

APPELLATE CIVIL.

*Before Mr. Justice Sundara Ayyar and Mr. Justice
Sadasiva Ayyar.*

KAMALA BAI (PLAINTIFF), APPELLANT,

v.

BHAGIRATHI BAI (DEFENDANT), RESPONDENT.*

1912.
October 8.

Hindu Law—Succession—Maiden's property—Preferential heir.

One Sitabai who became entitled to Rs. 3,000, under an insurance policy on the death of her father, died unmarried; and the plaintiff, the sister of her mother, sued for a declaration that the defendant who was the step-mother of the deceased Sitabai was not her heir under the Hindu law and that she as the maternal aunt of the deceased was her lawful heir and entitled to the amount that was held in deposit in Court.

Held, that the plaintiff was not entitled to succeed in preference to the defendant.

The sapindas, both of the father and the mother, in the text of Mitakshara, must refer to the same persons as the mother becomes a member of the father's family on her marriage.

Tukaram v. Narayan Ramchandra (1912) I.L.R., 36 Bom., 339, *Janglubai v. Jetha Appaji* (1909) I.L.R., 32 Bom., 409 and *Dwarka Nath Roy v. Sarat Chandra Singh Roy* (1912) I.L.R., 39 Calc., 319, followed.

The rule that female gotraja sapindas do not inherit as agnate relations taking the rank which they would be entitled to if their claims were based on sapinda relationship has been enforced with regard to succession to male's property.

Balamma v. Pullayya (1895) I.L.R., 18 Mad., 168 and *Thayammal v. Annamalai Mudali* (1896) I.L.R., 19 Mad., 35, referred to.

The rule that in the case of succession to sridhanam property, a daughter inherits as sapinda, where the succession has to be traced through the father or the husband, applies also to the case of a wife or widow.

Manja Pillai v. Sivabhagiyathachi (1911) 21 M.L.J., 851, applied.

SECOND APPEAL against the decree of V. VENUGOPAL CHETTI, the District Judge of South Canara, in Appeal No. 131 of 1910, preferred against the decree of T. V. ANANTAN NAYAR, the Subordinate Judge of South Canara, in Original Suit No. 73 of 1909.

Suit for a declaration.

One Brahmawar Sarvothama Row insured his life in the Sun Life Assurance Company of Canada for the benefit of his minor daughter Sitabai who was the daughter born to him by his first

* Second Appeal No. 217 of 1912.

KAMALA
v.
BHAGIRATHI.

wife Singarabai, the sister of the plaintiff. The said Sarvothama Row died on 6th June 1902 after paying the first premium; and the amount of the policy, Rs. 3,000, became payable to his minor daughter who died subsequently in March 1903. On the application by the defendant who is the widow of Sarvothama Row and the step-mother of the said Sitabai, the District Court ordered a succession-certificate to be issued to defendant on her furnishing security and as it was not furnished by the defendant, the amount was held in deposit in Court. Hence the plaintiff sued for a declaration that the said amount devolved by inheritance upon her as the heir of the deceased Sitabai.

B. Sitarama Rao for the appellant.

K. Yagnanarayana Adiga for the respondent.

SUNDARA
AYYAR AND
SADASIVA
AYYAR, JJ.

The JUDGMENT of the Court was delivered by SUNDARA AYYAR, J.—The plaintiff in this case claims the property sued for as the maternal aunt of a deceased maiden of a Hindu family. The defendant is the step-mother of the maiden. The question for decision is whether the plaintiff is entitled to preferential rights over the defendant. The Bombay High Court held in *Tukaram v. Narayan Ramchandra*(1) and *Janghubai v. Jetha Appaji*(2), that in default of both the mother and the father a maiden's property goes to the husband's sapindas. The same view was accepted by the Calcutta High Court in *Dwaraka Nath Roy v. Sarat Chandra Singh Roy*(3), though in that case there was no contest between the relations of the mother and of the father. In the Mitakshara there are no express texts dealing with the succession to the property of a maiden in default of the mother and the father, the text stopping with succession to the parents, the words 'parents' being interpreted to mean the mother and then the father. But in the case of the property of a childless married woman the succession is carried further down. It is stated that the property goes to the parents and in default तत्प्रयासन्नानाम् which may be interpreted to mean 'to their sapindas' as Mr. Sitarama Row contends. The Viramitrodaya does not deal specifically with the succession to a maiden's property at all but provides for the succession to the property of a childless married girl in terms similar to those used in the Mitakshara. We see no reason for not accepting the view of

(1) (1912) I.L.R., 36 Bom., 339.

(2) (1908) I.L.R., 32 Bom., 409.

(3) (1912) I.L.R., 39 Calc., 319.

the Bombay High Court, that the sapindas, both of the father and mother, must be understood to mean the same persons as the mother becomes a member of the father's family on her marriage. In this view the defendant, as the wife of the deceased maiden's father, would be a nearer heir than the plaintiff. But Mr. Sitarama Row contends that the father's widow could not inherit his property as a sapinda. He relies on the prevalent rule that female *gotraja sapindas* do not inherit as agnate relations taking the rank which they would be entitled to if their claims were based on sapinda relationship. With regard to the succession to a male's property this rule, no doubt, has been enforced in this Court. See *Balamma v. Pullayya*(1) and *Thayammal v. Annamalai Mudali*(2). But in the case of succession to *sridhanam* property a daughter has been held to be entitled to inherit as sapinda where the succession has to be traced through the father or the husband. See *Manja Pillai v. Sivabhagiathachi*(3). We see no reason why we should not adopt the same view with regard to the wife. Moreover, there is much support in the *Mitakshara* for the view, that a widow inherits her husband's property as his sapinda being one half of the husband's body.

We therefore agree with the District Judge that the plaintiff is not entitled to succeed in preference to the defendant and we dismiss the Second Appeal with costs.

KAMALA
v.
BHAGIATHI.
—
SUNDARA
AYYAR
AND
SADASIVA
AYYAR, JJ.

(1) (1895) I.L.R., 18 Mad., 168.

(2) (1896) I.L.R., 19 Mad., 35.

(3) (1911) 21 M.L.J., 851.
