

mortgage of 1877 is now existent if the fifth defendant establishes any rights under exhibits IV and V.

The decree therefore in directing that the sale should be subject to the mortgage which, as stated above, had already ceased to exist is wrong. The decree is therefore set aside and the suit remanded to the Court of First Instance for fresh disposal after due enquiry into the alleged rights of the several claimants, viz., the plaintiff and the fifth and sixth defendants.

Costs in this and in the lower Appellate Court will be provided for in the revised decree.

M. N. J. P. P. A.  
 ROI  
 T.  
 KRISHN-  
 AYYA.

## APPELLATE CIVIL.

Before Sir S. Subrahmania Ayyar, Officiating Chief Justice,  
 and Mr. Justice Sankaran Nair.

KRISHNA AYYANGAR AND OTHERS (PLAINTIFF AND  
 HIS LEGAL REPRESENTATIVES), APPELLANTS,

1905  
 August  
 18, 29.

v.

VENKATARAMA AYYANGAR AND ANOTHER (DEFENDANTS),  
 RESPONDENTS.\*

*Hindu Law-Succession-Bandhus—Father's sister's daughter's son entitled in preference to paternal grandfather's sister's son.*

It is a cardinal principle of Hindu Law that the nearer line excludes the more remote and the ground of distinction in favour of a party who is able to trace his descent with less intervention of females will not apply where he competes with one of a nearer line. The father's sister's daughter's son, being an *atmabandhu*, is entitled to succeed in preference to the paternal grandfather's sister's son—a *pitirbandhu*.

*Balasami Pandithar v. Narayana Rau*, (I.L.R., 20 Mad., 342), referred to.

SUIT by the plaintiff to recover properties as the nearest reversioner of the last male holder.

The facts necessary for this report are set out in the judgment.

A. S. Balasubrahmania Ayyar for second to sixth appellants.

R. Sivarama Ayyar for respondents.

\* Second appeal No. 745 of 1903, presented against the decree of M.R.Ry. S. Dorasami Ayyangar, Subordinate Judge of Tinnevely in Appeal Suit No. 203 of 1902, presented against the decrees of M.R.Ry. M.R. Narayanasami Ayyar, District Munsif of Ambasamudram, in Original Suit No. 601 of 1901.

KRISHNA  
 AYYANGAR  
 v  
 VENKATA-  
 RAMA  
 AYYANGAR.

JUDGMENT.—The dispute in the present case is between two parties who are both bandhus under the Mitakshara Law. The plaintiff is the deceased owner's paternal grandfather's sister's son. The defendant is his father's sister's daughter's son. The lower Courts have held that the defendant is the heir and they are clearly right. Undoubtedly he is an *atmabandhu*, and, as such, nearer to the last owner than the plaintiff who is the owner's *pitirbandhu*. It was, however, urged that the defendant has to trace his relation to the common ancestor through two females while there is the intervention of but one female between the plaintiff and the ancestor common to him and the deceased, and that this circumstance gives the plaintiff a preferential right. Whether having regard to the preponderating influence in the Hindu system of law of relationship through males with reference to the devolution of the heritage of a man such a circumstance as that relied on may or may not avail when the competition is between bandhus of the same category and of the same degree, it is unnecessary to consider. But assuming that the circumstance would in such a case afford a ground for distinction in favour of a party who is able to trace his descent with a less intervention of females, it could not affect the operation of such a cardinal principle of the Hindu Law as that the nearer line excludes the more remote [*Balusami Pandithar v. Narayana Rau* (1)]. The defendant is of the nearer line and therefore, as already stated, the person entitled to inherit.

The appeal is dismissed with costs.

(1) I L.R., 20 Mad., 342.