Ayyar for respondents.

The Court (Collins, C.J., and Shephard, J.) delivered the following

JUDGMENT:—The only question raised in this appeal is whether the appellant is, according to Hindu Law, the heir of the last male-holder, Karpura Sokku Pandaram. The relationship between the latter and the appellant is as follows:—

The deceased Karpura is great-grandson in the male line of the common ancestor, Namasivaya, while the appellant is the daughter's grandson of the same person. In other words he is a grandson of the paternal great aunt of the deceased Karpura. The Sub-Judge has held that standing in this relation to the deceased he is not his *bandhu*. We are of opinion that the appellant, being within seven degrees of the deceased on his father's side, was his sapinda. He does not belong to the same *gotra*, because a female intervenes, viz., the appellant's grandmother, but he is what is called a *bhinna gotra sapinda* or *bandhu*. The contrary opinion, maintained by the Subordinate Judge and contended for by the respondents, is based on the assumption that the examples of *bandhus* given in the commentaries are exhaustive and not merely illustrative. It is now clearly established that this assumption is erroneous, and that if any one comes within the definition of *bandhu*, though not specially named, he is entitled to succeed as such. It is sufficient to refer to a case which was not cited—*Ratnasubbu* v. *Ponnappa*(3), in which referring to the Privy Council decision(4) this Court

(1) See 4th ed. §§ 464 *et seq*. (2) 3 M.H.C.R., 346. (3) I.L.R., 5 Mad., 69.
(4) *Girdhari Lall Roy* v. *The Bengal Government*, 12 Moo. I.A., 448.

Sethurama v. Ponnammal.

held that the grandson of the maternal uncle of the deceased's mother was entitled to succeed as a bandhu *ex parte maternâ*. The decree of the Subordinate Judge must be reversed and the case remanded to be disposed of according to law. Costs to be provided for in the revised decree.

APPELLATE CIVIL.

Before Mr. Justice Kernan and Mr. Justice Wilkinson.

1888. Dec. 10, 11, 12.

NARASIMHA AND ANOTHER (PLAINTIFFS), APPELLANTS,

AND

AYYAN CHETTI (DEFENDANT), RESPONDENT.*

Civil Procedure Code, s. 539—Interest necessary to support a suit under—Suit to remove a trustee.

The plaintiffs, having an interest as the managers of a temple in seeing to the due performance of the religious part of the administration of a certain charity endowed for the sustenance of Brahmans and connected with the temple, and being further interested in its administration as Brahmans entitled under certain circumstances to share in the benefits of the charity; sued under s. 539 of the Code of Civil Procedure to remove defendant from the trusteeship of the charity on the ground of fraudulent mismanagement:

Held, that the plaintiffs' interest did not support the suit.

Quære: Whether a suit for the removal of a trustee will lie under the above section.

APPEAL against the decree of J. A. Davies, Acting District Judge of Tanjore, in original suit No. 2 of 1885.

This was a suit by the plaintiffs praying for the removal of the defendant from the office of trustee of a certain charity endowed by one Kuthan Chetti for sustenance of Brahmans, and for the appointment of the plaintiffs as trustees.

The plaintiffs, who are Brahmans, stated that they were the hereditary adhinakartas of the temple in question, and had by inheritance a certain precedence in the temple ceremonies; that the charity referred to above was dispensed in a choultry attached to the temple and that the defendant who was appointed trustee by the deeds of endowment had been guilty of fraudulent mis-

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* Appeal No. 160 of 1887.