

Privy Council Appeal No. 34 of 1913.

Ramchandra Martand Waikar and others - *Appellants,*

v.

Vinayak Venkatesh Kothekar and another - *Respondents.*

FROM

THE COURT OF THE JUDICIAL COMMISSIONER, CENTRAL
PROVINCES, INDIA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 29TH JUNE 1914.

Present at the Hearing :

LORD MOULTON.

SIR JOHN EDGE.

LORD PARKER OF WADDINGTON.

MR. AMEER ALI.

[*Delivered by Mr. AMEER ALI.*]

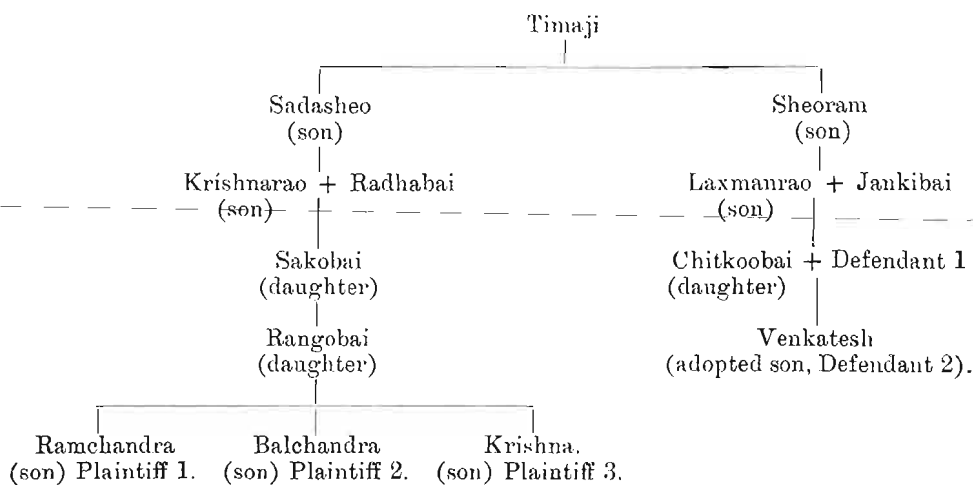
The suit that has given rise to the present Appeal was brought by the plaintiffs in the Court of the District Judge of Balaghat, in the Central Provinces of India, for possession of certain properties which originally belonged to one Laxmanrao, whose next-of-kin or *bandhus* they claim to be under the law of the *Mitakshara*.

Laxmanrao died in 1851, leaving him surviving his widow Jankibai and a daughter Chitkoobai, both since deceased. The defendant Venkatesh is Chitkoobai's husband. On Laxmanrao's death without male issue his inheritance devolved on Jankibai. She held possession of the properties in suit as a Hindu widow until her death in 1883, when Chitkoobai succeeded to her father's estate. She died on the 7th of May 1894, leaving the first defendant, her hus-

band. The second defendant is a son adopted by him after Chitkoobai's decease.

The present action was not instituted until March 1906. The plaintiffs claim that the inheritance to Laxmanrao opened to them on the death of Chitkoobai, and that they are entitled to recover possession of the properties from the defendants who have no right of succession to Laxmanrao's estate.

The following genealogical table will explain the relative position of the parties and the exact nature of the claim:—



The defendants resisted the claim mainly on two grounds; they alleged, *firstly*, that the ancestors of the parties had migrated to the Central Provinces from Asirgarh, situated within the Mahratta country, where the law in force conferred on the daughter succeeding to her father's inheritance an absolute estate descendible to her own heirs; that the family of Timaji was still subject to that law, and that accordingly the estate which Chitkoobai had acquired passed on her death without issue to the first defendant, her husband. In the second place, they urged that the plaintiffs had no heritable right or interest in Laxmanrao's estate as they did not

come within the category of *bandhus* entitled to succeed to his inheritance.

The Courts in India have overruled the first plea, and have held that on settling in the Central Provinces the family of Timaji adopted the *lex loci* and are now governed by the rules of the *Mitakhshara* generally in force in that province.

But they have given effect to the defendants' second contention; they have held in substance that the *Mitakhshara* lays down a well-defined limit where the kinship entitling *bandhus* to succession ceases, and that the plaintiffs are beyond that limit. They have accordingly dismissed the suit.

The plaintiffs have appealed to His Majesty in Council, and the case has on both sides been argued with considerable ability and learning.

In dealing with the arguments addressed to this Board on behalf of the appellants their Lordships cannot help noticing one circumstance, viz., that in the Courts below, so far as appears from the record, it was not denied that there was a limit to the heritable right of *bandhus*, the only contention being whether it was seven degrees from the *propositus* or five as urged by the defendants. Before this Board, on the other hand, it has been strenuously contended that there is no limit to the succession of *bandhus*. Their Lordships do not wish, however, to draw any inference from this change of ground, for what they have to determine in this appeal is whether the term *bandhu* is to be construed as the plaintiffs argue in the broadest sense, or whether it is subject to any limitation, and in the latter case what that limitation is according to the law by which the parties are governed.

In the Hindu law the succession of heirs individually specified does not present much

difficulty ; the controversies and divergences amongst Hindu lawyers are chiefly concerned with collateral succession. Manu, the ancient sage, whose identity is lost in the mist of ages, but whose word is regarded as divine, after giving the rules regarding the succession of lineal male descendants and male ascendants, declares : " The property of a near *sapinda* shall be that of " a near *sapinda*."* Sir William Jones in his translation of Manu's Institutes has rendered the passage somewhat differently, but for the purposes of the present judgment it is of little importance.

* Chapter IX., v. 187. This is the translation given by Mr. Justice Banerjee in *Babu Lall v. Nankuram*, I.L. 22 Cal. 339.

It is upon this enunciation that all the schools base the right of collaterals to succeed to the inheritance of a deceased person. This refers only to the succession of one male to another, for females inherit by express rules. The right of collaterals, therefore, is dependent on the existence of the *sapinda*-relationship between the *propositus* and the claimant. The contest that has arisen in the several schools is with regard to the meaning to be attached to the term *sapinda*, in other words, what does *sapinda*-relationship imply, and what is the true test for determining whether a particular person is a *sapinda* to the deceased or not? Jimutavahana, the author of the *Dayabhaga*, the guiding authority in the Bengal or *Gauriya* school, considers it to mean "community in the " offering of funeral oblations." He draws his argument from the word *pinda*, which literally signifies a ball of rice offered at the performance of obsequial rites. Mr. Lowndes is probably right, that in early times the right of inheritance was dependent on the right to participate in the offering of funeral oblations, a doctrine which is part and parcel of the *Dayabhaga* rules.

But it is also clear that Vijnaneswara, the author of the *Mitakshara*, who appears to have

flourished towards the end of the 11th and the beginning of the 12th century of the Christian era, some five centuries before Jimutavahana, abandoned the ancient doctrine, and construed *sapinda*-relationship to arise from community of blood, or to use the quaint language of Hindu writers, "community of particles of the same body." His legal conception in this respect will appear clearly from a passage of the *Mitakshara*, Book I., chapter on Marriage, not included in Mr. Colebrooke's translation. To this passage their Lordships will have to refer later on in the course of this Judgment.

Messrs. West and Bühler in their "Digest of the Hindu Law," whose merit and authority have been recognised by eminent Hindu lawyers, have examined in detail the doctrines of the *Mitakshara* on this point, and their general conclusion as to Vijnaneswara's legal conception of *sapinda*-relationship is summed up in the following words, that he based it "not on the presentation of " funeral oblations but on descent from a common ancestor, and in the case of females also " on marriage with descendants from a common " ancestor." Mr. Colebrooke in his rendering of the *Mitakshara* has paraphrased *sapinda* as a relation "connected by funeral oblations," which resulted in virtually obliterating one of the main distinctions between the Benares and the Bengal schools. But it is now recognised that his paraphrase was erroneous, and that the true theory of *sapinda*-relationship propounded by Vijnaneswara was based on community of blood. It is on this theory of Vijnaneswara that the learned counsel for the appellants place their chief reliance. The plaintiffs, it is urged, are unquestionably related to Laxmanrao by tie of blood; they are, therefore, his *sapindas*, and consequently, in the absence of nearer kinsmen, entitled to his inheritance. It is to be remarked, as has been observed in previous cases before this Board,

that the Hindu law contains its own principles of exposition, and that questions arising under it cannot be determined on abstract reasoning or analogies borrowed from other systems of law, but must depend for their decision on the rules and doctrines enunciated by its own lawgivers and recognised expounders.

The *Mitakshara* purports to be a commentary on the work of Yajnavalkya, who is supposed to have lived about the second century of the Christian era, about a thousand years before Vijnaneswara. In the *Mitakshara* he is spoken of in terms of deep veneration; and his doctrines, developed by Vijnaneswara, certainly show a marked advance over the legal conceptions of his predecessors. So far as their Lordships have been able to ascertain, the *bandhus*, or distant kinsmen related to the deceased through females, make their appearance as heirs first in Yajnavalkya's enunciations. Mr. Borrodaile, in the first volume of his Reports of the Bombay Sudder Dewany Adalut Decisions, has given a translation of the Index to the *Mitakshara*, which furnishes a general idea of the scheme of this great and important work of Hindu law. It consists of two books; the first called the *Acharadhyayu* "On Established Rules of Conduct or Ordinances"; the second the *Vyavaharadhyayu* "On the Laws and Customs of the People." Both books, however, are so inter-related that the rules of the one can scarcely be construed without reference to the other.

It is to be noted that in the *Vyavastha Chandrika* the Book on "Established Rules of Conduct" is cited as the *Achara Adhyaya* ("Chapter or Book on Established Rules of Conduct"), whilst in the decisions of the Indian Courts and recent works on Hindu Law, it is referred to under the name of the *Acharakanda* ("Division or Part relating to Established Rules of Conduct").

In the third chapter of the *Acharakanda*

Vijñaneswara lays down the rules relating to the forbidden degrees of kindred, and here he defines his theory of relationship. A translation of this passage is to be found in the "Digest of Hindu Law,"* by West and Bühler, and also in the judgment of the Bombay High Court in *Lallubhai v. Mankubarbai*†, which came on appeal to Her Majesty in Council, and was affirmed by this Board.‡

* Volume I., page 120.

† I.L.R., 2 Bom. 388.

‡ L.R. 7 I.A. 212.

That passage runs thus :—

"He should marry a girl who is non-sapinda (with himself). She is called his sapinda who has (particles of) the body (of some ancestor, &c.), in common (with him). Non-sapinda means not his sapinda. Such a one (he should marry). Sapinda-relationship arises between two people through their being connected by particles of one body. Thus the son stands in sapinda-relationship to his father because of particles of his father's body having entered (his). In like (manner stands the grandson in sapinda relationship) to his paternal grandfather and the rest, because through his father particles of his (grandfather's) body have entered into (his own). Just so is (the son a sapinda-relation), of his mother, because particles of his mother's body have entered (into his). Likewise (the grandson stands in sapinda-relationship) to his maternal grandfather and the rest through his mother. So also (is the nephew) a sapinda-relation of his maternal aunts and uncles, and the rest, because particles of the same body (the paternal grandfather) have entered into (his and theirs); likewise (does he stand in sapinda-relationship) with paternal uncles and aunts, and the rest. So also the wife and the husband (are sapinda-relations to each other), because they together beget one body (the son). In like manner brothers' wives also are (sapinda-relations to each other), because they produce one body (the son), with those (severally) who have sprung from one body (*i.e.*, because they bring forth sons by their union with the offspring of one person, and thus their husbands' father is the common bond which connects them). Therefore one ought to know that wherever the word sapinda is used, there exists (between the persons to whom it is applied) a connection with one body, either immediately or by descent."

Then after refuting certain objections to his

explanation of the word *sapinda*, Vijnaneswara proceeds thus :—

“In the explanation of the word ‘*asapindâm*’ (non-*sapinda*, verse 52), it has been said that *sapinda*-relation arises from the circumstance that particles of one body have entered into (the bodies of the persons thus related) either immediately or through (transmission by) descent. But inasmuch as (this definition) would be too wide, since such a relationship exists in the eternal circle of births, in some manner or other, between all men, therefore the author (Yajnavalkya) says :—

Verse 53: “After the fifth ancestor on the mother’s and after the seventh on the father’s side.”—“On the mother’s side in the mother’s line, after the fifth, on the father’s side in the father’s line, after the seventh (ancestor), the *sapinda*-relationship ceases; these latter two words must be understood; and therefore the word *sapinda*, which on account of its (etymological) import (connected by having in common) particles (of one body) would apply to all men, is restricted in its signification, just as the word *pankaja* (which etymologically means ‘growing in the mud,’ and therefore would apply to all plants growing in the mud, designates the lotus only) and the like; and thus the six descendants, beginning with the son, and one’s self (counted) as the seventh (in each case), are *sapinda*-relations*.”

* West and Bühler, vol. I., p. 120.

The rendering of the above passages by Pandit Rajkumar Sarvadbikari though apparently more free is certainly instructive and interesting, and deserves quotation as showing what a learned Hindu scholar considered was in the mind of Vijnaneswara when defining the word *sapinda*.

“The Mitakshara then explains the following words in the next verse of Yajnavalkya, beyond the fifth and seventh degrees on the mother’s side and the father’s side respectively.

“It has been already explained, that the relation of *sapinda* exists by reason of the connection of the parts of the same body, both directly and indirectly. But such a relationship is possible everywhere, in some way or other, between all men in this wide, wide world without a beginning. So the definition would be too wide. It is for this reason that the sage limits it thus, ‘Beyond the fifth, &c.’

“ The meaning is ‘ on the mother’s side ’, *i.e.*, in the line
 “ of the mother, after the fifth degree : ‘ on the father’s side,’
 “ *i.e.*, in the line of the father, after the seventh degree, the
 “ relation of sapinda ceases.

“ Although the word sapinda, therefore, may be applied
 “ in its etymological sense almost to all men it is, there can
 “ be no doubt, limited in its signification to certain definite
 “ individuals ; just as the word mud-born is applied only to
 “ a lotus.

“ Thus the father and the other ascendants are six
 “ sapindas ; and the son and the other descendants are six ; and
 “ the man himself is the seventh. In case of the division of
 “ a line also, the enumeration should be made until the
 “ seventh degree, commencing from whence the direction of
 “ the line changes. This rule should be applied in every
 “ case.”*

* Sarvadhikari’s Tagore Law Lectures,
 p. 603.

Their Lordships have no manner of doubt that in the passages quoted above, Vijnaneswara was laying down rules for the limitation of *sapinda*-relationship generally.

It has been suggested in argument that this limitation is with regard to marriage only ; that it defines the prohibited degrees within which a man cannot marry. A similar contention was put forward in *Lallubhai v. Mankuwarbai*.† The observations on this point of the learned Judges, one of whom was the distinguished jurist Mr. Justice West (co-author of the Digest, and afterwards Sir Raymond West) appear to their Lordships as extremely apposite to the present case.

† *Supra*.

‡ I.L., 2 Bom. p. 426.

Chief Justice Westropp in that case‡ said as follows :—

“ It has been contended for the plaintiffs that in the
 “ above extracts from the Achara Kanda and the Sanskara
 “ Mayukha the respective authors were dealing with
 “ sapinda relationship in its ceremonial aspect only, and
 “ that, when they wrote upon sapinda relationship with
 “ reference to inheritance, they may be regarded as viewing
 “ sapinda-relationship in the same light as the author of
 “ the Daya Bhaga and certain other commentators on
 “ Hindu law. But we think that the burden rests upon
 “ the plaintiffs to show that Vijnaneswara and Nilakantha
 “ regarded sapinda-relationship as resting on a different

“ basis for the purpose of inheritance from that on which,
 “ dogmatically perhaps, but most distinctly, the one has
 “ placed it in the Achara Kanda and the other in the
 “ Sanskara Mayukha. We do not think that the learned
 “ counsel for the plaintiffs have given any good reason for
 “ assuming that the authors intended to make any such
 “ difference, nor is it likely that they did.

“ The religious and ceremonial law of the Hindus as
 “ prevailing amongst castes, or in particular localities, is
 “ generally speaking, almost inseparably blended with their
 “ law of succession in the same castes or localities, an
 “ opposite condition being exceptional.”

As a matter of fact, as Messrs. West and
 Bühler point out, Vijnaneswara expressly says
 “ wherever the word *sapinda* is used there exists
 “ (between the persons to whom it is applicable)
 “ a connection with one body either immediately
 “ or by descent.”

In *Umaid Bahadur v. Udoi Chand** the
 learned Judges of the Full Bench (one of whom
 was a Hindu Judge of great eminence) express
 themselves on this point in the following
 terms:—

“ Having taken great pains in accurately defining the
 “ word *sapinda* in the beginning of his work, and having
 “ said in clear words in the passage in question that ‘one
 “ ought to know that wherever the word *sapinda* is used
 “ there exists (between the persons to whom it is applied)
 “ a connection with one body either immediately or by
 “ descent,’ it is hardly reasonable to suppose that the author
 “ used the word in another part of the same work in a
 “ different sense. It is a well understood rule of construc-
 “ tion amongst the authors of the Institute of Hindu law,
 “ that the same word must be taken to have been used in
 “ one and the same sense throughout a work unless the
 “ contrary is expressly indicated.”

Nor have the learned counsel for the
 appellants been in a position in this case to refer
 to any authority excepting one, which their
 Lordships will notice later on, in support of their
 proposition that the limitations of Vijnaneswara
 on *sapinda*-relationship are confined to marriage,
 impurity, and exequial rites, and do not relate to
 inheritance.

* I.L. 6 Cal. p. 119; see page 126.

The law of inheritance in the *Mitakshara* translated by Mr. Colebrooke, occurs in Book II., and forms chapter VI. of that part of the work. It is entitled "*dayuvibhagu*," or "partition of heritage." It is unnecessary to refer to chapter I. of Mr. Colebrooke's translation, or to the earlier sections of chapter II., as they deal with subjects which do not come within the purview of this judgment. It is with sections V., VI., and VII. of chapter II. that their Lordships are principally concerned. The rendering of the word *sapinda* as "relations connected by funeral oblations" runs throughout Mr. Colebrooke's translation. His arrangement of the matter is also different from the original where the subject of inheritance appears to be dealt with in a consecutive form in chapter VI.

Mr. Colebrooke has split it up into two chapters, divided into sections. (This circumstance is noticed in the Bombay judgment). Section V., chapter II. (in Mr. Colebrooke's Translation), deals with the succession of the *gotraja*, on failure of "brother's sons." Although *gotraja* is explained by the term *gentiles* borrowed from the Roman system, to which no doubt the Hindu system bears a remarkable analogy, it would be more convenient to adhere to the definition given in the *Mitakshara* itself. Omitting the English equivalents introduced into the translation, and retaining the Sanskrit expressions, the paragraphs run as follows:—

" 3. On failure of the paternal grandmother, *gotraja*-
" *sapindas*, namely, the paternal grandfather and the rest,
" inherit the estate.

" For *bhinnagotra sapindas* are indicated by the term
bandhu.

" 4. Here, on failure of the father's descendants, the
" heirs are successively the paternal grandmother, the
" paternal grandfather, the uncles and their sons.

" 5. On failure of the paternal grandfather's line, the

“ paternal great-grandmother, the great-grandfather, his
 “ sons and their issue, inherit. In this manner must be
 “ understood the succession of the samanagotra sapindas.

“ 6. If there be none such, the succession devolves on
 “ samanodakas, and they must be understood to reach the
 “ seven degrees beyond sapindas, or else as far as the limit
 “ of knowledge and name extend. Accordingly, Vhrat
 “ Menu says, ‘ The relation of the sapindas ceases with the
 “ ‘ seventh person, and that of samanodakas extends to
 “ ‘ the fourteenth degree, or, as some affirm, it reaches as
 “ ‘ far as the memory of birth and name extends. This is
 “ ‘ signified by gotra.’ ”

Their Lordships have preferred to adopt for the purposes of this Judgment the translation which was before this Board in *Lallubhai's Case*.

It is to be observed that the rule in paragraph 3 is thus stated in the *Viramitrodaya** “ on failure
 “ of the paternal grandmother, the paternal grand-
 “ father and the other sapindas of the same gotra
 “ are heirs ; since the sapindas (or persons con-
 “ nected through the pinda or body) of a different
 “ gotra are included under the term bandhu or
 “ ‘ cognates.’ ”

* Shastri Golap Chunder Sarkar's Tran.,
 page 199.

The earliest expounders appear sometimes to have used the term *bandhu* to signify a *sapinda* without any idea of including cognates. This is clear from a passage of the *Viramitrodaya*,† where, after quoting the rule as to the succession of collaterals given by Vishnu who places the *bandhus* immediately after brothers' sons, it says as follows:—“ Here the term *bandhu* (kinsman)
 “ signifies a *sapinda*, and the term *sakulya* (distant
 “ kinsman) means a *sagotra*, or one descended from
 “ a common ancestor in the male line (other than
 “ a *sapinda*); if by the term *bandhu* the cognates
 “ of the father were comprised, then there would
 “ be a conflict with the order mentioned by Jogis-
 “ wara, the Contemplative Saint,” *i.e.*, Yajna-
 valkya. Yajnavalkya himself employs the expression indiscriminately in various places to signify connections and friends. But in

† *Ibid*, page 142.

* Page 220.

chapter II. of his *Dharmasastram*, he distinctly introduces *bandhus* as acquiring a heritable right on failure of the *gotraja*. The passage in Rao Vishwanath Mandlik's translation* is as follows:—
 “ The wife, daughters, both parents, brothers, and
 “ likewise their sons, gotrajas (gentiles), bandhus
 “ (cognates), a pupil and a fellow-student. Of
 “ these, on failure of the preceding, the next
 “ following in order is heir to the estate of one
 “ who has departed for heaven leaving no *putra*
 “ (lineal male descendants).”

Learned counsel for the respondents urges that this inclusion of *bandhus* or cognates forms a marked extension of the right of inheritance to people who until then were not regarded as heirs, and he contends that it is hardly likely this remarkable change should have been made without any limitation, considering that the *sapinda*-relationship was subject to a limit.

To determine how far this contention is well-founded, it is necessary to examine a little more closely the doctrines of the *Mitakshara* relating to the succession of collaterals. Vijnaneswara in reality seems to have shaped the rules which govern this branch of the law of inheritance in force in the Benares school. In paragraph 3, section V. (Colebrooke's Translation) in describing the *gotraja-sapinda* or consanguineous relations sprung from the same stock, he emphasises the fact of their being members of the same family by the specific statement that the *sapindas* belonging to a different family (*gotra*)—the *bhinna-gotra*—are included under the designation of *bandhus*. This is clearly borne out by the passage of the *Viramitrodaya* already referred to. Henceforth the word *bandhu*, therefore, has, in the system of the *Mitakshara*, a distinctive and technical meaning, in other words it signifies the *bhinnagotra-sapindas*.

In paragraph 5 for the word *gotraja-sapinda* is

substituted the more definite term of *samâna-gotra sapinda*. With regard to this Messrs. West and Buhler observe that "The substitution of "samâna-gotra for gotraja, as well as the employment of bhinna-gotra to designate the opposite of the term, both show that Vijnaneswara took gotraja in the sense of belonging to the same family." Commenting on the passage relating to the succession of the *gotraja sapinda*, the *Viramitrodaya*, which is regarded as one of the most important commentaries on the *Mitakshara*, says "similarly to the seventh (degree) the sapindas of the same gotra take the estate of a person without male issue."*

* See p. 199.

This limitation of the seventh degree appears in Yajnavalkya's Institutes, chap. I., paras. 52, 53, in these words:—"A man should marry a girl . . . who is not a sapinda of him . . . who is descended from one whose gotra and pravara are different from him; and who is removed five degrees on the mother's and seven on the father's side."† The comment of Vijnaneswara on this text of Yajnavalkya has already been given *in extenso* in a previous part of this Judgment, but the following lines may be quoted again with advantage:—"On the mother's side, in the mother's line after the fifth; on the father's side, in the father's line, after the seventh (ancestor) the sapinda-relationship ceases."‡

† Rao Vishwanath Mandlik's transl., p. 167.

The translation by Golap Chunder Shastri of the passage, in which these words occur, is important, as he is the authority on whose expositions the appellants chiefly rely. It runs thus:—

‡ West and Bühler, p. 119; Mayne's Hindu Law (7th ed.), p. 691, para. 516.

"While explaining the term non-sapinda, the sapinda relationship is stated to be directly or mediately through connection with one body, but that relationship of all persons may, in one way or other, be traced with all other persons in this world of eternal transmigrations of the soul with its minute body, and so it would include persons

“that are not intended to be included; hence it is ordained:—

“‘and is beyond the fifth and seventh from the mother
“‘and from the father (respectively).’

“The purport is, that sapinda relationship ceases
“beyond the fifth from the mother, *i.e.*, in the mother’s
“line, and beyond the seventh from the father, *i.e.*, in the
“father’s line.”*

* Hindu Law, p. 54.

It is quite clear, therefore, that the limitation of the seventh degree with regard to the *samānagotra sapindas* given by Mitra Misra in the *Viramitrodaya* is taken from the rule enunciated by Vijnaneswara on Yajnavalkya in the *Acharakanda* in respect of the cessation of *sapinda*-relationship.

Now, a *bhinnagotra sapinda* is a *bandhu* according to Vijnaneswara. The classification contained in section VI., chapter II. (Colebrooke’s Translation) shows clearly who the *bandhus* are whom Vijnaneswara treats as *bhinnagotra sapindas* entitled to succession on failure of the *gotraja*. The passage as translated by Mr. Colebrooke runs thus:—

“1. On failure of gentiles, the cognates are heirs.
“Cognates are of three kinds; related to the person himself,
“to his father, or to his mother; as is declared by the
“following text, ‘The sons of his own father’s sister, the
“‘sons of his own mother’s sister, and the sons of his own
“‘maternal uncle, must be considered as his own cognate
“‘kindred. The sons of his father’s paternal aunt, the
“‘sons of his father’s maternal aunt, and the sons of his
“‘father’s maternal uncle, must be deemed his father’s
“‘cognate kindred. The sons of his mother’s paternal
“‘aunt, the sons of his mother’s maternal aunt, and the
“‘sons of his mother’s maternal uncles, must be reckoned
“‘his mother’s cognate kindred.’

“2. Here, by reason of near affinity, the cognate kindred
“of the deceased himself, are his successors in the first
“instance, on failure of them, his father’s cognate kindred,
“or if there be none his mother’s cognate kindred. This
“must be understood to be the order of succession here
“intended.”

Here Mr. Colebrooke renders the word *gotraja* into gentiles, and *bandhus* into cognates. He

also paraphrases the three classes under which Vijnaneswara groups the technical *bandhus*, viz., the *atma bandhus*, the *pitri bandhus* and the *matri bandhus* as "cognates related to the " person himself, to his father, or to his mother "

Their Lordships have little doubt reading these passages by the light of the comments in the *Viramitrodaya*,* that Vijnaneswara was using the term *bandhu* in a restricted and technical sense, as implying a relation belonging to a different family but united by *sapinda*-relationship. In fact he expressly says so (paragraph 3, section V., chap. II.).

* P. 200.

It is not disputed that the Plaintiffs do not come within the three categories mentioned above. But it is urged on the authority of *Gridharilal Roy v. The Government of Bengal*† that the enumeration is not exhaustive but merely illustrative.

† 12 M. I.A. p. 448.

In that case the question for decision was whether a maternal uncle not being specifically included in the enumeration of *bandhus* in the *Mitakshara* was excluded from succession. Answering that proposition in the negative, and holding that although not expressly mentioned he was entitled to succeed as a *bandhu* this Board observed that the text did not purport to be an exhaustive enumeration of all *bandhus* "who are capable of inheriting," nor was it cited as such for that purpose by the author; and that it was used simply as a proof or illustration of his proposition that there are three kinds or classes of *bandhus*. These remarks hardly warrant the contention, which is attempted to be based on them, that the classes specified by Vijnaneswara can be added to.

In the present case, however, it does not seem necessary to their Lordships to enter upon the determination of the question whether the classes can be extended, for the point at issue can be decided on other grounds.

The limitation of five degrees clearly applies, and can only apply, to the *bhinnagotra sapindas*. But it is contended that this limitation is confined to prohibition in respect of marriage. As has already been observed, a part of the limitation appears to have been applied to the succession of *samânagotra sapindas*; their Lordships are unable to see on what principle can it be said that the other part relative to kinsmen, who are equally *sapindas* but belong to a different *gotra* or gens, must be restricted to matrimonial affinity.

Considerable reliance has been placed on the statement of the law by Shastri Golap Chundar Sarkar in his work on Hindu Law. Great respect is due to the opinions of that learned lawyer. But it seems to their Lordships that their weight is considerably discounted by his desire, in order to prevent the deceased's property becoming so to speak derelict and thus escheating to the Crown, to bring in the caste-people of the deceased also as *bandhus*; and the somewhat uncertain note of his conclusion*, where he says:—

* Page 74.

“ The conclusion, therefore, which appears to legitimately follow from the foregoing consideration, is, that the word “ bandhu in the *Mitakshara* means and includes either all “ cognate relations without any restriction, or at any rate, “ all cognates within seven degrees on both the father's as “ well as on the mother's side.”

Again, his attempt to widen the signification of the word *sapinda* by employing the English equivalent of *relation* does not seem to be supported by the definition of *sapinda*-relationship in the *Mitakshara* itself.

Reference has also been made to certain passages in Rao Vishwanath Mandlik's valuable work, in which he says that the *sapinda*-relationship for inheritance is not always the same as for marriage or impurity (arising from birth or death). That may or may not be; but in

one part of his work to which the Judicial Commissioner has referred in his judgment, the learned translator of Yajnavalkya distinctly says that *sapinda* connection in general is “co-“ extensive with that for marriage purposes.” Nor in this connection their Lordships think, can the following passage in the *Viramitrodaya* be overlooked.

“And the text, ‘The sapinda relationship, however, “ ceases in the seventh generation ’—is to be explained “ consistently with the text of Yajnavalkya, namely (after ‘ the fifth and the seventh from the mother and the “ father (respectively) to mean that it remains in the “ seventh but ceases in the eighth generation. Hence, “ as in the case of the unmarried females, the sapinda “ relationship extending over three generations, as is “ declared in the chapter on impurity (occasioned by death, “ &c.,) is considered to be with reference to that alone ; “ so it is to be deemed that this sapinda relationship “ (extending to the fourth degree) is relative to succession “ alone.’”*

* Viramitrodaya, page 157.

In the absence of any authoritative text their Lordships do not see their way merely on abstract reasoning to displace a view of the law which has received the recognition of the Courts in India, and which the District Judge, an officer of great experience and learning, says is accepted by “public opinion.” As has already been observed, the right of inheritance is founded on *sapinda*-relationship, which, under the *Mitakshara*, means consanguinity, in a distinct legal sense clearly explained by the author. This bond comes to an end with the fifth degree when the descent is through a female. It seems difficult to conceive that the right to inherit should continue after the relationship on which it is founded, and which gives it birth, has come to an end.

In the case of *Umaid Bahadur v. Udoi Chand*† one of the tests employed for determining whether the defendant in that case was a *sapinda* of the *propositus* was the mutuality of *sapinda*-relationship. The doctrine of mutuality is based

† I. L. 6, Cal. 119.

on the rule enunciated by Manu, and is fully explained by Rajkumar Sarvadhikari in his lectures at page 690. Another well-known Hindoo writer of the present day speaks thus of the above rule:—

“ It is to be observed here that the wealth of a sapinda
“ is taken by his nearest sapinda, according to the well-
“ known text of Manu. From that text it follows that the
“ relation of sapindaship must be mutual. Among agnates
“ the relation of sapindaship is always mutual; but among
“ cognates it is not so in a few cases. In order to determine
“ whether any persons are heritable cognates of the propo-
“ situs ‘it is necessary to see whether they are related as
“ sapindas to each other,’ *Umaid Bahadur v. Udai Chand*.
“ Unless sapindaship is mutual, one cannot be the heir of
“ of the other.”*

* Commentary on Hindu Law by
J. N. Bhattacharya, page 459.

‡ I.L., 22 Cal. 339.

In *Babu Jal v. Nankuram*‡ the rule of the *Mitakshara* enunciated in the *Acharakanda* relative to *sapinda*-relationship in respect of marriage is assumed as applicable to inheritance. In fact the judgment proceeds on that basis; and the order of *sapinda*-relationship with its limitations in Rajkumar Sarvadhikari's Tagore Law Lectures is adopted as representing a correct exposition of the *Mitakshara* law. The doctrine of mutuality is also explained in clear terms:—

“ Again, a sapinda of the propositus to be capable
“ of inheriting must satisfy a further condition, namely,
“ that he must be so related to the propositus, that the
“ propositus is also a sapinda of him either directly or
“ through the father or the mother. This mutuality of sapinda
“ relationship between the propositus and his heritable
“ sapindas is assumed as a necessary condition in the case
“ of *Umaid Bahadur v. Udoi Chand*, and the authority for
“ this is to be found in the text of Manu (chapter IX., 187)
“ cited in the *Mitakshara*, chapter II., section III., verse 3, as
“ interpreted by Balambhatta and Visweswara Bhutta, the
“ two leading commentators on the *Mitakshara*. The text
“ according to these commentators means this, the property
“ of a near sapinda shall be that of a near sapinda. From
“ this it is clear that a man in order to be a heritable
“ sapinda of the propositus must be so related to him that
“ they are sapindas of each other.”

These two decisions of the Calcutta High
J. 343. F

Court have been challenged on the ground that they represent *Dayabhaga* views rather than the doctrines of the *Mitakshara*. To their Lordships the objection seems hypothetical and without any basis excepting the criticisms of Golap Chunder Shastri. One of the learned Judges who decided *Babu Lal's* case was the distinguished Judge and erudite Sanskrit scholar, Mr. Justice Gurudas Banerjee, who was not likely to allow his mind to be confused by *Dayabhaga* conceptions in determining a case under the *Mitakshara* law.

The general conclusion to which a close examination of the authorities leads their Lordships may be briefly stated as follows: (a) that the *sapinda*-relationship, on which the heritable right of collaterals is founded, ceases in the case of the *bhinna-gotra sapinda* with the fifth degree from the *propositus*; (b) that in order to entitle a man to succeed to the inheritance of another he must be so related to the latter that they are *sapindas* of each other, which is only a paraphrase of Manu's rule.

In the present case the plaintiffs are Laxmanrao's paternal grandfather's son's son's daughter's daughter's sons. They are his *bhinnagotra* beyond the fifth degree, and, as the District Judge points out, the element of mutuality is wanting between them and Laxmanrao.

Two considerations were strongly pressed on behalf of the appellants to induce their Lordships to extend the application of the *sapinda*-relation in the case of *bandhus* beyond the fifth degree mentioned in the *Mitakshara*. It was urged that it is hardly likely Vijnaneswara would give a right of inheritance to a spiritual preceptor or guru before kinsmen, however remotely connected. This argument appears to ignore the peculiar and intimate relationship which their Lordships understand exists in the Hindu system between the pupil and the guru who

has to initiate him into the mysteries of the Vedic laws and rites, and under whose roof he has to pass many years of his life. It is easy to suppose that in such circumstances the mystical relationship between a spiritual preceptor and a pupil should be regarded as creating a far closer tie than remote relationship of blood.

As regards the other consideration which is based on the possibility of the Crown becoming a claimant in the presence of remote *bhinnagotra*, their Lordships need only observe that whether such a claim would be justified or even be likely to be advanced, it does not seem necessary to express an opinion in the present case.

Here the defendant is in possession of Laxmanrao's estate claiming as heir to his wife, Laxmanrao's daughter. The plaintiffs' suit is an action in ejection, and they must, in order to succeed, strictly prove their title.

It is a matter of satisfaction to their Lordships that they find themselves in complete agreement with the learned Judges in the Courts below. The District Judge is himself a Hindoo, versed in Sanskrit, and has examined the authorities in original. His decision is entitled to great weight and consideration.

On the whole their Lordships are of opinion that this Appeal should be dismissed, and they will humbly advise His Majesty accordingly.

The appellants must pay the costs of this appeal.

In the Privy Council.

RAMCHANDRA MARLAND WAIKAR
AND OTHERS

v.

VINAYAK VENKATESH KOTHEKAR
AND ANOTHER.

[DELIVERED BY MR. ANIEER ALL.]

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