Privy Council Appeal No. 41 *of* 1930.
Bengal Appeal No. 1 *of* 1930.

Jotindra Nath Roy - - - - - - - - *Appellant*

v.

Nagendra Nath Roy and another - - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

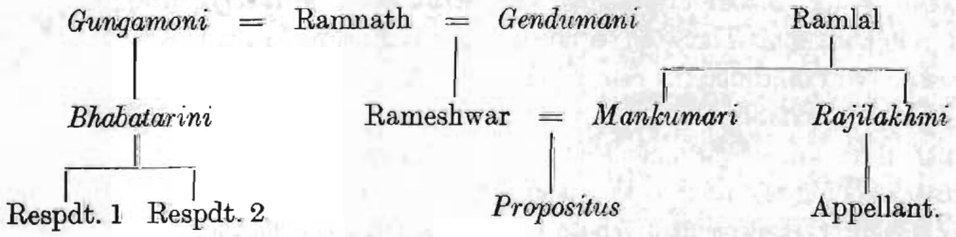
JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 6TH JULY, 1931.

Present at the Hearing:
LORD RUSSELL OF KILLOWEN.
SIR GEORGE LOWNDES.
SIR DINSHAH MULLA.

[*Delivered by* SIR GEORGE LOWNDES.]

There is no dispute as to the facts in this case. The sole question is as to which of two sets of cognates is entitled to succeed to the estate of a deceased Hindu who may for convenience be referred to as the *propositus*.

The pedigree of the parties is as follows, the names of females being printed in italics:



It will be seen from the above that the appellant is a son of a sister of the mother of the *propositus*, while the respondents are sons of a half-sister of his father.

The suit out of which the appeal arises was instituted by the appellant. He had two brothers who apparently refused to

support his suit. They were joined as co-defendants with the respondents, but have taken no part in the proceedings.

Both the Courts in India held that the respondents are the preferential heirs, though on slightly different grounds, with the result that the suit was dismissed. The plaintiff has obtained leave to appeal to His Majesty in Council *in forma pauperis*, and has appeared in person before the Board. He is, their Lordships are informed, a qualified legal practitioner, and has argued his case in great detail, having evidently studied the intricate questions of Hindu law which are involved with commendable industry. Their Lordships do not think that his cause has suffered for want of more experienced advocacy.

In the Indian Courts there was a suggestion that the case was governed by the *Dyabhaga* law, but before the Board it has been admitted that the parties are governed by the Benares school of the *Mitakshara*, under which it is now well settled that the primary test in all questions of inheritance is propinquity in blood.

It is in the first place contended by the appellant that he being the son of a full sister of the mother is half a degree (as he puts it) nearer to the *propositus* than the respondents, whose mother was only a half-sister of the father. Both the Courts in India have negatived this contention, and it does not appear to be in accordance with the authorities. In *Ganga Sahai* v. *Kesri Munshi Lal*, 42 I.A. 177, it is laid down (p. 184) that "having regard to the general scheme of the *Mitakshara* the preference of the whole blood to the half blood is confined to members of the same class, or to use the language of the judges of the High Court in *Suba Singh* v. *Sarafraz Kunwar* (I.L.R. 19, All. 215) to '*sapindas* of the same degree of descent from the common ancestor.'" In their Lordships' opinion the principle of this decision applies equally in the case of *bandhus*, not descended from a common ancestor, but claiming merely on the basis of propinquity. Again the *Mitakshara* (Chapter II, Section 4, placita 5-7) definitely prefers a half brother to the son of a full brother: see *Krishnaji Vyanktuh* v. *Pandurang*, 12 Bomb. H.C.R. 65; and there seems to be no doubt that under the *Dyabhaga* the sons of a step-sister share equally with the sons of a full sister, *Bhola Nath Roy* v. *Rakhal Dass Mukherji*, I.L.R. 11, Calc. 69. There is, so far as their Lordships can see, no reason why a different rule should be thought to prevail in the Benares school.

The next line of argument is that the mother under the *Mitakshara* being regarded as the nearer heir to her son than the father (Chapter II, Section 3), those related through the mother are (at all events where the degrees of descent are equal) to be regarded as nearer in blood than those related through the father. This particular argument does not seem to have been presented to either of the Indian courts where the appellant was represented by counsel, and no authority is cited in support of it.

It does not, their Lordships think, follow that the preference accorded by a special text to the mother should also apply to the mother's *bandhus*. Vijnanesvara, the author of the *Mitakshara*, prefers the mother on a rather obscure explanation of the text of *Yajnavalkya*, which merely brings in " both parents " as heirs after the daughter (Mandlik's translation of *Yajnavalkya*, Chapter II, verse 135). Most of the other commentators of repute give the preference to the father. The *Viramitrodaya*, which has always been regarded as a high authority by the Benares school (*Gridhari Lall Roy* v. *The Bengal Government*, 12 Moo. I.A. 448 at 466 : *Vedachala Mudaliar* v. *Subramania Mudaliar*, 48 I.A. 349, at 365) discusses the question at great length (Sarkar's translation, Chapter III, Part IV), and its author is evidently not in agreement with the reasoning of Vijnanesvara. He attempts to reconcile the divergent opinions by the conclusion that the preference is to be accorded to whichever parent had done most for the son, and was therefore entitled to the greater reverence from him. There is, moreover, no suggestion in the *Mitakshara*, nor, so far as their Lordships have been able to discover, in any work of authority, or in any case decided in India, that the preference accorded to the mother should be extended to *bandhus* on her side of the family. The principle upon which this extension is claimed seems to be negatived by the text of the *Mitakshara* (Chapter II, Section VI), by which *bandhus* of the mother are expressly postponed to those of the father. The *Sarasvati Vilasa* is also clear on the point (Setlur's translation, Section 598), and though this work is rather an authority of Southern India the conclusion there reached seems equally applicable, in the absence of other authority, to Benares. Moreover, the weight of opinion in India is rather in favour of a general preference for the paternal side, as will presently appear. Their Lordships, therefore, think that this argument of the appellant fails.

Apart from the considerations already referred to, it is not disputed that the opposing parties are in equal degrees of propinquity to the *propositus*. The relevant text of the *Mitakshara* is to be found in Chapter II, Section 6 of Colebrooke's translation. The passage is incorrectly quoted in Stokes's Hindu Books : the correct translation is given in Mayne's Hindu Law, Section 513 (and see Setlur's translation at p. 48). The effect of the passage is that *bandhus* are divided into three classes, taking, as classes, in the order named, viz., first, the *atma-bandhus*, the cognates of the *propositus* himself ; secondly, the *pitri-bandhus*, the cognates of his father ; and, lastly, the *matri-bandhus*, the cognates of his mother. The parties to this appeal come within the first class, and are *atma-bandhus* of the *propositus*.

On the accepted reading of the text, the *Mitakshara* lays down no rule of preference as between members of the class who are, as here, in an equal degree of propinquity to the *propositus*, nor does it suggest that they are all to share equally

Both the Courts in India have preferred the respondents, but, as already stated, on slightly different grounds. The Subordinate Judge was of opinion that there is a general preference in the Hindu law for relations *ex parte paterna*, and decided in favour of the respondents on this ground. The High Court, though not specifically dissenting from this view, held that the test to be applied was the comparative efficacy of the funeral oblations offered by the rival claimants, the inheritance going to those whose offerings conferred most benefit on the *propositus*.

The test adopted by the Subordinate Judge is no doubt the simpler one, and is supported by a considerable volume of authority. It seems to have commended itself to Mr. Mayne, whose opinion is always received with respect by this Board (Hindu Law, Section 579). He is supported by Golapchandra Sarkar, who lays down the rule that " of those (*bandhus*) equal in degree, one related on the father's side is to be preferred to one related on the mother's side " (Hindu Law, 3rd Ed., 265-6), and Bhattacharya's Commentaries seem to take the same view (2nd Ed., 460). The rule is also accepted by Sir Lawrence Jenkins for Bombay, *Saguna* v. *Sadashiv*, I.L.R. 26 Bomb. 710; and by the High Court of Madras in *Narasimma* v. *Mangammal*, I.L.R. 13 Madr. 10; see also *Ram Charan Lal* v. *Rahim Baksh*, I.L.R. 38 All. 416.

Their Lordships think, however, that the safer test is that of efficacy of offerings which has been approved in several cases before this Board. So in *Byah Ram Singh* v. *Byah Ugur Singh*, 13 Moo. I.A. 373 at 392, Sir Robert Phillimore dealing with a case under the *Mitakshara* law from Allahabad says :—

> " When a question of preference arises, as preference is founded on superior efficacy of oblations, that principle must be applied to the solution of the difficulty. It obtains properly when a succession opens to a deceased, when the question mooted is a real one (at least in the contemplation of pious Hindoos), viz., who best can confer on the deceased and his ancestors not fully benefited, the benefits which the grades of oblations offer in differing degree."

This was followed in *Buddha Singh* v. *Laltu Singh*, 42 I.A., 208, another *Mitakshara* case from Allahabad, and the question was again discussed in *Vedachala's* case, to which reference has already been made. There the fourth rule laid down by Sadasiva Ayar J. in *Muttusami* v. *Muttukumarasami* (I.L.R. 16, Madr. 23), viz., " that as between *bandhus* of the same class, the spiritual benefit they confer upon the *propositus* is, as stated in the *Viramitrodaya* a ground of preference," was approved. That this rule was applicable was not disputed by the appellant in the High Court. Before this Board, however, he objects that the doctrine of funeral oblations is only applicable under the *Dyabhaga*, and that, in any case, the Madras interpretation of the *Mitakshara* differs in many respects from that adopted by the Benares school. This is no doubt to some extent true, but the authority for the application of the rule in question is specifically stated to be the *Viramitrodaya*, which, as already pointed out, is a Benares authority.

The passage from the *Viramitrodaya* upon which reliance was placed is to be found in Chapter III, Part I, Section 2 (Sarkar, p. 158), and runs as follows :—

> "Since, in the chapter on partition of heritage the conferring of spiritual benefits is by the term 'therefore' set out as the reason; hence it is indicated that he alone is entitled to get the estate, on whom the estate being devolved conduces to the greatest amount of spiritual benefit to the deceased owner, and that proximity in this way is to be accepted as a general rule and reasonable."

It is, their Lordships think, a mistake to suppose that the doctrine of spiritual benefit does not enter into the scheme of inheritance propounded in the *Mitakshara*. No doubt propinquity in blood is the primary test, but the intimate connection between inheritance and funeral oblations is shown by various texts of Manu (see, for instance, Chapter IX, verses 136 and 142), and the *Viramitrodaya* brings in the conferring of spiritual benefit as the measure of propinquity where the degree of blood relationship furnishes no certain guide.

It may well be that the application of a rule of general preference in the case of *bandhus* of those claiming *ex parte paterna*, which was favoured by the Subordinate Judge, will, in the majority of cases, produce the same result as the test of religious efficacy of offerings, but their Lordships think that in adopting the latter they are on surer ground, and are following the precedent of previous rulings of this Board. There may be cases in which this rule will leave the question still undecided, and in which the other rule may have to be considered, but this is not so in the present case. The High Court held, as their Lordships think rightly, that the offerings made by the respondents to their ancestors conferred greater spiritual benefit on the *propositus* than those made by the appellant, and that therefore their claim must prevail. But even if the other rule were adopted, it is manifest that the conclusion would be the same.

The spiritual doctrine of *pinda* oblations is common to all classes of Hindus, whether governed by the *Mitakshara* or the *Dyabhaga* law. The ceremonies may not be strictly observed in every-day practice, as the appellant has asserted, but that is immaterial. Applying it to the parties in the present appeal, it is obvious that the respondents offer the full cake to the paternal grandfather and great grandfather of the *propositus*, while the appellant offers it to his maternal grandfather, great-grandfather and great-great grandfather. Thus, no doubt, the appellant offers three cakes and the respondents only two. But the *propositus* participates only in oblations made to his three immediate paternal ancestors and not in those made to his maternal ancestors (Sarvadhikari's Principles of Hindu Law, 1st edition, pp. 817-8). This statement is no doubt based upon passages cited from the *Dyabhaga*, but so far as the ceremonial doctrine of oblations goes there is no reason to think that it is not equally applicable to Hindus governed by the *Mitakshara*, and it

is again supported by the *Viramitrodaya*, Chapter III, Part I, Section II (Sarkar, p. 155).

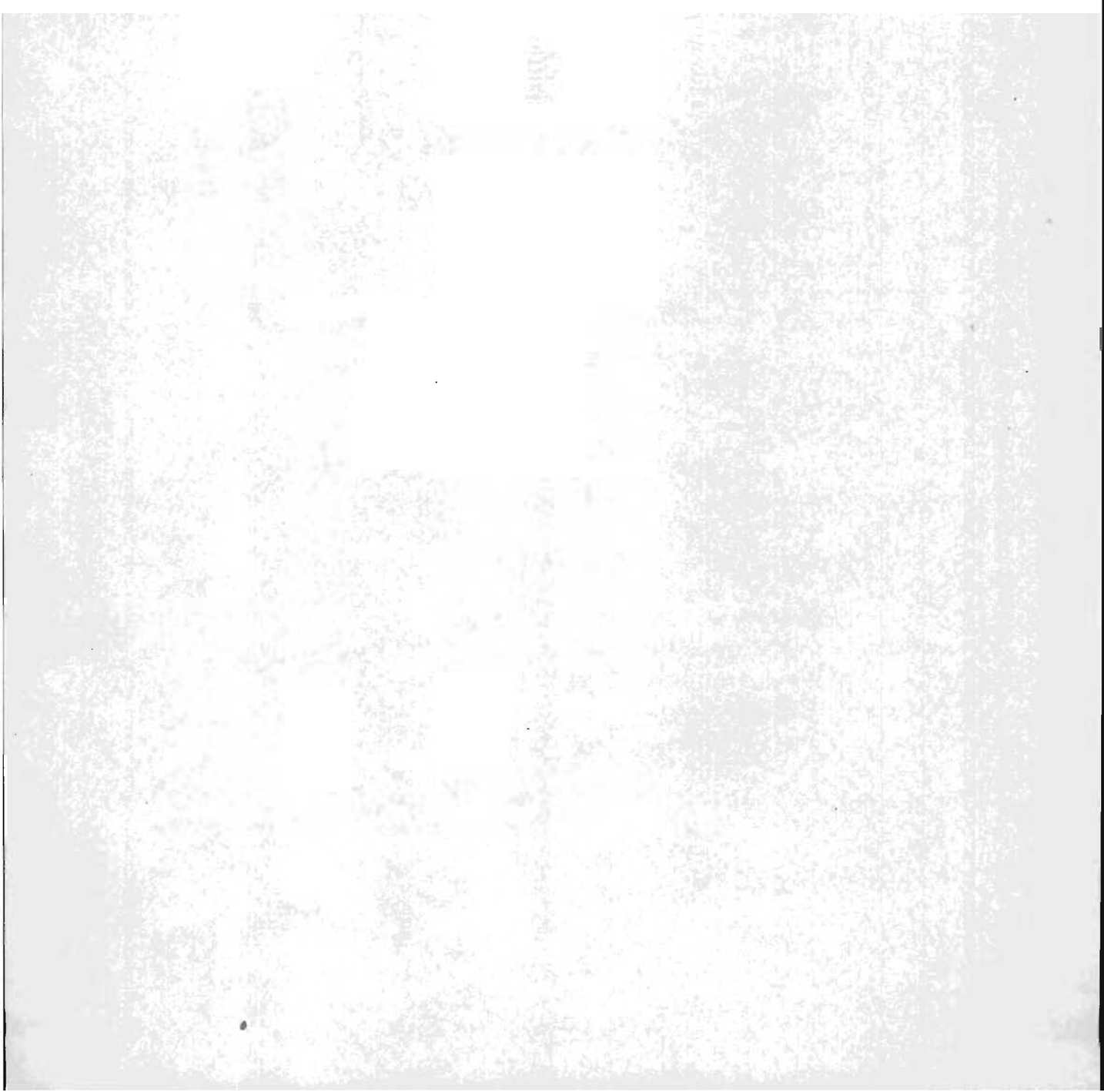
Apart from this, it seems to be well established that cakes offered to the paternal ancestors are of superior efficacy to those offered to maternal ancestors. This was laid down by a Full Bench of the Calcutta High Court in *Guru Gobind Shaha Mandal* v. *Anand Lal Ghose Mazumdar*, 5 Beng., L.R., 15. Dwarknath Mitter J., in delivering a well-known judgment, to which his four fellow Judges assented (two of them being afterwards members of this Board) states as follows :

> " Thus, among the *sapindas*, those who are competent to offer funeral cakes to the paternal ancestors of the deceased proprietor are invariably preferred to those who are competent to offer such cakes to his maternal ancestors only ; and *the reason assigned for the distinction is that the first kind of cakes are of superior religious efficacy in comparison to the second.*"

The first part of this quotation is no doubt the *Dyabhaga* law, but the portion printed in italics is, their Lordships think, for the reasons already given, directly applicable to the present case. The dictum emanates from a Hindu Judge of undoubted eminence and has stood unquestioned for over half a century.

Their Lordships must therefore hold that the offerings made by the respondents confer a greater spiritual benefit upon the *propositus* than those made by the appellant, and that taking this as a measure of propinquity the respondents must be held to be the preferential heirs.

In their opinion, therefore, the appeal fails and should be dismissed, and they will humbly advise His Majesty accordingly. As the appellant has appeared *in forma pauperis* there will be no order as to costs.



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DELIVERED BY SIR GEORGE LOWNDES.

Printed by
Harrison & Sons, Ltd., St. Martin's Lane, W.C.2

1931.