APPELLATE CIVIL.

Before Mr. Justice Varadachariar and Mr. Justice Burn.

GURAZADA VENKATESWARA RAO AND ANOTHER (DEFENDANTS 1 AND 2), APPELLANTS,

v.

GURAZADA ADINARAYANA (PLAINTIFF), RESPONDENT.*

1934, August 7.

Hindu Law—Inheritance—Father's brother's grandson nearer heir than brother's great-grandson—Descendants of a nearer line should be preferred to descendants of a remoter line and bandhus ex parte paterna *take in preference to bandhus* ex parte materna*—Limits of the rules pointed out.*

Under the Mitakshara Law the father's brother's grandson succeeds in preference to the brother's great-grandson.

The limits of the rules, viz., that "the descendants of a nearer line should be preferred to the descendants of a remoter line" and "bandhus *ex parte paterna* take in preference to bandhus *ex parte materna*", pointed out.

APPEAL against the decree of the Additional Subordinate Judge of the Court of the Subordinate Judge of Bezwada in Original Suit No. 42 of 1928.

P. Satyanarayana Rao for appellants.

B. Somayya for *V. Ramadoss* and *K. Subba Rao* for respondents.

The JUDGMENT of the Court was delivered by VARADACHARIAR J.—Both parties to this suit are agnatic kinsmen of one Sarabharaju and they claim, against each other, the properties which his widow enjoyed till her death in 1926. A genealogical table is appended to the plaint showing the relationship of the various parties. It is not necessary to refer to it here in more detail than to

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say that the plaintiff is the father's brother's grandson of Sarabharaju and that the defendants are the brother's great-grandsons of Sarabharaju. The only other portion of the pedigree to be borne in mind in dealing with the evidence is that Sarabharaju had two step brothers, Lakshmikantham and Naghabushanam, that Naghabushanam left only a widow surviving him, and that Lakshmikantham had a son Papahari who predeceased him, leaving a son Naghabushanam, the father of defendants 1 and 2. The plaintiff claimed that the properties in the possession of the widow were held by her as a widow's estate, she having succeeded to the same on Sarabharaju's death somewhere between 1860 and 1865. The defendants on the other hand contended that Sarabharaju and Naghabushanam (their father) were undivided and that Naghabushanam succeeded to all the family properties on Sarabharaju's death, but put Sarabharaju's widow, Lakshmayamma, in possession of certain properties for the purpose of her maintenance. Alternatively, the defendants contended that, even if the properties enjoyed by the widow should be found to have been held by her for a widow's estate, they were the preferable heirs as being descended from a nearer line.

The learned Subordinate Judge held in favour of the plaintiff on both the points and gave him a decree as regards some of the items claimed and disallowed his claim in respect of certain items on the ground that they have not been shown to have ever been in the possession of the widow.

The plaintiff has preferred a memorandum of objections in respect of the items disallowed to him; but the memorandum of objections can

hardly be seriously pressed, because there is very little evidence to show that the widow was in possession of those items. The memorandum of objections therefore fails and is dismissed with costs.

In the appeal by the defendants, both the points raised by them in the Court below have been pressed. First, as to the question of fact, it is not easy on the evidence to decide when and between whom the division, if any, actually took place. Mr. Satyanarayana Rao lays some stress on the fact that the plaintiff set up a division between Sarabharaju and his brothers, whereas the learned Subordinate Judge holds that the division must have taken place between Sarabharaju and Naghabushanam, i.e., his grandnephew. Seeing that all the parties are speaking of events which must have happened long ago and undoubtedly even before the plaintiff (who is the oldest man now alive amongst the parties) came of age, we are not disposed to attach undue importance to this particular statement in the pleadings. Nor does it seem to us necessary to come to any definite conclusion as to the division or its exact date. In view of the decisions of the Privy Council in *Satgur Prasad* v. *Raj Kishore Lal*(1) and *Lajwanti* v. *Safa Chand*(2), the plaintiff will be entitled to claim rights of inheritance to Sarabharaju's widow if the evidence clearly establishes that for more than the prescriptive period the widow had been enjoying these properties claiming to hold them in her own right, whether absolutely or for a widow's estate, and not merely as a maintenance holder. If the defendants could make out that

(1) (1919) I.L.R. 42 All. 152 (P.C.). (2) (1924) I.L.R. 5 Lah. 192 (P.C.).

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Naghabushanam put the widow in possession of certain properties under a maintenance arrangement, the widow may not, by a mere claim of a larger right in those properties, convert her possession into adverse possession for a widow's estate. But the onus of proving that the widow was thus let into possession will undoubtedly be upon the defendants and we agree with the Court below that the defendants have not discharged that onus.

Mr. Satyanarayana Rao admitted before us that, at any rate after 1884, the widow had been in possession of the properties found to be in her possession, in assertion of a claim as heir to her husband. In that view, it is not necessary to make more than a brief reference to some of the documents in the case.

[His Lordship discussed the evidence and continued :]

The result of the evidence therefore is to leave the undisputed possession of Lakshmayamma unexplained on the maintenance hypothesis put forward by the defendants. In this view, as already indicated, either on the finding of a division inferred from this course of enjoyment or on the footing of prescriptive title acquired by the widow whether for an absolute estate or for a widow's estate, the plaintiff will be entitled to claim a right of inheritance as heir.

The next question relates to the preferential right of succession as between the plaintiff and the defendants. The learned Subordinate Judge decided this question in favour of the plaintiff mainly on the authority of the decision of KUMARASWAMI SASTRI J. in *Soobramiah Chetty*

v. *Nataraja Pillai*(1). That decision covers only one aspect of the question argued before us. Mr. Satyanarayana Rao has put forward certain other arguments which were either not available in that case or at any rate were not placed before the learned Judge. As the matter has been argued before us at some length, it is better that we deal with the contentions put forward on behalf of the appellants.

At the outset we must point out that the genealogical table printed on page 62 of the report in *Soobramiah Chetty* v. *Nataraja Pillai*(1) is somewhat misleading, because, as it appears in the print, the question need not have been discussed by the learned Judge at all. The printed genealogical table does not bring out the finding of the learned Judge on the question of Sadasiva Chetti's adoption by Chinnappa Chetti. The result of that adoption was that the fourth plaintiff in that suit stood in the position of the grandfather's great-great-grandson of the propositus while the third defendant became the great-grandfather's great-grandson. That decision is relevant to the present case in so far as the learned Judge held that, 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, three degrees in the next collateral branch must be considered. Mr. Satyanarayana Rao has attacked that conclusion. But, before dealing with that, we may as well deal with another point raised by him which arises out of the facts of this case.

(1) (1928) I.L.R. 53 Mad. 61.

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The defendants are the brother's great-grandsons of the propositus. Mr. Satyanarayana Rao therefore wishes to invoke the rule that those who are included in what is generally referred to as the compact set of heirs must first be exhausted before those who are mentioned in the Sanskrit texts only by way of a generic description, viz., Gotrajas, can come in. Taking Yajnavalkya's text, the compact heirs go up to brother's son of the propositus, and it is common ground that it is only after the brother's son that all persons who come under the category of Gotrajas can be considered. If the word "son" in that expression "brother's son" (*Tatsuta* in Sanskrit) is taken literally, it would not help Mr. Satyanarayana Rao's present argument; but if, by the analogy of the reasoning of the Privy Council in the case of *Buddha Singh* v. *Laltu Singh*(1), the word "son" even in the expression "brother's son" could be taken to stand for a son, grandson and *great-grandson*, the result would be that "brother's great-grandson" would be brought within the category of compact heirs. Mr. Satyanarayana Rao urges that we ought not to think of the rule of calculating three degrees *from the common ancestor* but merely take the word "son" in the expression "brother's son" and carry the calculation three degrees down from the brother himself. He recognizes that this will put the brother's line in a better position than the descendants of the propositus himself, because, as regards the propositus, it is well established that only descendants up to three degrees can succeed. But he urges that, whatever may be the reason with reference to which the descendants of the

(1) (1915) I.L.R. 37 All. 604 (P.C.).

propositus are limited to three degrees, the reasoning of the Privy Council in *Buddha Singh* v. *Laltu Singh*(1) will justify him in claiming that in the case of the brother's line the word "son" (in the expression "brother's son") should be taken to extend to three degrees from the brother.

We are unable to accede to the above argument. The Privy Council in *Buddha Singh* v. *Laltu Singh*(1) were dealing, not with that portion of Yajnavalkya's text which refers to the brother's son, but, with the commentary of Mitakshara relating to the next group of heirs, viz., Gotrajas. In indicating the order of succession among Gotrajas, the Mitakshara deals with the grandfather's line and then with the great-grandfather's line. There is nothing whatever in their Lordships' judgment to show that as regards those lines they intended to go down more than three degrees from the common ancestor. What they lay down is that in those passages where the Mitakshara uses the word "son" it is used not in the "literal" sense but in what is spoken of as the "extended" or "generic" sense. Once we reach the conclusion that a word is used in a generic or extended sense, the question immediately arises, how to fix the limits of that generic or extended sense. It is not by any etymological significance that it has to be fixed but only with reference to other principles of law; and, if, as clearly indicated in their Lordships' judgment, the limiting principle is to be gathered from the text of Manu which refers to the offering of oblations by three degrees of descendants, it will follow that the proper interpretation of their Lordships' pronouncement

(1) (1915) I.L.R. 37 All. 604 (P.C.).

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is not that the three degrees ought to be calculated even after allowing for a further link from the common ancestor but only from the common ancestor. In this view the analogy of the pronouncement of the Privy Council in *Buddha Singh* v. *Lallu Singh*(1) will not really help Mr. Satyanarayana Rao's argument. That this must really have been their Lordships' opinion is made clear by the way in which they refer to the passage from Nanda Pandita and also to the passage from Vyavastha Chandrika including the footnote. In both of them the passages quoted by their Lordships specifically refer to the brother's son's case as well and to the fact that the calculation should be taken only to the brother's grandson and not to the brother's great-grandson. It is therefore not possible to hold that the defendants will come within the compact series of heirs as enumerated by Yajnavalkya.

Mr. Satyanarayana Rao's next point is that, even if the defendants do not come within the set of compact heirs, there is no reason why, as amongst Gotrajas, the principle of the nearer line being preferred to the more remote ought not to be followed, or the opinion indicated by Mr. Harrington in the passage cited in *Rutcheputty Dutt Iha, Bho Launauth Iha, and others*, v. *Rajunder Narain Rae and Coower Mohainder Narain Rae*(2)—viz., of carrying each line down to the seventh descent before going to the ascending line—ought not to be followed. As regards Mr. Harrington's opinion, it is sufficient to say that he was not there dealing with the question of preferential right of succession at all but merely pointing out who are all the

(1) (1915) I.L.R. 37 All. 604 (P.C.). (2) (1839) 2 M.I.A. 133.

Sapindas that ought to be exhausted before the inheritance can go to cognates. There is no doubt that descendants up to the seventh degree will be comprehended within the term Sagotrajas or Sapindas. This is all that Mr. Harrington was laying down and that passage has so far not been understood as indicating the order of succession. No doubt in *Buddha Singh* v. *Laltu Singh*(1) that passage was brought to their Lordships' notice and they leave its bearing open because in their opinion it was not necessary for the purpose of the case before them to decide whether succession in each line should be carried down to the seventh degree or not. But, if Mr. Harrington's statement is to be understood as laying down a rule of preferential right of succession amongst agnates, it will be difficult to reconcile it with the whole reasoning on which the judgment in *Buddha Singh* v. *Laltu Singh*(1) rests. There can be no doubt whatever that, so far as the propositus is concerned, inheritance descends only to his three descendants and on failure of the third it ascends. There is absolutely no justification whatever for holding that in respect of collateral inheritance the matter should stand on a different footing. In *Buddha Singh* v. *Laltu Singh*(1) itself the Privy Council took pains to point out that the scheme of the Hindu Law of Inheritance is quite logical and capable of logical application ; surely no one need go out of the way and make it illogical.

As for the theory that the descendants of a nearer line should be preferred to the descendants of a remoter line, this is not a complete or accurate statement of the law. The true rule is

(1) (1915) I.L.R. 37 All. 604 (P.C.).

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that the nearer heir excludes the more remote. It may no doubt often happen that the nearer heir will be found in the nearer line but it would not be safe to paraphrase the one into the other. The nearer heir is to be determined with reference to a number of considerations, one of which no doubt may happen to be his being born in the nearer line. This rule about the "nearer *line*" is very much like another rule frequently assumed as the basis of decision in several Madras cases, viz., that Bandhus *ex parte paterna* take in preference to Bandhus *ex parte materna*. The language used by the Judicial Committee in a recent case, *Jatindranath Ray* v. *Nagendranath Ray*(1), when the latter rule was brought to their Lordships' notice, may usefully be recalled here.

The rule as to the preference of the nearer line is no doubt stated in the judgment of this Court in *Chinnasami Pillai* v. *Kunju Pillai*(2), but much of the reasoning in that judgment has been set aside by the judgment of the Privy Council in *Buddha Singh* v. *Laltu Singh*(3). Differing from the opinion of the learned Judges of this Court, the Privy Council specifically approved of the view of Messrs. Sarvadhikari, Jolly and Shama Charan Sarkar and they also approved of the authority of the commentary of Apararka. What is even more important is that their Lordships in the concluding portion of the judgment specifically accept the applicability of the spiritual benefit theory which the learned Judges in *Chinnasami Pillai* v. *Kunju Pillai*(2) expressly repudiated. There can be no doubt in the present case

(1) (1931) I.L.R. 59 Calc. 576 (P.C.). (2) (1911) I.L.R. 35 Mad. 152.
(3) (1915) I.L.R. 37 All. 604 (P.C.).

that on the application of the spiritual benefit theory the plaintiff will be the nearer heir. Whatever the position might have been at the time when the judgment in *Chinnasami Pillai* v. *Kunju Pillai*(1) was pronounced, several pronouncements of the Privy Council have since laid down that, even in determining succession under the Mitakshara, the doctrine of spiritual benefit has got a place, though only a subordinate place. Both in *Buddha Singh* v. *Laltu Singh*(2) and in *Masit Ullah* v. *Damodar Prasad*(3) the Privy Council have referred with approval to the passage in the Veeramitrodaya dealing with the position of son, grandson and great-grandson, their right of inheritance, and their liability to pay debts and also the conferring of spiritual benefit. It is not therefore right to say that the Veeramitrodaya cannot be relied on as an authority in dealing with this question even under the Mitakshara. The matter is put beyond further question by the judgment in *Jatindranath Ray* v. *Nagendranath Ray*(4), where the doctrine of spiritual benefit is affirmed and applied by their Lordships as "a test of the measure of propinquity" in certain circumstances. In their Lordships' opinion it is

> "a mistake to suppose that the doctrine of spiritual benefit does not enter into the scheme of inheritance propounded in the Mitakshara."

For these reasons we hold that the plaintiff is entitled to succeed to Sarabharaju's estate in preference to the defendants.

As regards the direction in the decree of the lower Court in respect of mesne profits both

(1) (1911) I.L.R. 35 Mad. 152. (2) (1915) I.L.R. 37 All. 604 (P.C.).
(3) (1926) I.L.R. 48 All. 518 (P.C.). (4) (1931) I.L.R. 59 Calc. 576 (P.C.).

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parties agree that the following order may be substituted therefor, viz., "and do pay the plaintiff mesne profits from fasli 1344, until delivery of possession or the expiry of three years, whichever event first occurs, at the rate of Rs. 371 per year, less any cist and water tax that may be paid by the defendants and that the plaintiff do pay Rs. 54 being the excess recovered by him from the defendants in respect of profits up to the end of fasli 1343." Subject to this variation, the decree of the Court below is confirmed and the appeal dismissed with costs.

G.R.

APPELLATE CIVIL.

Before Sir Owen Beasley, Kt., Chief Justice, and Mr. Justice King.

1934, August 31.

ACHAYI AND ANOTHER (PETITIONERS), APPELLANTS,

v.

PARAMESWARAN NAMBOODRIPAD AND ANOTHER (RESPONDENTS), RESPONDENTS.*

Malabar Tenancy Act (XIV of 1930), secs. 3 (l) and (v) and 17 (a)—Kanamdar—Kanam evidenced by written instrument—Kanamdar under—Transferee named in document—Persons jointly entitled to kanam amount with—Kanamdars within meaning of Act if.

Under the Malabar Tenancy Act, where a kanam is evidenced by a written instrument, the kanamdar can be no other person than the transferee mentioned in the document or his legal representative or his assignee. The two contracting parties are the landlord on the one hand and the kanamdar on the other. The landlord cannot recognize any person other than the person to whom the kanam has been transferred and

* Second Appeal No. 215 of 1933.