

*Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir
Pramada Charan Banerji.*

SHIB SAHAL AND OTHERS (PLAINTIFFS) v. SARASWATI AND ANOTHER
(DEFENDANTS).*

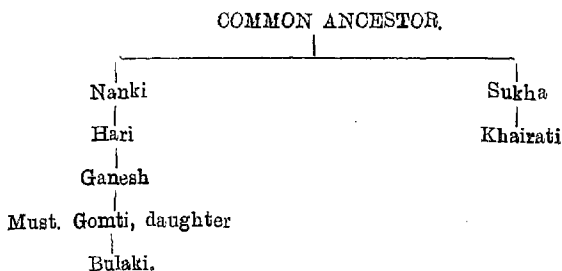
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*Hindu law—Mitakshara—Bandhu—Grandfather's great-grand-son's
daughter's son not a bandhu under the Mitakshara law.*

Held that for *bandhu* relationship to exist it is essential that the person claiming to be *bandhu* and the last male owner must have been *sapindas* of each other. The rule of *sapinda* relationship under the Mitakshara Law extends to seven degrees on the father's side and five degrees on the mother's side including the last owner. Therefore a grandfather's great-grandson's daughter's son is not a *bandhu* under the Mitakshara law.

THE facts of this case are as follows :—

The following pedigree explains the position of the parties :—



The plaintiffs came into court suing for possession as transferees of Bulaki. The last owner of the property was Khairati. He died leaving a widow Chitto Kunwar, who in 1912 made a gift of it to the defendant, who was her relation. After Chitto's death Bulaki, alleging himself to be the next reversioner sold his right to recover possession to the plaintiffs. The defence was that Bulaki was not the next reversioner; that the sale was fictitious, and even if the pedigree was correct, Bulaki was not a *bandhu* and had no right to maintain the suit. The court of first instance decreed the suit, but the lower appellate court reversed the decree. The plaintiffs appealed.

The Hon'ble Dr. *Tej Bahadur Sapru* (with him The Hon'ble Dr. *Sundar Lal*) for the appellants.

* Second Appeal No. 260 of 1914, from a decree of C. E. Guiterman, Additional Judge of Moradabad, dated the 24th of January, 1914, reversing a decree of Kunwar Sen, Additional Subordinate Judge of Moradabad, dated the 28th of July, 1913.

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Bulaki Rai being the son of the last male owner's uncle's grandson's daughter's son was a *bandhu* within the meaning of the Mitakshara. It was true that in the list given in the Mitakshara an uncle's grand-son's daughter's son was not mentioned, but the list was not exhaustive. Sarvadhikari's Tagore Lectures on the Hindu Law of Inheritance, p. 630.

Pandit *Krishna Narain Laghate* (for Dr. *Satish Chandra Banerji*) and Mr. *B. E. O'Connor*), for the respondents, was not called upon.

RICHARDS, C. J., and BANERJI, J.—This appeal arises out of a suit for possession of the property of one Khairati Rai. The plaintiff claims as transferee from Bulaki, who is alleged to be the *bandhu* of Khairati Rai, and thus to have inherited his property. According to the pedigree put forward by the plaintiff in the plaint, the relationship between Bulaki and Khairati Rai is this that Bulaki is the son of the daughter of a grandson of the paternal uncle of Khairati's father. The question, therefore, is whether the grandfather's great-grandson's daughter's son is a *bandhu* under the Mitakshara law. The court of first instance was of opinion that the plaintiff's vendor Bulaki was Khairati's *bandhu* "*ex parte maternâ*." The learned Subordinate Judge clearly misunderstood what was meant by a "*bandhu ex parte maternâ*." According to the Mitakshara, *bandhus* are of three descriptions, namely, the owner's own *bandhus*, his father's *bandhus*, that is, "*bandhus ex parte paternâ*" and his mother's *bandhus* that is "*bandhus ex parte maternâ*." There is no question of Bulaki being a "*bandhu ex parte maternâ*" in this case. The question what constitutes a *bandhu* was fully considered by their Lordships of the Privy Council in the recent case of *Ramchandra Martand Waikar v. Vinayak Venkatesh Kothekar* (1) and the present case is practically concluded by the ruling of their Lordships. The word "*bandhu*" under the Hindu Law (as has been held in that case also) means a "*sapinda*" who belongs to a different *gotra*, that is to say, a "*bhinna gotra sapinda*." Therefore, for the *bandhu* relationship to exist it is essential that the person claiming to be the *bandhu* and the last owner must have been *sapindas* of each other. The rule of *sapinda* relationship

has been laid down in the Mitakshara and it extends to seven degrees on the father's side and five degrees on the mother's side, including the last owner. Taking the pedigree put forward by the plaintiff, which will be found at page 9 of the paper book, it is clear that Bulaki was one degree beyond the seventh degree counting from the last owner Khairati Rai. We are asked to count the seven degrees from the great grandfather of Khairati who was the common ancestor, and it is said that computing from the common ancestor Khairati is within the seventh degree, but this computation would leave out of consideration altogether Khairati himself and his father. The mode in which relationship should be computed is stated in Sarvadhikari's Tagore Law Lectures (1880) page 707, and that is a mode which the lower appellate court has adopted. We think that the decision of that court is right. We dismiss the appeal with costs.

Appeal dismissed.

FULL BENCH.

Before Sir Henry Richards, Knight, Chief Justice, Mr. Justice Tudball and Mr. Justice Kafiq.

ASHRAF ALI (DEFENDANT) v. KALYAN DAS AND OTHERS (PLAINTIFFS).
Act (Local) No. III of 1899 (Court of Wards Act), sections 16 and 20—Claim not notified—Maintainability of suit—Admissibility of documents.

Section 20 of the Court of Wards Act, 1909, applies only to cases, where persons who have notified their claims under section 16 of the said Act have failed to produce their documents. Where the property of the debtor was taken over by the Court of Wards at a time when the Court of Wards Act of 1899 was in force and the creditor did not notify his claim under section 16, but brought a suit upon his bonds after the property was released by the Court of Wards, held that the bonds were admissible in evidence and the suit was maintainable. *Collector of Ghazipur v. Balbhaddar Singh* (1) overruled.

THE facts of the case were as follows:—

Two mortgages were executed by the defendant on the 7th of August, 1907, and the 11th of February, 1909, respectively. The estate of the mortgagors was taken over by the Court of Wards and a notification was duly issued, with effect from the

* First Appeal No. 281 of 1913, from a decree of Banke Behari Lal, Additional Subordinate Judge of Aligarh, dated the 1st of May, 1913.

(1) (1912) 10 A. L. J., 234.

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