

## APPELLATE CIVIL.

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

CHINNAMMAL AND ANOTHER (DEFENDANTS), APPELLANTS,  
v.

VENKATACHALA (PLAINTIFF), RESPONDENT.\*

*Hindu law—Inheritance—Paternal aunt—Maternal grandfather.*

Under the Hindu law obtaining in the Madras Presidency, the maternal grandfather of a deceased Hindu succeeds to him in preference to his paternal aunt.

SECOND APPEAL against the decree of H. H. O'Farrell, Acting District Judge of Trichinopoly, in appeal suit No. 24 of 1889, modifying the decree of V. Swaminatha Ayyar, Additional District Munsif of Trichinopoly, in original suit No. 123 of 1888.

Suit on a hypothecation bond, dated 22nd December 1886, and executed by one Rangammal (deceased) in favour of the plaintiff.

The last male holder of the land, the subject of the hypothecation, was Krishnasami Naick, who was the son of Rangammal's brother. On Krishnasami Naick's death, Rangammal entered on the land as his heiress; the inheritance was then contested by his maternal grandfather and grandmother, who, having entered on her death, were joined as defendants in this suit. That contest was not finally determined in the lifetime of Rangammal, and the same question was now raised by the defendants, who pleaded that the charge purported to have been created by Rangammal was invalid, no title to the land having vested in her.

The Lower Courts passed decrees for the plaintiff, against which the defendants preferred this second appeal.

*Krishnasami Ayyar* for appellants.

*Ambrose* for respondent.

JUDGMENT.—The only question is, who is the nearest heir to the last male owner—his father's sister or his mother's father? The Lower Courts have decided in favour of the father's sister, on the ground that she being related through a male must be held to be more closely related to Kuppusami than the defendants, the

1891.  
November 23.  
December 15.

\* Second Appeal No. 235 of 1891.

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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 sapinda, 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.

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## APPELLATE CIVIL.

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

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.