

Privy Council Appeal No. 54 of 1919.
Patna Appeal No. 13 of 1917.

Adit Narayan Singh - - - - - *Appellant*

v.

Mahabir Prasad Tiwari - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT PATNA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 18TH JANUARY, 1921.

Present at the Hearing:

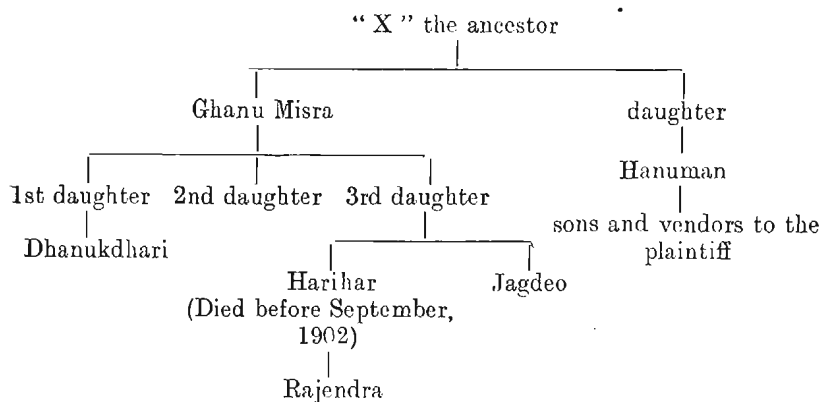
VISCOUNT CAVE.
LORD SUMNER.
SIR JOHN EDGE.

[*Delivered by* SIR JOHN EDGE.]

The suit in which this appeal has arisen was brought on the 22nd April, 1911, by Mahabir Prasad Tiwari, who is the respondent to this appeal, against Adit Narayan Singh, who is the appellant here, and others, who were not necessary parties. It is a suit for the possession of Mauza Bariapur, in the District of Patna. The Mauza is in the possession of the defendant appellant under a usufructary mortgage for Rs. 200 which was granted to him on the 1st September, 1902, by Monakka Kuar, the widow of Dhanukdhari, who was a separated Hindu of a family governed by the law of the Mitakshara, and at his death was proprietor of the Mauza. He died about 1866 without issue. His widow, Monakka Kuar, died on the 13th September, 1902. She had power as a Hindu widow to grant the usufructary mortgage. The heir of Dhanukdhari at his death or his successor in title was when this suit was brought entitled to possession of the Mauza on payment to the defendant appellant of the Rs. 200 mortgage money. The plaintiff on the 1st September, 1908, purchased such right, title and

interest as Devaki Nandan Tiwari and his brothers had in the Mauza. They were the sons of Hanuman, who was living when Monakka Kuar died, but had died before the purchase. The question of title on which this suit depends is whether Hanuman was at the time when Monakka Kuar died, the heir of her deceased husband Dhanukdhari. If Hanuman was not then the heir of Dhanukdhari, no title to the Mauza passed to the plaintiff by the purchase from his sons, and it is established in this suit that the plaintiff had no other title. As the defendant appellant was in possession it was for the plaintiff to prove a title to the possession of the Mauza.

The case for the defendant appellant was that on the death of Monakka Kuar, the heir of Dhanukdhari was not Hanuman, and was either Jagdeo or Rajendra. The following short pedigree will show the relationship of Dhanukdhari, Jagdeo, Rajendra and Hanuman to each other.



The Trial Judge considered that it was not proved that Jagdeo was living when Monakka Kuar died. It was for the plaintiff to prove that Jagdeo had died in the lifetime of Monakka Kuar. The High Court found that Jagdeo had died before Monakka Kuar. Having regard to these findings, their Lordships assume that Jagdeo had died before Monakka Kuar.

The pedigree shows that Rajendra is the mother's sister's grandson of Dhanukdhari, and that Hanuman was Dhanukdhari's mother's paternal aunt's son. Rajendra and Hanuman were bhinna gotra sapindas, bandhus, of Dhanukdhari.

The Trial Judge found that Hanuman was on the death of Monakka Kuar the heir of Dhanukdhari, and made a decree in favour of the plaintiff for possession of the Mauza on payment to the defendant appellant of the Rs. 200 mortgage money. From that decree the defendant appellant appealed to the High Court at Patna, The High Court in its view of the law of the Mitakshara came to the conclusion that on the death of Monakka Kuar the heir of Dhanukdhari was Hanuman, and was not Rajendra, and by its decree dismissed the appeal. From that decree of the High Court this appeal has been brought.

There has been much discussion and much divergence of opinion in India as to how the right of succession amongst bandhus subject to the law of the Mitakshara is to be ascertained; the

subject was by no means an easy one, but their Lordships consider that it has now to a large extent been settled by decisions of the Board.

According to the text of Manu, which is the foundation of the rules of inheritance of the Hindus, "the property of a near sapinda shall be that of a near sapinda." Vijnyaneswara in his commentary, which is known as the Mitakshara, in giving the rules for the succession of cognate kindred, bandhus, in Chapter II, Section 6, as translated by Colebrooke, said :—

" 1.—On failure of gentilas (gotrajas) the cognates (bandhus) are heirs. Cognates (bandhus) are of three kinds ; related to the person himself (atma bandhu), to his father (pitri bandhu), or to his mother (matri bandhu), 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 (atma bandhus). 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 (pitri bandhus). 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 (matri bandhus).' "

" 2.—Here by reason of near affinity the cognate kindred of the deceased himself (his atma bandhus) are his successors in the first instance ; on failure of them, his father's cognate kindred (pitri bandhus) ; or if there be none, his mother's cognate kindred (matri bandhus). This must be the order of succession here intended."

With reference to these texts from the Mitakshara which are above quoted, the Board in *Muthuswami Mudaliyar and Others v. Sunabedu Muthukumaraswami Mudaliyar*, 23 I.A. 83, held that :—

" To whatever extent rules of succession may have been founded on religious observances, or may now be explained by them, it is clear that fixed rules of law for succession have been established for ages, and equally clear that the Mitakshara professes to express such rules in the quoted text. Taking it to mean what it says, the question is whether its omission to mention a maternal uncle signifies that he is excluded from the first class of bandhus, or whether the writer is not rather classifying by sample without attempting to specify every member of each class.

" Their Lordships are of opinion that even if the quoted text (Section 6 of Chapter II) stood alone, the only admissible construction would be the latter one ; for no rational ground can be assigned for excluding the maternal uncle of the deceased while his more remotely allied sons are admitted to succeed. But in fact the text does not stand alone, and whatever difficulty might at one time have been felt in applying it has now been removed by judicial decision.

" In the case of *Gridhari Lall Roy v. Bengal Government* (12 Moore, I.A. 448), the person claiming to be heir was the maternal uncle of the deceased's father. The High Court of Calcutta decided against his claim on the ground that he was omitted from the quoted text. On appeal, this Board referred to a passage in the Mitakshara which is not translated by Colebrooke, but which was translated and used for the purpose of that suit. In that passage, which deals with the property of a trader dying abroad, his maternal uncle is included among bandhus capable of succeeding though the order of succession is not there stated. The Board also referred to a passage of the Viromitrodaya as a work of high authority at Benares and properly receivable to explain things left doubtful by the Mitakshara.

That passage states that maternal uncles are to be comprehended in the quoted text ; noting how objectionable it would be to exclude them while admitting their sons. This Board held that a grand-uncle fell within the same reasoning, and upheld the plaintiff's title."

Having regard to this decision it appears to be clear that in families governed by the law of the Mitakshara the right of succession amongst the three classes of bandhus mentioned in the text is governed by the propinquity of the class ; and accordingly that a pitri bandhu does not succeed until the class of atma bandhus is exhausted and a matri bandhu does not succeed until the classes of atma bandhus and pitri bandhus are exhausted. In the present case Hanuman was a matri bandhu, the son of a mother's paternal aunt being expressly included in that class. Harihar, as a son of a mother's sister, was an atma bandhu ; and the question to be determined is whether his son Rajendra was also included in that class. In their Lordships' opinion he was. The word " sons " in a similar context has been construed in a generic sense and has been held to include a grandson (*Buddah Singh v. Laltu Singh*, 42 I. A. 208) : and in any case the grandson of a mother's sister falls within the general description of an atma bandhu, a person related to the propositus himself, and is not to be excluded only because he is not mentioned among the illustrations in the text of the Mitakshara. A similar view was taken in *Krishna Ayyangar v. Venkatarama Ayyangar* (I.L.R. 29 Madras 115) where a father's sister's daughter's son was held to be an atma bandhu and to have priority over the paternal grandfather's sister's son, and in *Bai Vulji v. Bai Prabhalakshmi* (9 Bombay L.R. 1129) where a mother's sister's grandson was preferred to the paternal grandfather's sister's son's daughter.

The learned Judges of the High Court appear to have been influenced in arriving at their decision of the appeal to their Court in this suit by opinions which they expressed in their judgments to the effect that Hanuman could have made efficacious offerings to the maternal great-grandfather and the maternal great-great-grandfather of Dhanukdhari and that Rajendra could make no offerings to any ancestor of Dhanukdhari. It is not necessary for the decision of this appeal that their Lordships should express any opinion as to the right, if any, of Hanuman and Rajendra respectively to make efficacious offerings to any ancestor of Dhanukdhari, as Rajendra is of the class of atma bandhu and Hanuman was of the class of matri bandhu and the rule of succession as between them is the rule of the Mitakshara which has been cited above. That rule, in preferring the nearer to the more remote class of bandhus, is not dependent on individual propinquity or on the efficacy of offerings to a deceased person. Of course a bandhu must, in order to be heritable in a female line, fall within the fifth degree from the common male ancestor and must be so related to the deceased person that they were mutually sapindas of one another, that is to say, where the Mitakshara applies, persons connected by particles of one body (see *Ramchandra Martand Waikar v. Vinayak Venkatish Kothekar*,

41 I.A. 290) ; but if these conditions are satisfied that rule takes effect. What the rule of succession under the Mitakshara may be as between bandhus of the same class it is not necessary to decide.

In this case Rajendra is an atma bandhu, and is within the fifth degree of descent from Ghanu Misra. Rajendra and Dhanukdhari were mutually sapindas of each other, within the meaning of that term as used in the preceding paragraph, and Rajendra was the heir of Dhanukdhari on the death of Monakka Kuar. Hanuman was a matri bandhu and consequently was not entitled as heir on the death of Monakka Kuar as Rajendra was then living.

Their Lordships will humbly advise His Majesty that this appeal should be allowed with costs, and that the decrees of the Courts below should be set aside and the suit dismissed with costs.

In the Privy Council.

ADIT NARAYAN SINGH

o.

MAHABIR PRASAD TIWARI.

DELIVERED BY SIR JOHN EDGE.

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