APPELLATE CIVIL.

Before Mr. Justice Phillips and Mr. Justice Napier.

1919, April, 3 and 22.

SUNDARAM PILLAI (PLAINTIFF'S LEGAL REPRESENTATIVE), APPELLANT,

v.

RAMASAMIA PILLAI AND SEVEN OTHERS (DEFENDANTS NOS. 1, 7, 2 TO 4 AND 8 TO 10), RESPONDENTS.*

Hindu Law—Inheritance—Stridhanam—Maiden's property—Father's sapindas, right of inheritance of—Father's sister—Father's paternal uncle's son—Preferential heir—Texts of Baudhayana and Brihaspati—Mitakshara and Smriti Chandrika.

Under the Mitakshara law the heirs to the stridhanam property of a maiden, who died leaving neither uterine brothers, nor mother, nor father, are the sapindas of her father; and, as between her father's paternal uncle's son and her father's sister, the former is the preferential heir.

Text of Brihaspati held inapplicable; text of Baudhayana and commentaries of Mitakshara and Smriti Chandrika discussed.

Kamala v. *Bhagirathi*, (1915) I.L.R., 38 Mad., 45, followed.

SECOND APPEAL against the decree of A. EDGINGTON, the District Judge of Tinnevelly, in Appeal No. 67 of 1917, preferred against the decree of MUHAMMAD FAZL-UD-DIN, the Subordinate Judge of Tinnevelly, in Original Suit No. 54 of 1915.

One Muthia Pillai bequeathed the suit properties to his daughter, Gomati Ammal, who died a maiden after the death of her father. At the time of her death, she had neither brothers, nor father nor mother alive. The properties were claimed by the plaintiff as the nearest sapinda of Muthia Pillai, being the latter's paternal uncle's son; and as such the heir of the deceased maiden. The third defendant claimed to be the heir in preference to the plaintiff as being the sister of Muthia Pillai. The Subordinate Judge, who tried the suit, held that the plaintiff was the preferential heir and decreed the suit in his favour. On appeal, the learned District Judge held that the third defendant was the preferential heir under the Hindu Law and dismissed the suit. The plaintiff preferred this second appeal.

T. R. Venkatarama Sastri and *A. Subbarama Ayyar* for the appellants.

*Second Appeal No. 1001 of 1918.

A. Swaminatha Ayyar for the respondents Nos. 1 and 2.

P. R. Ganapati Ayyar for *K. Srinivasa Ayyangar*, *S. Somasundaram Pillai* and *S. Aravamuda Ayyangar* for respondents Nos. 3, 4, 6 and 7.

JUDGMENT—The sole question for determination in this appeal is whether plaintiff or third defendant is the heir to the property of one Gomati Ammal, a maiden. Plaintiff is the father's brother's son of Gomati's father, whereas third defendant is the sister of Gomati's father. In *Kamala* v. *Bhagirathi*(1) it was held that when a maiden's mother and father are dead, her heirs are her father's sapindas and this case followed *Janglibai* v. *Jetha Appaji*(2), *Tukaram* v. *Narayan Ramachandra*(3) and *Dwarganath Rai* v. *Sarat Chandra Singh Roy*(4). In Mitakshara (chap. II, sec. 11, pl. 20) there is a text of Baudhayana which says: PHILLIPS, J.

"The wealth of a deceased damsel let the uterine brethren themselves take. On failure of them it shall belong to the mother, or, if she be dead, to the father."

But the Mitakshara is silent as to the succession in default of mother or father.

In the above-mentioned cases the rule of succession to the property of a woman married in an unapproved form, contained in placitum 11 of the same section, was applied by analogy and it would appear that this decision of three High Courts would be final, but it is contended for respondents that a text of Brihaspati contained in the Smriti Chandrika (chap. IX, sec. III, pl. 36) and the Sarasvati Vilasa (pl. 327) provides for the succession after the mother and father. This text no doubt immediately follows the text of Baudhayana in the Smriti Chandrika, but there does not appear to be any connexion between the two, for Brihaspati's text relates to what are called secondary mothers, and deals with the succession to their property. In the Sarasvati Vilasa the text follows a placitum relating to the property of a betrothed damsel. It is difficult to believe that the succession to a maiden is analogous to the succession to secondary mothers, for a maiden cannot by any stretch of language be treated as a secondary mother, whereas there is no such difficulty in the case of the persons cited, i.e.,

(1) (1915) I.L.R., 38 Mad., 45. (2) (1908) I.L.R., 32 Bom., 409.
(3) (1912) I.L.R., 36 Bom., 339 (F.B.). (4) (1912) I.L.R., 39 Calc., 319.

SUNDARAM PILLAI v. RAMASAMIA PILLAI.

PHILLIPS, J.

mother's sister, uncle's wife, father's sister, etc. There is also another difficulty in the way of applying the text in the way contended for by respondent's vakil, which is that the persons enumerated are the heirs to a maiden's estate, for in the Smriti Chandrika the persons enumerated are said to be equal to a mother. If that be so they would take the succesion after the mother to the exclusion of the father. This is directly opposed to Baudhayana's text in the Mitakshara, which in this Presidency must always be preferred to the Smriti Chandrika, when they are not in agreement. Respondent's contention must therefore be negatived for two reasons, firstly because Brihaspati's text does not at all refer to the succession to a maiden's property, and secondly, because, if it does refer to it, it is opposed to the Mitakshara. I therefore follow *Kamala* v. *Bhagirathi*(1) and hold that the heirs to Gomati's property are her father's sapindas. So far I agree with the District Judge, but he has followed the Bombay High Court in holding that a sister is a nearer heir than the father's brother's son. In Madras, however the law is that the father's brother's son is t be preferred, the sister only coming in after the male sapindas. I am unable to accept the contention based on the single sentence of the judgment in *Kamala* v. *Bhagirathi*(1) that the father's sapindas in a case when the property of a female is concerned are different to the sapindas in the case of a male's property. In the absence of any rule to the contrary the sapindas must always be the same. The appeal is accordingly allowed, and the Subordinate Judge's decree restored with costs both here and in the lower Appellate Court.

NAPIER, J.

NAPIER, J.—The question raised in this Second Appeal is as to the succession to the stridhanam property of one Gomati Ammal. The deceased Gomati Ammal inherited the property under a will from her father, one Muthia Pillai, and it is conceded that the mother is also dead. The contesting parties are the son of the paternal uncle of the deceased's father and the father's sister of the deceased, the uterine brothers who admittedly would have a preference to anyone else having failed. The point has been expressly decided in two cases in Bombay—*Janglibai* v. *Jetha Appaji*(2) and *Tukaram* v. *Narayan*

(1) (1915) I.L.R., 38 Mad., 45. (2) (1908) I.L.R., 32 Bom., 409.

Ramachandra(1)—and the view taken by that Court was followed by two learned Hindu Judges of this Court in *Kamala Bhagirathi*(2). It is suggested before us that this question requires reconsideration in view of the fact that the Mitakshara does not definitely decide the point and that the Bombay High Court relied on the Veeramitrodaya, a work which is not followed in Madras. It is further contended before us that the question is disposed of by a text in the Smriti Chandrika. The language of the Mitakshara is based on the authority of Baudhayana text: Baudhayana says:

"The wealth of a deceased damsel first uterine brothers themselves take. On failure of them, it shall belong to the mother, or, if she be dead, to the father" (chap. II, sec. II, pl. 30).

As the text stops there, this Court applied the analogy of the succession to the property of a childless married woman which is provided for in placitum 11 of the same section. There the succession is stated as being

"To the mother and to the father; on failure of them their nearest of kin takes the succession."

The translation is that of Borrodaile. The High Court, however, preferred "to their sapindas" as being a more correct translation. The judgment then proceeds as follows:—

"We see no reason for not accepting the view of the Bombay High Court that the sapindas both of the father and the mother must be understood to mean the same persons, as the mother becomes a member of the father's family on her marriage."

It is to be noted that the learned Judges do not expressly follow the language of Veeramitrodaya which is definite on the subject as did the High Court of Bombay, but proceeded by way of analogy arriving at the same result. It is not, therefore, correct to say that the decision of this Court is based on a text which is not an authority in this Presidency.

It remains to consider the text relied on by Mr. Ganapati Ayyar in his contention that this ruling is incorrect. I feel naturally considerable diffidence in construing a text which is translated, not being myself acquainted with the original Sanskrit. But in spite of that I am satisfied that the text has nothing whatever to do with the subject. In Smriti Chandrika,

(1) (1912) I.L.R., 36 Bom., 339 (F.B.). (2) (1915) I.L.R., 38 Mad., 45, 3-4

SUNDARAM PILLAI v. RAMASAMIA PILLAI. —— NAPIER, J.

chapter IX, section 3, placitum 36, Brihaspathi enumerates secondary mothers and points out who takes their property.

"The sister of a mother, the wife of a maternal or of a paternal uncle, the sister of a father, the mother of a wife and the wife of an elder brother are declared equal to a mother. If they leave no male issue of their body nor a son of a daughter nor a daughter, a sister's son and the like shall inherit their property."

Taken by itself, this text has on its face no application, because we are not construing here the succession to secondary or quasi-mothers. The only mother with whom we are concerned is the real mother, and the question is who, on the death of such real mother and father, is to succeed. The next objection is that, if this text is to apply, it contradicts the language of placitum 30 itself, for that is specific, the words being

"It shall belong to the mother or if she be dead to the father" not to the heirs of the secondary mother. The text is interesting as laying down that these quasi-mothers are to be treated as real mothers, but admittedly no such broad proposition is accepted in Hindu Law as applied in this Presidency. The only reason which Mr. Ganapati Ayyar could urge for applying this text is that it follows the placitum in the Smriti Chandrika which is identical with placitum 30 in the Mitakshara. Both of these texts are to be found in the Smriti Chandrika in section 3—Succession to a woman's property.

We were informed at the bar that the numbers given in the English translations are not in the original which is borne out by the fact that placitum 36 in Mr. Krishnaswami Ayyar's translation is No. 21 in Ghose's translation. The chapter contains a series of texts on succession to the property of woman generally and explanations of the terms used by the sacred writers, and the whole chapter is in the nature of a dissertation on conflicting views of the authorities. The only passage which deals with inheritance to the wealth of a damsel appears to be the one placitum of Baudhayana above referred to. The placitum relied on seems to be a note by the learned commentator to the effect that, where in the preceding paragraphs inheritance to a mother is dealt with, a specific line of succession is to be applied to these secondary mothers, and has no connexion whatsoever with the quotation from Baudhayana in the preceding passage. I am confirmed in this view that the passage relied on has nothing

whatever to do with the subject by the fact that although Smriti Chandrika is a recognized authority of secondary weight in Madras the learned vakils who appeared before our learned brothers in *Kamala* v. *Bhagirathi*(1) did not think that the passage was worth putting before their Lordships for consideration. In this respect I agree with the judgment of my learned brother.

K.R.

APPELLATE CIVIL.

Before Mr. Justice Oldfield, Mr. Justice Seshagiri Ayyar and Mr. Justice Kumaraswami Sastri.

VEERARAGHAVA REDDI (FOURTH RESPONDENT IN C.M.P. No. 2734 OF 1915 AND IN APPEAL No. 201 OF 1910), APPELLANT.

1919, April, 7 and 23.

v.

SUBBA REDDI AND SEVEN OTHERS (PETITIONERS IN C.M.P. No. 2734 OF 1915 AND APPELLANTS NOS. 1 TO 3 AND THEIR LEGAL REPRESENTATIVES IN APPEAL No. 201 OF 1910), RESPONDENTS.*

Lis pendens—*Alienee made a party to the litigation—Compromise between original parties behind the back of the alienee, whether binding on the alienee.*

An alienee *pendente lite* who has been added as a party to the litigation is entitled to object to a decree being passed in terms of a compromise arrived at between his alienor and the opposite party.

APPEAL under clause 15 of the Letters Patent against the decision of WALLIS, C.J., in *Veeraraghava Reddi* v. *Subba Reddi*.(2)

This was a suit to enforce a mortgage executed in favour of the plaintiff by the first defendant in 1895. Other defendants were added as persons interested in the mortgaged property. The plaintiff having failed in the First Court preferred an appeal to the High Court in 1910. During the pendency of the appeal

---

(1) (1915) I.L.R., 38 Mad., 45.

* Letters Patent Appeal No. 93 of 1917.

(2) Civil Miscellaneous Petition No. 2734 of 1915 filed in Appeal No. 201 of 1910 preferred to the High Court against the decree of the District Court of Nellore in Original Suit No. 6 of 1907.