

1910
May 23.

Before Mr. Justice Tudball and Mr. Justice Chamier.

RAM BARAN RAI AND OTHERS (DEFENDANTS) v. KAMLA PRASAD
(PLAINTIFF) AND MUSAMMAT RAJWANTI KUAR (DEFENDANT).*

*Hindu Law—Mitakshara—Succession—Samanodakas—
Bandhus—Cause of action.*

Samanodakas are those who participate in the same oblations of water and include descendants from a common ancestor more remotely related than the thirteenth degree from the *propositus*. A sister's son is only a *bandhu*. A *samanodaka* is a nearer heir to a deceased Hindu than a *bandhu* and will exclude the latter. Where therefore B was in the thirteenth degree from the common ancestor L and D was in the fourteenth degree from him and B's widow executed a deed of compromise declaring that after her death D would become entitled to the possession of B's property, *held* that this gave no cause of action to B's sister's son for a suit for declaration of title and cancellation of the deed. *Bai Devkore v. Amritram Jamiatram* (1) referred to.

THE facts of this case were as follows :—

On the death of Bindachal Rai, the last owner of the property in dispute, his mother, Musammat Rajwanti, succeeded to it and got possession. A dispute arose as to the succession between her and the present appellants who claimed to be entitled to the property. They brought a suit against her for possession; this suit was compromised. The compromise "recognized the right" of the Musammat to remain in possession during her life-time, and declared that on her death the present appellants would be entitled to succeed as the nearest reversioners. They were of the 14th degree of lineal descendants, counting from the common ancestor, Lala Rai. Thereupon the first respondent, Kamla Prasad, who was the son of a sister of Bindachal Rai, brought the present suit against both the parties to the former suit, on the allegations that he was a nearer reversioner than the appellants and that the former suit and the compromise were collusive. He therefore prayed for a declaration that he was the next heir and that the compromise was void and ineffectual as against him. Both the lower courts held that the plaintiff, being a near *bandhu*, was a nearer reversioner than the defendants, and partly decreed his claim. The defendants appealed.

* Second Appeal No. 565 of 1909 from a decree of Sri Lal, District Judge of Ghazipur, dated the 20th of April, 1909, confirming a decree of Chhajju Mal, Subordinate Judge of Ghazipur, dated the 14th of January, 1909.

(1) (1885) L. L. R., 10 Bom., 372.

Mr. *M. L. Agarwala*, for the appellants :—

The plaintiff, who is a sister's son, is a *bandhu*. According to the Mitakshara the order of succession is as follows:—*Sapindus*, then *Sakulyas*, then *Samanodakas*, and after them *Bandhus*. Mayne: *Hindu Law*, 7th Edition, paragraphs 574 and 575. The appellants are *samanodakas*. This class extends not only to seven degrees beyond the *sakulyas*, but even further, so long as the pedigree can be traced. A lineal descendant, however far down the genealogical table he may be, is a *samanodaka*, so long as he can trace his descent from a common ancestor. Mayne: *Hindu Law*, 7th Edition, paragraph 574. Sarvadhikari: *Principles of Hindu Law of Inheritance* (Tagore Law Lectures, 1880), pp. 656, 686, 687. *Bai Devkore v. Amritram Jamiatram* (1). The Mitakshara: Chapter II, section 5, pl. 6. The effect of the compromise was to confirm the possession of Musammât Rajwanti for her life and to declare that, after her, the appellants would be the next reversioners. This was entirely in accordance with what the position of the parties was according to the Hindu Law. There was no collusion and no infringement of the right of any one.

Munshi *Haribans Sahai*, for the respondents :—

The plaintiff is the next reversioner, and not the appellants. The appellants are not *samanodakas*, as they are more than seven degrees beyond the *sakulyas*. The class of *samanodakas* includes only those who are within seven degrees from the *sakulyas*. Ghose: *Hindu Law*, p. 125. Golap Chandra Sarkar: *Hindu Law*, p. 64. Even if the plaintiff be held not to be the next reversioner, he has, under the circumstances of the case, a right to sue. A remote reversioner can sue where the near reversioner colludes with the widow. *Rani Anund Koer v. The Court of Wards* (2). In the compromise Musammât Rajwanti assented without demur to the assertion, by the other side, of their *present* ownership of the property, over which they professed to give her possession for life, not because she was entitled to it, but merely in *view* of maintenance. The following cases are in my favour:—*Bukhtawar v. Bhagwana* (3) and *Sheo Singh v. Jeoni* (4).

(1) 1885 I. L. R., 10 Bom., 872.

(2) 1880 L. R., 8 I. A., 14;

I. L. R., 6 Cal., 764.

(3) 1910 I. L. R., 32 All., 176, (178).

(4) 1897 I. L. R., 19 All., 524.

1910

RAM BABAN
RAI
v.
KANTLA
PRASAD.

Mr. *M. L. Agarwala* was not heard in reply ; but he referred to Mayne : *Hindu Law*, 7th Edition, paragraph 648.

TUDBALL and CHAMIER, JJ :—This appeal arises out of a suit brought by the plaintiff claiming as the next reversioner to Bindachal Rai to obtain a declaration that he is entitled to the estate of the deceased after the death of his maternal grand-mother, Musammat Rajwanti Kunwar, and that the deed of compromise, dated the 5th of June, 1908, was void and ineffectual as against him. In paragraph 5 of the plaint he stated that the defendant, first party, had brought a suit against Rajwanti Kunwar to recover possession of the property left by Bindachal Rai ; that they colluded, and on the 5th of June, 1908, filed a compromise in the suit to the effect that the defendant, 2nd party (i. e., Rajwanti Kunwar) would remain the owner and possessor of the property left by Bindachal Rai as long as she was alive, and that after her death the defendants, first party, would become entitled to the possession of the aforesaid property. In paragraph 6 the plaintiff urged that this compromise was prejudicial to him, as according to Hindu Law he is the heir of Bindachal Rai and the defendants, first party, could not in any way be deemed to be his heirs. With the plaint was filed a pedigree which will be found at page 7 of the paper book. In this pedigree one Lala Rai is shown as the common ancestor from whom Bindachal Rai and also the defendants, Rambaran Rai, Sita Ram Rai, and Swarath Rai are descended. Bindachal Rai is shown as being in the thirteen degree from Lala Rai, while the defendants are shown in the fourteenth degree from him. The defendants in their written statement filed another pedigree which will be found at page 9 of the paper book in which they show themselves as within 6 or 7 degrees of Lala Rai. They also raised a plea that the plaintiff was the son of Bindachal Rai's step-sister and not of his own sister. The court of first instance granted the plaintiff a declaration that the compromise made by Rajwanti Kunwar on the 5th of June, 1908, was collusive and that the declaration therein that the defendants were the heirs after her was not binding on the plaintiff. This decree was upheld on appeal. In this Court it is urged that on the plaintiff's own pedigree the defendants appellants are

the reversioners next entitled to take the estate of Bindachal Rai on the death of Rajwanti Kunwar, and that therefore the plaintiff has no cause of action to obtain the declaration which he seeks, as the compromise does nothing more than declare that the defendants are the reversioners according to Hindu Law. On behalf of the respondent it is urged that the appellants cannot be the next reversioners because they are too remote from Lala Rai, the common ancestor. It is next urged that under the compromise in question the mother recognized the title of the appellants as actual owners of the property on the date of the compromise, and that this was prejudicial to the interests of the plaintiff at least as a remote reversioner. In regard to the first point, on page 686 of Sarvadhikari's Principles of Hindu Law of Inheritance; it is laid down:—"In default of *gotraja sapindas*, says the Mitakshara, the succession devolves on *samanodakas*, and they must be understood to reach to seven degrees beyond the *gotraja sapindas*, or else as far as the limits of knowledge as to birth and name extend." At page 778 of Mayne's Hindu Law, 7th Edition, in paragraph 574, where Mr. Mayne discusses *sakulyas* and *samanodakas*, he says:—"The former extend to three degrees both in ascent and descent beyond the *sapindas*, and the latter to seven degrees beyond the *sakulyas*, or even further so long as the pedigree can be traced." The same question arose before the Bombay High Court in the case of *Bai Devkore v. Amritram Jamiatram* (1). It was there held that the word *samanodakas*, meaning literally those participating in the same oblation of water, includes descendants from a common ancestor, more remotely related than the thirteenth degrees from the *propositus*. Mitakshara, chapter II, section 5, pl. 6, was quoted which runs as follows:—"If there be none such, the succession devolves on kindred connected by libations of water; and they must be understood to reach to seven degrees beyond the kindred connected by funeral oblations of food: or else as far as the limits of knowledge as to birth and name extend." It is quite clear on the authorities and on the face of the pedigree filed by the plaintiff himself that the defendants appellants are nearer

1910

 RAM BARAN
 RAI
 v.
 KAMLA
 PRASAD.

1910

RAM BABAN
RAI
v.
KANULA
PRASAD.

reversioners to Bindachal Rai than the plaintiff, who, at the utmost, being a sister's son, is a *bandhu*.

In regard to the argument that the mother did more than acknowledge the rights of the appellants as reversioners, this is entirely a new case which has been put before the Court for the first time on this appeal. The plaint, the pleadings in the lower courts as well as the judgements of the lower courts show clearly how the compromise was read by the parties in those courts. We have nothing before us to show what were the pleadings and the issues in the suit which was originally brought by the defendants appellants against Musammat Rajwanti Kunwar. We have before us only the compromise that the defendant should remain in possession in lieu of maintenance during her lifetime, and that after her death the then plaintiffs would get the property as heirs and owners after Bindachal Rai. In our opinion the plaintiff has no right whatever to put forward at this late stage a new case. As the case stood in the lower court, the plaintiff claimed to be a nearer reversioner than the defendants, and on that ground sought a declaration that the compromise was not binding as against him. As has been shown above, he is a remote reversioner, and the defendants appellants on his (plaintiff's) own showing are nearer heirs to the estate of Bindachal Rai. The compromise does nothing more than acknowledge the right of the mother Rajwanti Kunwar to remain in possession for her lifetime and the right of the defendants appellants to enter into the estate on her death if they are then alive. In our opinion the plaintiff has no cause of action whatsoever for the present suit.

We allow the appeal and set aside the decree of the lower courts. The suit will stand dismissed with costs in all courts.

Appeal decreed.