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considered that the plaintiff had shown unnecessary haste in instituting this suit, which, he said, was superfluous in view of the prior Suit No. 96 of 1899. In that view, with which we concur, he ought to have rejected the claim, and we now do so, reversing his decree.

Plaintiff must bear all costs, but those costs should only be costs incurred in Suit No. 167 of 1899 and not include any of the costs in Suit No. 96 of 1899.

Decree reversed.

APPELLATE CIVIL.

Before Sir L. H. Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Batty.

1903. *July* 9.

GANESH VAMAN KULKARNI (ORIGINAL PLAINTIFF), APPELLANT, *v.* WAGHU VALAD RAJARAM (ORIGINAL DEFENDANT), RESPONDENT.*

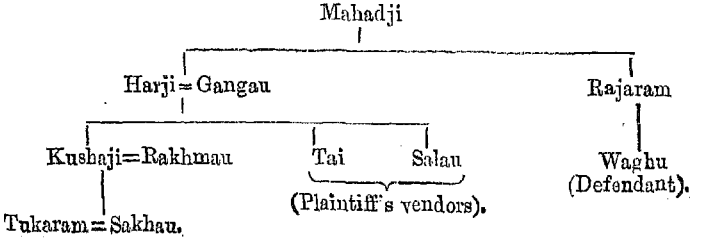
Hindu Law—Succession—Paternal aunt—Paternal great-grandfather's grandson.

Under the Hindu Law as prevailing in the Bombay Presidency, the grandson of the paternal great-grandfather of the propositus is entitled to succeed in preference to the paternal aunt.

SECOND appeal from the decision of Gangadhar V. Limaye, First Class Subordinate Judge of Poona, with Appellate Powers, confirming the decree of Ruttonji Mancherji, Subordinate Judge of Junnar.

Suit to recover possession of immoveable property and mesne profits.

The following genealogical table will simplify the pleadings :—



* Second Appeal No. 32 of 1903.

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The plaintiff sued for possession and mesne profits, alleging that the property in suit originally belonged to Harji and after his death his son Kushaji was in possession, and after Kushaji his son Tukaram was in possession. Tukaram having died childless, the property was in the joint possession of his grandmother Gangau, his mother Rakhmau, and his widow Sakhau, who having remarried, the possession continued with Gangau and Rakhmau. Gangau died and thereafter Rakhmau was in sole possession. After Rakhmau's death, Harji's daughters Tai and Salau became entitled to the property as joint heiresses and they sold the property to the plaintiff. The defendant was a distant relation of Rakhmau and was in possession of the property. The plaintiff, therefore, brought the present suit.

The defendant pleaded that Harji had a brother Rajaram. The defendant was the son of Rajaram who was the the *chulat-chulta* (paternal uncle one degree removed) of the deceased Tukaram. Tai and Salau were the sisters of Tukaram's father Kushaji; therefore, the inheritance could not go to them, but to the defendant. The defendant was in possession of Tukaram's property as his heir and the plaintiff had no right to sue as the assignee of Tai and Salau, who had no right to Tukaram's estate.

The Subordinate Judge rejected the claim, holding that the defendant had a preferential title to Tukaram's estate, and not the plaintiff.

On appeal by the plaintiff the Judge confirmed the decree.

The plaintiff preferred a second appeal.

Mahadeo B. Chaubal, for the appellant (plaintiff):—The last holder was Tukaram's mother Rakhmau. Therefore we contend that succession must be traced to her husband Kushaji and not to the last male holder. If our contention is correct, then Salau and Tai, being the sisters of Kushaji, would be entitled to inherit the property. We further contend that for the purpose of succession Rakhmau must be treated as a male: *Manilal* v *Bai Rewa*.[1] Even if succession be traced to the last male holder, that is, to Tukaram, the father's sister would have a preferential right to that of a distant relative. According to the Mayukha, a

[1] (1892) 17 Bom. 758.

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sister is a *sagotra sapinda*, and that being so, the father's sister would stand on the same level.

Krishnaji H. Kelkar, for the respondent (defendant):—On Tukaram's death his mother took only a widow's estate: *Narsappa* v. *Sakharam* [1]; *Sakharam* v. *Sitabai* [2]; *Bharmangavda* v. *Rudrappgavda* [3]; *Tuljaram* v. *Mathuradas*.[4] The distinctive feature of a widow's estate is that, after her death, the succession is to be traced to the last male holder: *Bhugwandeen* v. *Myna Baee* [5]; *Collector of Masulipatam* v. *Cavaly Vencata*.[6]

The next question is whether a father's sister is a *sagotra sapinda*. In the Bombay Presidency a sister is admitted as an heir, not because she is *sagotra sapinda* according to the Mitakshara, but because she is mentioned as an heir in Nilakantha's Commentary on account of her propinquity to the last male holder, her brother. The doctrine cannot be extended to the father's sister. This point was raised and decided in Second Appeal No. 158 of 1870, which was a case from Gujarát, and therefore governed by the Mayukha. Vijnaneshvar, the author of the Mitakshara, does not mention the father's sister as a *sagotra sapinda*. She does not appear in the Subodhini or in the Viramitrodaya. Possibly she is not even a *bandhu*. The enumeration of *bandhus* in the Mitakshara, however, has been held by the Privy Council to be illustrative and not exhaustive: *Muthusami Mudaliyar* v. *Simambedu*.[7] She is treated as a *bandhu* in the Madras Presidency: *Narasimma* v. *Mangammal* [8], *Chinnammal* v. *Venkatachala*.[9]

JENKINS, C. J.:—The question arising on this appeal is, whether the appellant should be preferred to the respondent as heir to the property in suit? The relationship of the parties is shown in the tabular statement contained in the judgment of the first Court. On Tukaram's death, about thirty years ago, he was succeeded by his widow, but on her remarriage the property passed to Tukaram's mother who has now died.

(1) (1869) 6 Bom. H. C. R. 215.
(2) (1879) 3 Bom. 353.
(3) (1879) 4 Bom. 181.
(4) (1881) 5 Bom. 662.
(5) (1867) 11 Moore's I. A. 487.
(6) (1861) 8 Moore's I. A. 529.
(7) (1896) 19 Mad. 405.
(8) (1889) 13 Mad. 10.
(9) (1891) 15 Mad. 421.

The present claimants are the appellant who derives title under Tai and Salau on the one hand, and Waghu, who is the grandson of Mahadaji.

In the first place it was contended that on Tukaram's mother's death succession ought to be traced to Kushaji, her husband.

The purpose of this argument was to take advantage of the rule in this Presidency which assigns a high place in the order of succession to the sister. We are, however, of opinion that the point is covered by authority and that the heir of Tukaram is the person to succeed. The question therefore resolves itself into this: is the paternal aunt or the paternal great-grandfather's grandson to be preferred? Both the lower Courts have decided against the aunt.

Now there is no doubt that the great-grandfather's grandson is a *sagotra sapinda*. Mr. Chaubal contends that the same, or as good a qualification, is possessed by the aunt, and he is forced so to contend; for he concedes that if she be *bhinna gotra sapinda* or *bandhu*, she cannot succeed unless, by reason of the parties being Sudras, it can be said *gotra* is not a determining factor. Now an aunt by marriage, becomes of another *gotra*. Reliance is, however, placed on the text of the Vyavahar Mayukha, which deals with a sister's succession (IV, viii, 19). In the record of Second Appeal No. 158 of 1870 we have the following translation of this passage:

"In her (father's mother's) absence the sister. For Manu says—that among *sapindas* to the nearest the inheritance belongs. Brahaspati (also) says where there are many caste-fellows and *bandhus* of the same family (Sakulya), among them, the nearest takes the wealth of the childless deceased. And because of her also having been born in the *gotra* of the brother, there is the identity of *gotratva* (state of belonging to the *gotra*). Only she has no *sagotratva* (evenness of *gotra*) (with the brother). *Sagotratva* (however) is not stated as the cause (occasion) of vesting the inheritance."

The same reasoning, it is urged, is applicable to the paternal aunt.

In Second Appeal No. 158 of 1870 it was decided that the father's sister even in Gujarát was not entitled to come in at the head of

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the *gotraja sapindas*, and she was postponed to distant male *gotraja sapindas*. Here then we have the decision of a bench of this Court more than thirty years old on a point of property law which governs this case, and we think that in the absence of strong reasons it would be wrong for us not to treat ourselves as bound by it; for in property law the principle of *stare decisis* must have the greatest weight ascribed to it. Therefore we hold that the paternal grandfather's grandson is to be preferred to the paternal aunt, and we think it should make no difference in this respect that the parties are Sudras. The decree of the lower Appellate Court must therefore be confirmed with costs.

Decree confirmed.

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Jacob.

1903. *July* 14.

RAMCHANDRA VINAYAK KULKARNI AND OTHERS (ORIGINAL PLAINTIFFS), APPELLANTS, *v.* NARAYAN BAJAJI AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Limitation Act (XV of 1877), schedule II, article 118—Adoption—Declaration that the adoption is invalid—Knowledge—Death of adopter—Date from which limitation runs.

B adopted N on the 17th March, 1891. On the 30th March, 1897, B died. The plaintiffs filed this suit on the 14th April, 1899, for a declaration that the adoption of N was invalid.

Held, that the suit not having been brought within six years from the 17th March, 1891, the date on which the plaintiffs came to know of the adoption, was barred under article 118 of schedule II to the Limitation Act (XV of 1877); and that the fact that B died within six years of the date of the suit could not prevent the bar of limitation.

SECOND appeal from the decision of Gangadhar V. Limaye, First Class Subordinate Judge, A. P., at Poona, confirming the decree passed by K. R. Jalihal, Subordinate Judge of Khed.

Suit for a declaration that an adoption is invalid.

One Bajaji adopted Narayan (defendant 1) on the 17th March, 1891: on the same day this fact came to the knowledge of the plaintiffs who were reversionary heirs of Bajaji.

* Second Appeal No. 35 of 1903.