1875. *August* 16. *R. C. No.* 20 *of* 1875.

The Court delivered the following

JUDGMENT:—The 7th clause provides for suits "for the wages of a domestic servant, artisan or labourer not provided for by this Schedule No. 4," and No. 4 relates to suits for wages, hire or price of work under Act IX of 1860 ("to provide for the speedy determination of certain disputes between workmen engaged in Railway and other public works and their employers.") In the case stated, the suit is for arrears of a monthly payment agreed to be made for instructions in fencing and wrestling. Such a suit is not, in our opinion, governed by the 7th clause, which applies to the wages of servants and labourers skilled and unskilled but not to the pay of a teacher or instructor.

Appellate Jurisdiction.(a)

Special Appeal No. 484 *of* 1871.

KUTTI AMMAL.....(*Plaintiff*) *Special Appellant.*

RADAKRISTNA AIYAN (*2nd Defendant*) *Special Respondent.*

A sister may succeed to her brother and sue for the recovery of property unlawfully alienated by their mother which the latter inherited on the death of her son.

1875. *August* 27. *S. A. No.* 484 *of* 1871.

THIS was a Special Appeal against the decision of Mr. P. P. Hutchins, the Acting Civil Judge of Tanjore in Regular Appeal No. 183 of 1870, presented against the decree of the Court of the District Munsif of Mannargudi in Original Suit No. 40 of 1869.

Plaintiff stated that she and 1st and 3rd defendants were sisters; that their father, who had no male issue, died 15 years ago leaving certain properties which were in the enjoyment of his widow, the mother of the plaintiffs

(a) Present:—Sir W. Morgan, C. J., and Innes, J.

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and 1st and 3rd defendants, who removed to 1st and 2nd defendants' residence with the moveable property a year ago, and died there two months before date of suit; and that the property was all in the enjoyment of the 1st and 2nd defendants. Plaintiff, therefore, sued to recover her $\frac{1}{3}$rd share in the moveable and immoveable property.

The 1st defendant admitted the relationship alleged by the plaintiff, and the fact of her father having left immoveable property to the extent mentioned in the plaint, but she denied that there was any ready cash, and that her mother brought any property with her when she removed to her (1st defendant's) house. 1st defendant added that her father had an adopted son who died six months after him, that of the land belonging to the family $\frac{1}{16}$ karai in Sattanore and $\frac{1}{16}$ in Kakkaiyadi were delivered to the 5th defendant under the terms of a razinamah entered into by her mother and 5th defendant in Original Suit No. 164 of 1860, and that that extent has been since sold by 5th defendant to the 2nd defendant, in whose possession it now is, that the remaining land and certain tamarind trees were in the enjoyment of the 4th defendant under the terms of a lease executed to him by plaintiff's mother, and that plaintiff was entitled to $\frac{1}{3}$rd of the same and of the houses and grounds in her possession.

The plaintiff admitted that her father had an adopted son, who died six months after his adoptive father as stated by 1st defendant.

The Lower Court found that all the property mentioned in the plaint was in the possession of the 1st and 2nd defendants and of the 4th defendant on their account; that $\frac{1}{8}$th karai of land was alienated by plaintiff's mother to 5th defendant, and that that alienation was not for necessary family expenses, and that it was consequently invalid as against the plaintiff.

From this decision the 2nd defendant appealed upon the following, amongst other grounds. "That this suit

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brought by plaintiff as heiress of her father while there had been an adopted son surviving him is not sustainable in law."

The 1st defendant appealed as to the value of the property, costs, and appreciation of evidence.

The Acting Civil Judge gave the following judgment:

"This is a suit to recover a share of certain property lately held by the mother of plaintiff and 1st defendant. Their father left an adopted son, and it is admitted that the property vested in that son, and that the mother took it only after his decease. The mother had therefore only a life estate, *Bachiráju* v. *Venkatappadu* (1); the property now reverts to the heirs of the son. That being so, it is admitted that his sisters have no right of inheritance whatever, and upon this ground put forward by the 2nd defendant in his appeal, the decree of the Munsif must be reversed, and the suit dismissed so far as the 2nd defendant is concerned. That defendant will also be entitled to his costs as defendant, but as the objection was not taken in the Lower Court, he will bear his own costs in this appeal.

"As for the 1st defendant, she has only raised two objections to the decree, and on both these points her demands have been conceded. As regards her the decree will be modified by the one-third of the lands decreed to plaintiff being directed to be made over with reference to good and bad soils, and by the reversal of the Munsif's order as to costs. At the hearing the 1st defendant wished to take advantage of the objections raised by the 2nd defendant, but as she has throughout admitted plaintiff's claim, and that claim is at all events as good as her own, I think that the decree as now modified may fairly be regarded as a decree by consent or on a razinamah at all events. I am not prepared to allow her to repudiate all her admissions and take a totally new ground for the first time at the final hearing of the appeal. She is, however, entitled to her costs in this

(1) 2 Madras H. C. Rep., p. 402.

appeal in which she has succeeded, and probably the Munsif will consider it a proper case in which to require the plaintiff to pay all costs which may be fairly incurred in execution."

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From this decision the plaintiff appealed on the ground that it was "wrong in law in holding that a sister cannot inherit."

Mr. Shephard, for *Mr. Mayne*, and *Lutchmipathy Naidoo*, for the special appellant, the plaintiff.

Mr. O'Sullivan, for the special respondent, the 2nd defendant.

The Court delivered the following

JUDGMENT :—The plaintiff is one of three sisters, whose father adopted a son. On the death of the father, the property devolved on the son, and on his death, the mother took it. Part she sold to 5th defendant, who again sold to 2nd defendant. Part she leased to 4th defendant. 1st and 3rd defendants are the sisters of plaintiff, and 2nd defendant is the husband of 1st defendant.

Plaintiff claims a right to question the alienations made by her mother and to have them set aside in her favor.

The only question, which we have to determine in connexion with this case on the reference to us by the Division Court, is whether a sister is in the line of heirs.

But this question must be answered with reference to the positions of the parties in the case. The mother took only an estate for life, and we have the authority of the Privy Council in the *Collector of Masulipatam* v. *Cavaly Venkata Narainapah* (1) for saying that the restrictions on her power of alienation are inseparable from her estate and independant of the existence of heirs capable of taking on her death. This being so, it is clear that, whatever view may be taken of plaintiff's claim, the mother could not give a title beyond her own life. Then the next question is—Is plaintiff entitled, as an heir to the person to be traced from, to question the alienations and have them set aside in her

(1) VIII Moore's I. A., p. 500.

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favor? Her brother is, according to the decisions of this Court, the person to be traced from, and so the question comes to this—Is a sister an heir to her brother? That she is a Sapinda, is, we think, a position, which cannot be maintained. The contention that she is so is founded on the opinion of Bálambhaṭṭa as to the meaning of the word 'brethren' used in verse 185 of the 9th Chapter of Manu and quoted in the Mitácsharâ. But none of the treatises of Hindu Law, not excepting the Vyaváhara Mayúkha, have placed the sister, in regard to partition, on a footing with the brothers. She is allowed a fourth part of a brother's share for her marriage; but she does not take it as a share and is not, therefore, to be regarded as having an equal interest in the property with the brothers. Further, she does not join with the surviving brothers in succeeding to a deceased brother, but her inheritance is obstructed by a long list of other heirs, far more remotely related, interposed between surviving brothers and her. If the term 'brethren' in the passage referred to, be taken to mean brothers and sisters, it is inferrible from it that they have an equal interest in the ancestral property, which they have never been held to have. That such a position is against the common understanding of the people as to the law in this part of the country would seem tolerably clear from the fact that there is no instance on record of any such claim having been put forward, though the occasion for it must be of every day occurrence.

Whether the sister is entitled to succeed as a relative of deceased more remote than a Sapinda is another question. Since the decision of the Judicial Committee in *Gridhari Lall Roy* v. *The Government of Bengal*, (1) the High Court of Madras, following that decision and the decision of the High Court of Bengal in *Amrita Kamari Devi* v. *Lakhinaraiyan Chakkerbatti* (2) of which the Judicial Committee approved, have held (3) that a sister's

(1) XII Moore's I. A., p. 448.

(2) 2 Bengal L. R., (F. B.) p. 28.

(3) *Chelikani Tirupati Rayaningáru* v. *Rájah Surameni Venkata Gopala Narasimha Rau Bahadur*, 6 Madras H. C. Rep., p. 278.

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son is entitled to succeed as a Bandhu, and that the text and commentary in Chapter 2, Section 6 of the Mitácsharâ do not restrict the limit of Bandhus to the cognate kindred there mentioned but are to be read as merely offering illustrations of the degree of Bandhus in their order of succession. In Section 3 of Chapter 2 of the Mitácsharâ, para. 4, it is said "nor is the claim in virtue of propinquity restricted to kinsmen allied by funeral oblations but, on the contrary, it appears from this very text (verse 187, Chapter 9 of Manu) that the rule of propinquity is effectual without any exception in the case of (Samánodakas) kindred connected by libations of water *as well as other relations* when they appear to have a claim on the succession," and it is afterwards said in Section 7 "If there be no relatives of the deceased, the preceptor, &c., according to the text of A'pastamba, 'If there be no male issue, the nearest kinsman inherits or, in default of kindred, the preceptor.'" It follows from the above not only that, in regard to cognates, is there no intention, expressed in the law or to be inferred from it, of limiting the right of inheritance to certain specified relationships of that nature, but that, in regard to other relationships also, there is free admission to the inheritance in the order of succession, prescribed by law for the several classes, and that all relatives, however remote, must be exhausted, before the estate can fall to persons, who have no connexion with the family. In this view plaintiff must be regarded as a relative entitled to succeed on an equal footing with her sisters, who are relatives of the same degree.

We must therefore modify the decree of the District Judge by restoring the decree of the District Munsif except as to the award of costs against 1st defendant who admitted plaintiff's claim. Plaintiff must have her costs in appeal and special appeal.

Appeal allowed.