ORIGINAL SIDE.

Before Mr. Justice Kumaraswami Sastri.

V. V. SOOBRAMIAH CHETTY AND THREE OTHERS, PLAINTIFFS, 1928, August 24.

v.

NATARAJA PILLAI AND SEVEN OTHERS, DEFENDANTS.*

Gotraja sapindas—Preferential heir amongst—Determination of —If seven and not merely three degrees in each branch to be reckoned.

For the purpose of determining which of two *gotraja sapindas* is the preferential heir, only three and not seven degrees in each branch have to be reckoned, and after the third degree in one branch, the three degrees in the next collateral branch must be considered and so on. Hence, the great-grandson of the great-grandfather of the propositus is a preferential heir to the son of the great-grandson of the grandfather of the propositus.

Budha Singh v. *Laltu Singh*, (1915) I.L.R., 37 All., 604 (P.C.), referred to.

SUIT for a declaration that the plaintiffs 1, 2 and 3 are absolutely entitled to the properties mentioned in the plaint.

The plaintiffs 1 to 3 claimed certain properties as having been transferred to them by one Subraya Chetti (the fourth plaintiff), who claimed to have succeeded to them as reversioner on the death, issueless and intestate, of Vasavambal, widow of Sadasiva Chetti. Sankara Chetti, the third defendant, claimed the properties as the next reversioner to Vasavambal and Sadasiva, alleging that Sadasiva was adopted to Chinnapapu Chetti. The first and second defendants claimed under a transfer from the third defendant, and also independently of the transfer, as the illegitimate sons of Sadasiva. The

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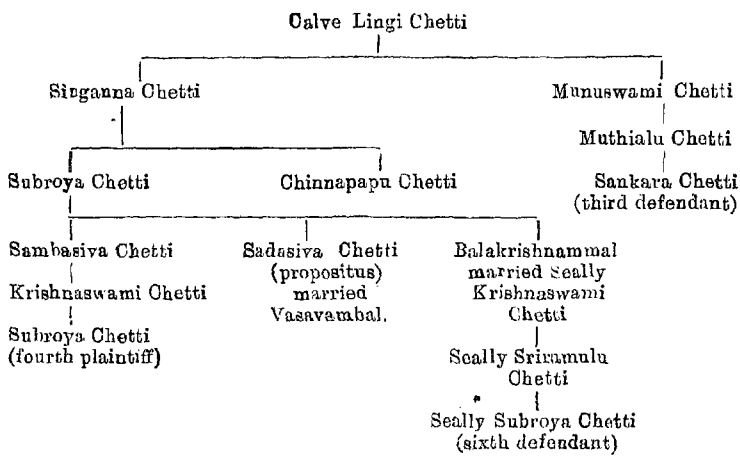
sixth defendant made a claim as the adopted son of Vasavambal. The other defendants were formal parties.

Of the issues settled, the two that are relevant for the present report are:

(5) Was Calve Sadasiva Chetti adopted by Chinnapapu Chetti, and if so is it valid?

(6) Is Calve Sankara Chetti, the third defendant, the nearest reversionary heir of Calve Vasavambal or Calve Subbaraya Chetti, the fourth plaintiff?

The following genealogical table sets out the relationship between the parties:—



V. Raghunatha Sastri for plaintiffs.

T. L. Venkatrama Ayyar for defendants 1 and 2.

S. Parthasarathi Ayyangar for defendant 3.

V. Ramaswami Ayyar for defendant 6.

JUDGMENT.

[His Lordship, after setting out the contentions of the parties, dealt with the evidence relating to issue No. 5, and held that the adoption had been clearly proved.]

The next question is, whether the fourth plaintiff would still be the next reversioner. I have already set

out in the genealogical table the relationship between the parties and the competition is between Subroya Chetti, the fourth plaintiff, on the one side, and Sankara Chetti, the third defendant, on the other.

There can be little doubt that both of them are *sapindas* to Sadasiva. The contention of the plaintiffs is, you must exhaust the direct descendants of his father to the seventh degree before you go to collaterals, and that Subroya Chetti would therefore be the nearer *sapinda* entitled to succeed. The contention for the first defendant is that, under Hindu Law, in determining which of two sapindas is the nearer heir, you have to go three degrees in each branch, and after the third degree, you must go three degrees to the next collateral branch, and so on, and that applying this test, the third defendant would be the nearer *sapinda*.

I can find little authority for the contention of Mr. Raghunatha Sastri for the plaintiffs that you must exhaust the sapindas to the seventh degree in the nearest branch before you can go to any other branch.

The text of Manu which forms the basis of *sapinda* succession to collaterals is found in verses 186 and 187. Verse 186 runs as follows :—

"To three (ancestors) water must be offered, to three the funeral cake is given, the fourth (descendant) is the giver of these oblations, the fifth has no connection with them."

Verse 187 says—

"Always to that relative (within three degrees) who is nearest to the (deceased) *sapinda*, the estate shall belong ; afterwards, a *sakulya* shall be the heir, then the spiritual teacher, or the pupil."

The words in Manu are *Anantaraha sapindath*. (See Manu—Sacred Books of the East). The Mitakshara in dealing with *sapratibandha* succession in Chapter 2, section 5, does not specifically state to what degree each

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line should be exhausted, before going to the next line. The words *putrah* and *sunavah* have, however, been held to mean the three descendants by their Lordships of the Privy Council in *Budha Singh* v. *Lalta Singh*(1). It is admitted by the plaintiffs' vakil, that, unless by the words *putrah* or sons, you must exhaust seven lineal descendants before you go to the next ascending line, the fourth plaintiff will not be a nearer heir than the third defendant. It is clear that if Sadasiva Chetti was adopted to Chinnapapu Chetti and if by "son" you only include three degrees of descendants, the fourth plaintiff will be excluded by the third defendant.

The consensus of opinion seems to be that you must break off when you come to the third degree, in determining the question who is the nearer sapinda, and go to the next collateral line.

The line of succession is dealt with by Mayne in paragraphs 570 (*a*), 571, 572, and it will be seen from the table of Agnatic *Sapindas* that it is only three degrees that are taken in each branch. It will be seen from the table that the son, grandson and the great-grandson succeed in order, in their absence the estate goes to the widow, daughter and daughter's son, then to the mother, then to the father, then to the brother, nephew, grand-nephew : in their absence, it goes to the grandmother, then to the grandfather : and then to the three descendants and so on.

Professor Jolly in his Tagore Lectures on Hindu Law gives a table at page 212 which is substantially the same as that given by Mayne. He points out that the first part of this table is in accordance with the systems of Apararka and Nanda Panditha.

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(1) (1915) I.L.R., 37 All., 604 (pages 611 to 618).

Jogendra Chunder Ghose in his Principles of Hindu Law adopts a similar rule (pages 118 and 119).

The same view is taken by Sarvadhikari in Lecture 13, where he refers to the order of succession under the Mitakshara Law, and in the table of succession which he gives in that Lecture. In Lecture 10, he gives the views of the commentators.

West and Buhler, however, incline to a different view, but, so far as I can see, the preponderance of authority, both as regards text writers and commentators, is the other way.

Turning to the decided cases, the question was considered by their Lordships of the Privy Council in *Budha Singh* v. *Laltu Singh*(1), and it was held that the great-grandson of the grandfather of the deceased, who was also the grandson of his paternal uncle, was the preferential heir as against the grandson of the deceased's great-grandfather. Their Lordships, after an exhaustive review of the authorities and the texts, observe at page 620—

"Dr. Raj Kumar Sarvadhikari's construction appears to them to rest on a logical foundation, and his views seem to be consistent and clear. In effect, he says that the Mitakshara propounds a definite scheme of succession; lineal male descendants of the deceased owner down to and including the third degree, who constitute the first class of propinquous relations (the nearest sapindas) inherit in succession in the first instance. In their default, the widow and daughter take by express provision of the law. The daughter's son comes in similarly. In their absence, the inheritance ascends; each ascending line begins with a female, and each has to be exhausted in accordance with the rule of propinquous sapinda relationship before the next in order can take; so that the parents and 'their three successive descendants' take first; then the paternal grandmother and the paternal grandfather and 'their three successive descendants' come next, and so on."

(1) (1915) I.L.R., 37 All., 604.

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Their Lordships then refer to the fact that the view of Dr. Jolly is in substantial agreement with the view of Dr. Raj Kumar Sarvadhikari.

The view taken in Madras, which was based upon a narrower construction propounded by the Smriti Chandrika and the Subodhini, was that instead of three descendants you must take only two, and their Lordships refer to *Suraya* v. *Lakshminarasamma* (1), and *Chinnasami Pillai* v. *Kunju Pillai* (2), and disapprove of the narrower construction, and observe :

"However, the two Madras decisions have received the respectful consideration of their Lordships. They have already given reasons for holding that in the Mitakshara as expounded in the Benares school, the word *putra* and its synonym employed by Vijnaneswara in connexion with brothers and uncles must be understood in a generic sense, as in the case of the deceased owner, and that the descendants in each ascending line, up to the fixed limit, should be exhausted at any rate to the third degree, before making the ascent to the line next in order of succession."

Their Lordships also state that, even under the Mitakshara, in cases of competition between collaterals, preference is given to one who has the right to confer spiritual benefit, and observe :

"It seems to their Lordships that there is another ground on which the plaintiff must fail. It is admitted that the defendant confers greater benefit on the deceased by the offerings he makes to the manes of the common ancestor. Now, it is absolutely clear that under the Mitakshara, whilst the right of inheritance arises from sapinda relationship, or community of blood, in judging of the nearness of blood relationship or propinquity among the gotraja, the test to be applied to discover the preferential heir is the capacity to offer oblations. Mitra Misra, the author of the Viramitrodaya, an authoritative commentary on the Mitakshara, lays down this doctrine in express terms. He says 'when there are many claimants to the heritage among gotrajas and the like, then the fact of conferring benefits on the

(1) (1881) I.L.R., 5 Mad., 291. (2) (1911) I.L.R., 35 Mad., 152.

proprietor of the wealth by means of the offering of oblations and the like only excludes those that do not confer such benefits.' Dr. Raj Kumar Sarvadhikari renders the last part of this passage thus: 'The benefit conferred on the late owner by the offering of the cake and the water determines the title to inheritance.,'"

In the case of *Bhyah Ram Singh* v. *Bhyah Ugar Singh*(1), the Board affirmed this rule in the following words:—

"When a question of preference arises, as preference is founded on superior efficacy of oblations, that principle must be applied to the solution of the difficulty."

In *Suraya* v. *Lakshminarasamma*(2), the learned Judges held that, according to the law of succession current in the Madras Presidency, the term "sons" used in the Mitakshara, Chapter II, section 4 (7), and section 5 (1), does not include grandsons.

In *Chinnasami Pillai* v. *Kunju Pillai*(3), the learned Judges were of opinion that the word "sons" in the Mitakshara, Chapter II, section 1, verse 2, section IV, verses 7 and 8, and in section V, verse 1, should not be given an extended meaning so as to include grandsons, and they approved of *Suraya* v. *Lakshminarasamma* (2) and did not follow the decision in *Kalian Rai* v. *Ramachandra*(4).

As their Lorships of the Privy Council in *Budha Singh* v. *Laltu Singh*(5), referred to above, followed the view in *Kalian Rai* v. *Ramachandra*(4) and disapproved of the two Madras decisions, it is unnecessary to deal with those decisions at any length.

So far as I can see, in the case of competition between *gotraja sapindas*, the difference of opinion has always been whether to take it to three degrees or two

(1) (1870) 13 M.I.A., 373. (2) (1881) I.L.R., 5 Mad., 291.
(3) (1911) I.L.R., 35 Mad., 152. (4) (1901) I.L.R., 24 All., 128.
(5) (1915) I.L.R., 37 All., 604.

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degrees, and there is no case which says that you must exhaust seven degrees in one line before you can go to the next. In fact, such a construction would be contrary to the principles of collateral succession laid down by commentators and text writers. As pointed out in the Madras cases, the construction that you must exhaust seven degrees is against the whole scheme of collateral succession and would postpone the heirs specifically mentioned in the Mitakshara as entitled to preference.

Mr. Raghunatha Sastri for the plaintiffs relied on *Rutchèputty Dutt* v. *Bajunder Narain Rae* (1) and *Bhyah Ram Singh* v. *Bhyah Ugar Singh*(2) and *Kesar Singh* v. *Secretary of State for India*(3). But these cases are not cases of competition between *sapindas*. In *Bhyah Ram Singh* v. *Bhyah Ugar Singh*(2), their Lordships of the Privy Council observe at page 392 :

> "This is not a case of priority between two persons claiming as heirs, or between two classes of heirs; it is one of asserted exclusion from inheritance, raised by persons not competitors in the prescribed degrees of heirs. The question of preference is distinct from that of entire exclusion. When a question of preference arises, as preference is founded on superior efficacy of oblations, that principle must be applied to the solution of the difficulty."

I think it is clear that the third defendant is the preferential heir to the fourth plaintiff. In this view of the case, the plaintiffs' suit fails, as they have to establish that the fourth plaintiff is entitled to succeed to the property of Vasavambammal or Sadasiva Chetti as the next *sapinda*.

It is unnecessary to consider the other issues raised in the case.

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(1) (1839) 2 M.I.A., 133. (2) (1870) 13 M.I.A., 373.
(3) (1926) I.L.R., 49 Mad., 652.

I decide nothing as between the defendants.

This suit fails and is dismissed with costs, two sets—one for defendants 1 and 2, and the other for the sixth defendant.

The other defendants will bear their own costs.

Plaintiffs will take their taxed costs out of the trust estate.

B.C.S.

APPELLATE CRIMINAL.

Before Mr. Horace Owen Compton Beasley, Chief Justice, and Mr. Justice Anantakrishna Ayyar.

VEERA KORAVAN AND TWO OTHERS PRISONERS.*

1923, July 4.

Criminal trial—Practice of tendering for cross-examination important eye-witnesses cited by prosecution—Regularity of—Proper procedure.

The practice of tendering important eye-witnesses cited by the prosecution for cross-examination is highly irregular.

In cases where any witness known to the prosecution is able to swear to facts material to the case, the proper procedure to follow is to ask him to give evidence on oath as to the facts known to him, and which are relevant to the case, though other witnesses might have spoken to the same facts. Merely "tendering for cross-examination" is not a practice which should be encouraged, especially in murder cases, as it would be very unfair to the accused.

Queen Empress v. *Ram Sahai Lall*, (1884) I.L.R., 10 Calc., 1070, followed.

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* Referred Trial No. 67 of 1923.