PRIVY COUNCIL.

J. C.*
1924.
June 19.

KENCHAVA AND ANOTHER (DEFENDANTS) v. GIRIMALLAPPA CHANNAPPA (PLAINTIFF)*.

[On Appeal from the High Court at Bombay.]

Hindu law—Inheritance—Reversioner murdering person holding widow's estate—Disqualification—Subsequent descent of estate—Bandhus ex parte paterna *of equal degree—Preference of male.*

A Hindu who was next reversioner to the estate of an intestate was convicted of the murder of the intestate's mother upon whose death the reversionary interest was expectant.

Held, that even if Hindu law did not disqualify the murderer from succeeding to the estate, he was so disqualified upon the principles of justice, equity and good conscience.

Held, further, that the murderer was not to be regarded as the stock for a fresh line of descent, but as not existing when the succession opened. No distinction could be drawn between the murderer's legal and beneficial interests, the theory of legal and equitable estates forming no part of Hindu law.

Vedanayaga Mudaliar v. *Vedammal*[1], disapproved; *Gangu* v. *Chandrabhagabai*[2], distinguished.

The right to succeed as heir to the intestate was contested between the respondent, who was related to the intestate as father's sister's son, and appellants the intestate's father's brother's daughters.

Held, that father's sister's son was to be preferred, since as between bandhus both *ex parte paterna* and of the same degree, a male was to be preferred to a female.

Quaere, in the case of the female claimant *ex parte paterna* and the male claimant *ex parte materna*.

Saguna v. *Sadashiv*[3], *Rajah Venkata Narasimha* v. *Rajah Surenani Venkata*[4], and *Balkrishna* v. *Ramkrishna*[5], discussed.

Vedachela Mudaliar v. *Subramania Mudaliar*[6], referred to.

Decree of the High Court (45 Bom. 768) affirmed.

* *Present.*—Lord Dunedin, Lord Phillimore, Lord Carson, and Sir John Edge.

(1) (1904) 27 Mad. 591.
(2) (1907) 32 Bom. 275.
(3) (1902) 26 Bom. 710.
(4) (1908) 31 Mad. 321.
(5) (1920) 45 Bom. 353.
(6) (1921) L. R. 48 I. A. 349.

1924.

KENCHAVA v. GIRIMALLAPPA.

APPEAL (No. 100 of 1922) from a decree of the High Court (September 1, 1920) varying a decree of the First Class Subordinate Judge at Dharwar.

The suit was brought by the respondent against the appellants to recover from them possession of properties forming the estate of one Parappa who died intestate in 1912. Upon the death of Parappa his mother Chanbasava succeeded to the estate. Hanmappa who was next reversionary heir upon her death in 1914, was convicted of the murder of Chanbasava. The relationship of the parties appears from the judgment of the Judicial Committee.

The trial Judge made a decree for the plaintiff for a third of the property ; he held that though Hanmappa was disqualified from taking beneficially, the estate vested in him, and that as his heirs the plaintiff and the defendants had equal rights.

Upon an appeal to the High Court, with cross-objections, the right of the plaintiff, the present respondent, to the whole estate was decreed.

The learned Judges (Macleod C. J. and Fawcett J.) held that Hanmappa was disqualified upon the principles of justice, equity and good conscience, and that as a result of that disqualification the heirs of the intestate, and not the murderer's heirs succeeded. They further held that the respondent as a male bandhu of the intestate was to be preferred to the appellants, female bandhus in the same degree. The appeal is reported at 45 Bom. 768.

1924. May 12.—*E. B. Raikes*, for the appellants :— Under Bom. Reg. IV of 1827, section 26, the principles of justice, equity and good conscience should have been applied only if no other law was applicable. The

matter should have been determined according to Hindu law. Hindu texts expressly lay down certain disqualifications from inheriting, but this is not one. Analogies of English law should not have been applied: *Ramchandra Martand Waikar* v. *Vinayak Venkatesh Kothekar*[1]. The English cases do not deal with succession to an intestate's estate. Under sections 61 and 62 of the Indian Penal Code the Court has power to forfeit the property of a person convicted of murder; there is, therefore, no room for the application of the principles of public policy. Even if Hanmappa was personally disqualified, the appellants nevertheless were entitled as his heirs: *Gangu* v. *Chandrabhagabai*[2]. But if the succession passed to the heirs of the intestate the appellants as his father's brother's daughters, according to Hindu law as applied in Bombay, were entitled in preference to the respondent, his father's sister's son. In *Saguna* v. *Sadashiv*[3] the High Court at Bombay distinguished between the law in that Presidency and that laid down in Madras in *Narasimma* v. *Mangammal*[4]. In *Balkrishna* v. *Ramkrishna*[5] the decision in *Saguna* v. *Sadashiv*[3] was not referred to. The appellants being within the gotra, and the respondent not being so, they were to be preferred having regard to the doctrines of Hindu law prevailing in Bombay: Mayne's Hindu Law, paras. 38, 585; *Vijiarangam* v. *Lakshuman*[6]; *Bai Kesserbai* v. *Hunsraj Morarji*[7], *Parot Bapalal Sevakram* v. *Mehta Harilal Surajram*[8].

The respondent did not appear.

(1) (1914) L. R. 41 I. A. 290 at p. 299; 42 Cal. 384 at p. 406.

(2) (1907) 32 Bom. 275 at p. 280.

(3) (1902) 26 Bom. 710.

(4) (1889) 13 Mad. 10.

(5) (1920) 45 Bom. 353.

(6) (1871) 8 Bom. H. C. (O. C. J.) 244 at p. 261.

(7) (1906) L. R. 33 I. A. 176; 30 Bom. 431.

(8) (1894) 19 Bom. 631.

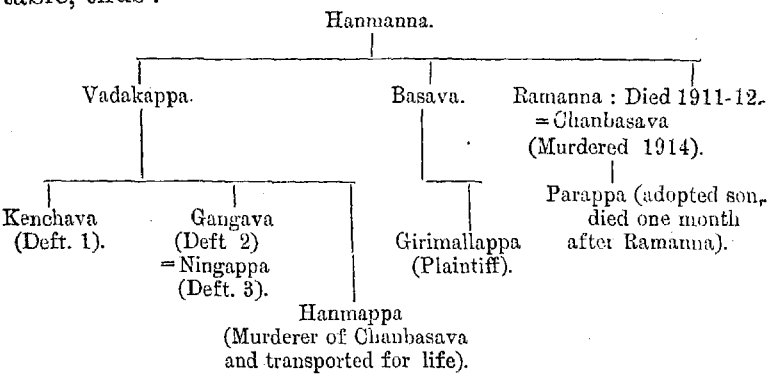
1924.

KENCHAVA v. GIRIMALLAPPA.

June 19.—The judgment of their Lordships was delivered by

LORD PHILLIMORE :—This case involves some questions of importance. The parties are all relations, descendants of one Hanmanna. He had three children—a daughter, Basava, whose son Girimallappa Channappa Somasagar is the plaintiff and present respondent; a son Vadakappa who had two daughters, Kenchava and Gangava—who are the defendants and present appellants—and a son Hanmappa—of whom more hereafter. The third child of Hanmanna was another son, Ramanna since deceased. Ramanna married Chanbasava; they had no children, but they adopted as a son, Parappa. He died a month after Ramanna. Thereupon, his adoptive mother Chanbasava succeeded to the property for the ordinary Hindu woman's estate, and upon her death, descent would have to be traced to Parappa as the *propositus*; and Hanmappa if he survived Chanbasava would be the natural heir to Parappa.

The relationships can be illustrated on a genealogical table, thus :—



In 1914, Hanmappa had a quarrel with his aunt Chanbasava and murdered her. He was tried and sentenced to transportation for life. The matter to be determined in this case is who, in these circumstances

—the Hindu woman's estate of Chanbasava having been brought to an end—is to succeed as heir to Parappa's property.

The defendants, Kenchava and Gangava, the daughters of Parappa's uncle, obtained possession. Thereupon, the plaintiff, as son of Parappa's aunt, sued claiming to have a better title. The defendants being in possession—while averring their better title—also rely as they are entitled to do, upon the contention that the real title is in or through the murderer Hanmappa.

The case, therefore, raises three questions—

Can the murderer succeed?

If not, can title be claimed through him?

If not,—and he is to be wiped out altogether—who are the heirs of Parappa?

And to this last question there are three possible answers. The three cousins may be entitled equally; or the daughters of the uncle may succeed alone; or the son of the aunt may succeed alone.

As to the first two questions the Subordinate Judge held that the matter was provided for by Hindu law, and that this law disqualified a murderer from succeeding to an estate, the succession to which he had accelerated by killing the woman who had a previous interest during her life. But in compliance, as he considered, with a decision of the High Court of Madras, he held that nevertheless the murderer did take the legal estate, though he was disqualified from having any beneficial interest. He further held that this disqualification was not confined to a personal disqualification of the murderer, but wiped him out from the line of descent, so that the heirship to the propositus Parappa is to be traced directly and not through him.

1924.

KENCHAVA v. GIRIMALLAPPA.

The High Court came to the same conclusions, that is to say, that the murderer had no title, and that the heirship was not to be traced through him, but on a somewhat different line of reasoning. The learned Judges thought that there was no Hindu law which governed the matter, so that they had to have recourse, in obedience to the Bombay Regulation of 1827, No. 4, section 26, to the principles of equity, justice and good conscience. And while thinking it immaterial whether the murderer had the legal estate vested in him or not because "in either case he must for the purpose of the inheritance be treated as if he were dead when the inheritance opened and as not being a fresh stock of descent," they thought it "simpler to say that the exclusion extends to the legal as well as beneficial estate".

Before this Board, it has been contended that the matter is governed by Hindu law, and that the Hindu law makes no provision disqualifying a murderer from succeeding to the estate of his victim and, therefore, it must be taken that according to this law he can succeed, and, he being alive, the plaintiff has no title.

Their Lordships do not take this view. There is much to be said for the argument of the Subordinate Judge that the principles of jurisprudence which can be traced in Hindu law, would warrant an inference that according to that law a man cannot take advantage of his own wrong, and that if this case had come under consideration by the Hindu sages they would have determined it against the murderer. But it is unnecessary so to decide, because the alternative is between the Hindu law being as above stated or being for this purpose non-existent, and in this latter case the High Court have rightly decided that the principles of equity, justice and good conscience exclude the murderer.

The English law on this subject is based upon principle and is well settled. It is true that the reported decisions have been in cases where the murderer was a devisee or legatee under the will of the murdered person, and that Joyce J. in *In re Houghton*[1] thought it a matter for consideration whether the same rule would apply in the case of an intestacy, and cited a decision of a Court in the U. S. A., by which it was held that the provisions of the Statute of Distributions were paramount and forbade the consideration of any disqualification. But the actual decision of Joyce J. was rested upon another ground and a quite satisfactory one ; and their Lordships are unable to follow the reasoning of the learned American Judge. Statutes regulating heirship or descent, or giving force to wills and to the devises contained in wills should be read as not intended to affect paramount questions of public policy or depart from well-settled principles of jurisprudence.

In their Lordships' view it was rightly held by the two Courts below that the murderer was disqualified ; and with regard to the question whether he is disqualified wholly or only as to the beneficial interest which the Subordinate Judge discussed, founding upon the distinction between the beneficial and legal estate which was made by the Subordinate Judge and by the High Court of Madras in the case of *Vedanayaga Mudaliar* v. *Vedammal*[2], their Lordships reject, as did the High Court here, any such distinction. The theory of legal and equitable estates is no part of Hindu law and should not be introduced into discussion.

The second question to be decided is whether title can be claimed through the murderer. If this were so, the defendants as the murderer's sisters, would take

[1] [1915] 2 Ch. 173 [2] (1904) 27 Mad. 591.

1924.

KENCHAV v. GIRIMALLAPPA.

precedence of the plaintiff, his cousin. In this matter also, their Lordships are of opinion that the Courts below were right. The murderer should be treated as non-existent and not as one who forms the stock for a fresh line of descent. It may be pointed out that this view was also taken in the Madras case just cited.

It was contended that a different ruling was to be extracted from the decision of the Bombay High Court in *Gangu* v. *Chandrabhagabai*[1]. This is not so. In that case, the wife of a murderer was held entitled to succeed to the estate of the murdered man; but that was not because the wife deduced title through her husband, but because of the principle of Hindu family law that a wife becomes a member of her husband's gotra, an actual relation of her husband's relations in her own right, as it is called in Hindu law a gotraja-sapinda. The decision, therefore, has no bearing on the present case.

It remains to be determined whether as between the appellants and the respondent—all three being first cousins of the propositus—any distinction is to be made by reason of their sex or the sex of their parents. The Subordinate Judge thought that there was no distinction to be made between bandhus of equal nearness, and that all took equally, and so he gave to the plaintiff a third of the property.

Both parties appealed to the High Court, which held that as between bandhus of equal nearness to the propositus, male members of the family were preferred to female, and gave judgment that the plaintiff should take the whole.

The case against this decision has been very fully argued before their Lordships by counsel for the defendants-appellants. He brought a number of authorities

[1] (1907) 32 Bom. 275.

before their Lordships for review, all of which have been considered.

In the result, however, for the purposes of this case, the matter can be brought into a short compass. Both the Subordinate Judge and the High Court agreed—indeed the Subordinate Judge said it was conceded in argument on both sides—that the plaintiff and the defendants are bandhus (bhinna gotra sapindas) of an equal degree being sapindas within four degrees of the common ancestor. This being so, no reason is shown in their Lordships' opinion why the defendants as daughters of the deceased father's brother should take in preference to the plaintiff who is the son of the deceased father's sister. So far again, both Courts are in agreement, and their Lordships are in agreement with both Courts. That leaves to be determined the point on which the two Courts differ, the Subordinate Judge having held that all three should share alike, and the High Court having given preference to the plaintiff as being a male.

Now it was decided by the High Court of Madras in 1889, in the case of *Narasimma* v. *Mangammal*[1], that a father's sister was postponed to a mother's brother by reason of the general preference given among bandhus to male over female heirs. This decision was quoted without disapproval by their Lordships on this Board in the case of *Vedachela Mudaliar* v. *Subramania Mudaliar*[2].

But the High Court of Bombay in 1902 in the case of *Saguna* v. *Sadashiv*[3] came to the conclusion that however this might be in Madras it was different in Bombay. The Judges gave preference to the father's half-sister over the mother's brother, and did not follow the case of *Narasimma* v. *Mangammal*[1] which was

[1] (1889) 13 Mad. 10. [2] (1921) L. R. 48 I. A. 349 ; 44 Mad. 753.
[3] (1902) 26 Bom. 710.

1924.

KENCHAVA v. GIRIMALLAPPA.

quoted to them. And it was upon this decision of the High Court of Bombay that the main argument of counsel for the appellants was founded.

When analysed, however, the decision of the Bombay Court comes to this only. There may or may not be a preference among bandhus of males over females, if they are otherwise in the same position, but there is a prior and paramount enquiry whether they are bandhus on the father's side or on the mother's side—those on the father's side having the precedence.

The question of priority as between atma bandhus *ex parte paterna* and those *ex parte materna* has been the subject of much discussion—the latest word on the subject being found in *Vedachela Mudaliar* v. *Subramania Mudaliar*[1] which decided in 1921, that as between pitru bandhus and matru bandhus, the preference given to the former is settled.

The case now before their Lordships is not affected however by these considerations, as both sets of claimants are related on the father's side.

In 1908, the High Court of Madras in *Rajah Venkata Narasimha* v. *Rajah Surenani Venkata*[2] again decided that in that Presidency a male bandhu is entitled to preference over a female bandhu, even though the latter is nearer in degree. *Saguna* v. *Sadashiv*[3] was not referred to in the judgment, but it was unnecessary because there was no contest between maternal and paternal bandhus.

Then in *Balkrishna* v. *Ramkrishna*[4] (decided in 1920 by the High Court of Bombay—consisting of the same Judges who decided the case now under appeal) the authority of *Rajah Venkata Narasimha* v. *Rajah Surenani Venkata*[2] was followed. The principle that among bandhus the male is entitled to preference over

(1) (1921) L. R. 48 I. A. 349 ; 44 Mad. 753.
(2) (1908) 31 Mad. 321.
(3) (1902) 26 Bom. 710.
(4) (1920) 45 Bom. 353.

the female—even though the latter is nearer in degree—was accepted as being law for the Bombay Presidency as much as for the Madras Presidency ; and preference was given to a mother's sister's son over a brother's daughter. In that particular case the actual decision would appear to conflict with *Saguna* v. *Sadashiv*,[1] because it apparently ignored the supposed prior and paramount claim of paternal over maternal bandhus ; and it would seem that for some unaccountable reason, *Saguna* v. *Sadashiv*[1] was not cited to the Court. Whenever, therefore, the two conflicting principles of preference of the paternal over the maternal line and preference of the male over the female sex, in the Presidency of Bombay, have to be weighed, the Court which weighs them will have to choose between these two decisions of the High Court.

But it will be seen from this summary that there is no case in the Bombay Presidency which decides that some preference is not to be given to male bandhus over female. And there is no doubt, indeed the learned counsel for the appellants did not contend that there was any doubt, that throughout the rest of India, preference for the male would be certain.

This being so, their Lordships are of opinion that the case was rightly decided by the High Court of Bombay, and that this appeal should be dismissed, and they will humbly advise His Majesty accordingly.

Solicitors for appellants : Messrs. *T. A. Wilson & Co.*

A. M. T.

[1] (1902) 26 Bom. 710.