CHINNAMMAL v. VENKATACHALA.

parents of Kuppusami's mother, who are related through a female. It is argued here that, in virtue of the rule excluding females in favour of male heirs, the maternal grandfather has the preference—*Narasimma* v. *Mangammal*(1). On the other side, it is contended that the father's sister comes in under the father's brother, as the sister is included in the term brethren. This construction of the text of the Mitakshara has not been approved by commentators and has been rejected by the Privy Council—*Thakoorain Sahiba* v. *Mohun Lall*(2). A father's sister cannot be a gotraja sapind, because as soon as a female marries, she passes into a different gotra, but she is a bandhu, and the son of the paternal aunt ranks higher than any maternal bandhu (Mayne, § 535, fourth edition); but it does not follow that his mother is a bandhu of the same class. The son takes by his own independent merit, not through her (Mayne, § 492). The maternal uncle has been recognized as a bandhu (*Gridhari Lall Roy* v. *The Bengal Government*(3)) and the maternal grandfather ranks higher than the maternal uncle. (See Mayne, § 535, and *Krishnayya* v. *Pichamma*(4)). His right therefore as an undoubted male heir must prevail over that of the paternal aunt. The decrees of the Lower Courts must be reversed and the suit dismissed with costs throughout.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.

1892. February 29.

RAGHUPATI (DEFENDANT No. 2), APPELLANT,

v.

TIRUMALAI (PLAINTIFF No. 1), RESPONDENT.*

Hindu law—Suit by reversioner to establish invalidity of a sale by a widow—Daughter of last male holder not joined.

Under the Hindu law obtaining in the Madras Presidency a reversioner is entitled to sue to establish the invalidity of a sale by the widow of the last male holder, notwithstanding the fact that he left a daughter, who was alive at the date of suit, but was not joined as a party.

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(1) I.L.R., 13 Mad., 10. (2) 11 M.I.A., 386. (3) 12 M.I.A., 448.
(4) I.L.R., 11 Mad., 287. * Second Appeal No. 1428 of 1891.

SECOND APPEAL against the decree of W. R. Weld, District Judge of Kurnool, in appeal suit No. 2 of 1891, affirming the decree of D. Venkoba Rau, District Munsif of Markapur, in original suit No. 47 of 1890.

Suit to declare the plaintiffs' title as reversioners to certain land, the property of the husband (deceased) of defendant No. 1, and to declare a sale-deed executed in respect of it by defendant No. 1 to defendant No. 2 on 15th November 1881 to be void as against the plaintiffs.

The plaintiffs claimed to be the nearest sapinda gnatis of the late husband of defendant No. 1, who died, leaving a daughter, his only child. The daughter was not a party to the suit.

The District Munsif struck the name of the second plaintiff off the record and passed a decree as prayed in favor of plaintiff No. 1, and this decree was affirmed on appeal by the District Judge.

Defendant No. 2 preferred this appeal.

Subramanya Ayyar for appellant.

Ranga Rau for respondent.

JUDGMENT.—The only question argued before us is whether first plaintiff was entitled to maintain the suit notwithstanding the existence of the daughter of Appala Reddi, the last male owner, and our attention has been drawn to *Rani Anund Koer* v. *The Court of Wards*(1). That case decided that the party entitled to sue is, as a general rule, the nearest reversionary heir. No question then arose as to whether the existence of a daughter while the property was in possession of the widow would bar a suit by the next male reversioner. The other decisions to which we are referred are *Bhikaji Apaji* v. *Jagannath Vithal*(2), *Madari* v. *Malki*(3), *Balgobind* v. *Ramkumar*(4) and *Raghu Nath* v. *Thakuri*(5). The decision in *Balgobind* v. *Ramkumar*(4) is a clear authority against the appellant's contention, and we agree with the conclusion at which the learned Judges arrived therein. An estate taken by a daughter being a qualified heritage like that of a widow, we see no reason why the existence of a daughter should bar a suit by a reversioner any more than would the existence of a co-widow.

(1) L.R., 8 I.A., 14. (2) 10 Bom. H.C.R., 351. (3) I.L.R., 6 All., 428.
(4) I.L.R., 6 All., 431. (5) I.L.R., 4 All., 16.

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In the other cases referred to this point did not arise, or was not so fully considered. Such suits are allowed for the purpose of enabling the reversioner to protect his interest against alienations made by persons in possession with a limited interest. We are of opinion that the appeal must fail and we dismiss it with costs.

APPELLATE CIVIL.

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

1892. January 4, 5. March 2.

THE MOST REVEREND JOSEPH COLGAN AND ANOTHER (DEFENDANTS NOS. 4 AND 5), APPELLANTS,

v.

ADMINISTRATOR-GENERAL OF MADRAS AND OTHERS (PLAINTIFF AND DEFENDANTS NOS. 1—3), RESPONDENTS.*

Perpetuities, rule against—Superstitious uses—Trust for masses—Executor, assent of—Vesting of bequest.

An Armenian died in Madras in 1836, leaving a will whereby she appointed executors and bequeathed a certain sum "that the income thereof be given for perpetual masses for the benefit of my soul and for the souls in purgatory," and she also bequeathed, *inter alia*, Rs. 42,000 to her grand-daughter for life and provided that in the event of her marrying and having children she could bequeath to them the said Rs. 42,000, but in the event of her dying without issue, Rs. 14,000 out of the said Rs. 42,000, should be subtracted and given to her husband, and the remaining Rs. 28,000 should be added to the first-mentioned bequest and the income thereof be similarly given for masses. The executor with probate gave effect to the first-mentioned legacy. By a settlement made in contemplation of the marriage of the grand-daughter, the subject of the second legacy was settled as provided in the will except as to the Rs. 14,000, as to which it was declared that in the event of there being no issue of the marriage, and of the wife surviving the husband and dying without marrying again, it should be divided between the residuary legatees of the testatrix. The husband was a party to the settlement, as also was the executor of the testatrix who was one of the trustees of the settlement. The marriage having taken place, a suit was brought by the husband and wife against the trustees, and a decree was passed under which the trustees were relieved of their office, and the trust funds paid into Court with the direction that interest accruing thereon be paid to the wife until further order. The husband died without issue and subsequently in 1890 the wife died not having re-married. The Administrator-General of Madras took out letters of administration to administer the estate left

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* Appeal No. 22 of 1891