

PRIVY COUNCIL

Buddah Singh and others.

Vs.

Laltu Singh and others.

P.C.A No. 110 of 1914

(Lord Shaw, CJ, Sir George Farwell, Sir John Edge and Mr. Ameer Ali. JJ)

29.7.1915

JUDGMENT

Mr. Ameer Ali J.

1. The question for determination involved in this appeal is one of considerable importance under the Hindu Law and relates to the order of succession under the *Mitakshara* as expounded in the Benares school, among the collateral kindred belonging to the same paternal stock as the deceased.
2. The suit out of which the appeal arises was brought by the appellant Buddha Singh alias Chaturi Singh to establish his right as the nearest reversioner to the estate of one Saheb Sahai, who died in 1873, without leaving any male issue. Saheb Sahai was a minor and unmarried at the time of his death; his mother, Rani Kishori Kunwar, who survived him, accordingly came into the possession of his estate, which she held for nearly 34 years. She died in 1907, when the succession opened to the male collaterals of Saheb Sahai.
3. The following genealogical table, on which both the courts in India have based their judgments, will explain the relative position of the parties to this action.
4. The plaintiff, Buddha Singh, is thus the grandson of Nainsukhmal, the great-grandfather of Saheb Sahai, whilst the defendant Laltu is the great-grandson of Saheb Sahai's grandfather, Nirpat, and the grandson of his paternal uncle, Pura. The plaintiff's contention is that under the law of the *Mitakshara* he has a preferential title to the inheritance of Saheb Sahai as against the defendant, who is admittedly in possession of the deceased's estate since, Rani Kishori's death. He bases his right on the following text of the *Mitakshara*:- "On failure of the father's descendants the heirs

are successively the paternal grandmother, the paternal grandfather, the uncles and their sons" (Colebrooke's translation, Chap. II, section 5, v. 4). and he contends that the expression "sons" occurring in this verse must be strictly construed, and so construed, the devolution of the inheritance in Nirpat's line ceased with his grandson, Buddha, and did not come down to his great-grandson, the defendant Laltu, and that after Buddha, by virtue of the immediately following verse he, as the grandson of the great-grandfather of the deceased, has become entitled to the estate. Their Lordships will refer presently a little more fully to this text and examine its meaning by the light of other texts.

5. Both the courts in India have held against the plaintiff's claim; hence this appeal to His Majesty in Council.

6. The learned Judges of the Allahabad Court in two separate and able judgments have exhaustively reviewed the authorities bearing on the subject, and as their Lordships agree in the main with their deductions and the conclusion at which they have arrived on these deductions, they find themselves relieved of the necessity of discussing the law in any detail.

7. The *Mitakshara* of Vijnaneswara, who flourished about the end of the eleventh and the beginning of the twelfth century of the Christian era, purports to be a commentary on the Institutes of *Yajnavalkya*. Vijnaneswara analyses and discusses the text of his great predecessor, often at considerable length, explains the meaning of recondite passages, supplies omissions and reconciles discrepancies by frequent reference to other old expounders of the law. The best example of his treatment of *Yajnavalkya's* text is to be found in the commentary on the rule relating to the succession to the estate of a person who dies without leaving any male issue. After stating that the right of "sons, principal and secondary" to "take the heritage" had been already shown, he proceeds to quote the rule of *Yajnavalkya* declaring the order of succession in their default, which runs thus (Mr. Colebrooke's translation of the *Mitakshara*, Chap. II, Section 1, para 2) :-

"The wife, and the daughters also, both parents, brothers likewise, and their sons, gentiles, a pupil, and a fellow student : on failure of the first among these, the next in order is indeed heir of one who has departed for heaven leaving no male issue. This rule extends to all persons and classes."

8. Mr. Mandlik's rendering of these two *slokas* of *Yajnavalkya* is more literal and is as follows (Mandlik's translation of the Institutes of *Yajnavalkya*, p. 220, vv. 135, 136) :-

"The wife, daughters, both parents, brothers and likewise their sons, *gotrajas* (gentiles); *bandhus* (cognates) - a pupil and a follow student. of these, the next following on failure of the preceding in order is heir to the estate of one who has departed for heaven, leaving no *putra*. This rule extends to all (males whether belonging or not to the four) classes."

9. The compound word *aputra* occurring in *Yajnavalkya's* text has been rendered by Mr. Colebrooke as "leaving no male issue"; by Mr. Mandlik as "leaving no *putra*." He was evidently anxious to avoid any English synonym, as the word *putra* here, according to all the commentators, conveys a larger meaning than is usually implied by the term "son." The *Viramitrodaya* says clearly that the word "sonless", which is the literal equivalent of *aputra*, signifies, "in default of son, grandson and great-grandson" (Chap. III, Part I, v. ii, Shastri Golap Chandra Sarkar's translation, p. 154) that, in other words, it comprehends three degrees in the direct line of descent. In fact, it is not disputed at their Lordships' Bar that the word *putra* as used in relation to the last owner signifies and includes son, grandson, and great-grandson. What is contended for is that the same word in connection with other relatives, such as brother, ancle or grand-uncle, must be construed in a restricted and literal sense.

10. Commentary of Vijnaneswara on the above quoted *slokas* of *Yajnavalkya*, extends over several sections in Mr. Colebrooke's translation, and makes the work more a digest than a mere commentary. In section 1 of Chap. II, the author deals exhaustively with the right of the widow to inherit the estate of "one who has died *aputra*." Her right of succession is dependent on his leaving no male issue to the third degree. In paragraph 3 the word *putra* is used again in the same generic sense. After treating of the rights of daughters and parents in sections 2 and 3 respectively, he deals in section 4 with the succession of brothers and "their sons." Here, again, the word *putra* is used, whether in the literal or in an extended sense is a matter for consideration.

11. Section 5 relates to the right of collateral kindred of the same paternal stock or *gotra*, and therefore called the *gotraja*, to take the inheritance of the *aputra* in default of "bother's sons." Admittedly both the plaintiff and the defendant are Saheb Sahai's *gotrajas*. Reference, therefore, is necessary to the rules embodied in section 5.

12. It is to be noted here that the word *putra* or more correctly *putra*, which literally means "one who releases from hell "(put)," is used by Vijnaneswara at the very beginning of his Book on Inheritance. In paragraph 3, section 1, Chap. I, describing the two kinds of property (*daya*, wealth) to which rights of inheritance attach, viz., the "unobstructed" and "obstructed," he speaks thus of the latter class :-

"but property devolves on parents (or uncles) and brothers and the rest, upon the demise of the owner if there be no male issue, and thus the actual existence of a son and the survival of the owner are impediments to the succession; and on their ceasing, the property devolves (on the successors) in right of his being uncle or brother, This is an inheritance subject to obstruction."

13. and then comes the significant passage :-

"The same holds good in respect of their sons and other descendants," meaning, clearly, the sons and descendants of uncles and brothers. and this is the construction which Balambhatta, one of the best known commentators of the *Mitakshara*, appears to have put on these words.

14. As pointed out in the case of *Ramachandra Martand Waikar v. Vinayak Venkatesh Kothekar*¹ the right of collaterals to succeed to the inheritance of a deceased person is based on the rule of Manu, which has been translated differently by different writers, but which in substance amounts to this, that the estate of a deceased goes to his nearest *sapinda*. The right of collaterals, therefore, is dependent on the existence of the *sapinda* relationship between the propositus and the claimant. It is now well settled by the decisions of this Board that under the *Mitakshara Lulloobhoy Bappoobhoy v. Cassibai*² the *sapinda* relationship arises "between two people through their being connected by particles of one body," viz., that of the common ancestor, in other words, from community of blood in contradistinction to the Dayabhaga notion of "community in the offering of religious oblations." But, as will be shown later on, the *Mitakshara*, whilst holding that the right to inherit does not spring from the right to offer oblations, does not exclude it from consideration as a test of propinquity or nearness of blood.

15. Mr. Colebrooke has, in his translation of section 5, erroneously rendered the word *sapinda* as "relations connected by funeral oblations," and *samanodakas* as those connected by "libations of water," which has led to some confusion of ideas. Their Lordships, therefore, propose to follow the translation which was before this Board in Lulloobhoy's case.

16. The first paragraph stands thus:-

"If there be no brother's sons, *gotrajas* share the estate. *Gotrajas* are the paternal grandmother and *sapindas* and *samanodakas*"

17. Their Lordships understand that the word rendered "sons" in this paragraph is *putra* in the original. Then follows paragraph 2, in which Vijnaneswara develops the

position of the grandmother in the following terms:-

"In the first place the paternal grandmother takes the inheritance." The paternal grandmother's succession immediately after the mother was seemingly suggested by the text before cited. "And the mother also being dead, the father's mother shall take the heritage," (Section 1, paragraph 7).

"No place, however, is found for her in the compact series of heirs from the father to the nephew, and that text (the father's mother shall take 'the heritage') is intended only to indicate her general competency for inheritance; she must, therefore, of course, succeed immediately after the nephew; and thus there is no contradiction."

18. Paragraph 3 then states in general terms that after the grandmother the *sapindas* of the same paternal stock, viz., "the paternal grandfather and the rest inherit the estate, for *bhinnagotra sapindas* (i.e., sapindas belonging to another stock) are indicated by the term *bandhu*" (dealt with in section 6).

19. Paragraphs 4 and 5 deal specifically with the succession of the *samanagotra sapindas* and run as follows:-

"(4) Here on failure of the father's descendants, the heirs are successively the paternal grandmother, the paternal grandfather 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*."

20. It is clear from the observations of both Mr. Mandlik and Dr. Jolly (Mandlik's Hindu Law, p. 379; Dr. Jolly's Tagore Law Lectures, p. 124) that Mr. Colebrooke in his translation of paragraph 5 has omitted towards the end the important words "up to the seventh," which makes a material difference in the sense of the passage.

21. Mandlik translates the last sentence as follows :

"In this manner up to the seventh (*sapinda*) the taking of wealth by the *samanagotra sapindas* should be known." Only instead of expression *samanagotra*, which is in the original, he uses the abbreviated terms *sagotra*.

Paragraph 6 then provides as follows:-

"(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 Variant 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*.'

22. It is contended on behalf of the appellant on the strength of these several passages that the word "son" used in conjunction with brothers must be literally construed, for otherwise, it is urged, the position assigned to the grandmother in the order of succession would be displaced. The effect of this argument (which by parity of reasoning must apply also to uncles), if well founded, is that the succession in the father's or grandfather's line must cease ipso facto on the failure of descendants of the second decree, and the inheritance must be diverted to another line ascending first to the female ancestor.

23. In their Lordships' opinion it begs the very question which they have to determine, viz., in what sense Vijnaneswar has used the term "son" in these passages; and that question can be answered only first by examining his own method of employing the word, and secondly, by inquiring in what sense other Hindu jurists of the same school or cognate schools have understood the expression. Before proceeding with their examination of Vijnaneswara's own words, their Lordships desire to make one observation, as it strikes them, regarding the place of the grandmother in his scheme of succession.

24. In *Yajnavalkya's* rule, already quoted, to which Vijnaneswara refers as "the compact series of heirs," the paternal grandmother is not included as an heir. Vijnaneswara finds a place for her among the *gotraja*, on the authority of an enunciation of Manu, which he quotes in paragraph 7 of section 1, Chap. II, and which runs thus :-

"Of a son dying childless the mother shall take the estate; and the mother also being dead, the father's mother shall take the heritage."

25. According to Manu, then, if his words are to be literally construed, the paternal grandmother would take immediately after the mother. This difficulty Vijnaneswara himself recognizes; in order to reconcile the conflict between *Yajnavalkya*, who omits the grandmother altogether from his "compact series of heirs," and Manu, who would place her directly after the mother, he places her somewhat arbitrarily, as Messrs. West and Buhler also indicate, after the "brother's sons." The question, however, whether he intended his declaration to be imperative can be solved only by a less free translation than Mr. Colebrooke's. Anyhow, the meaning to be attached to the word "sons" is left subject to explanation.

26. Now, in paragraph 1 of section 5, where Vijnaneswara says "if there be not even brother's sons," the word used is putra; in paragraph 2, where the grandmother's place is declared, the expression employed is brother's suta, a synonym of putra. In paragraph 4 again the word putra appears to be used in connection with uncles. In paragraph 5, where the expression "his sons and their issue" occurs, the original words are said to be tat putras, "his sons," and tat sunavas, (plural of sunu "offspring." Sunu is the old Indo-Aryan word which survives in the English "son") "their sons".

27. The word "descendants" in Mr. Colebrooke's translation is in the original "santana," which means race, lineage, or posterity, and is still used among Hindus to mean male progeny without limitation. Mr. Justice Telang construes it as meaning "continuation" *Rachava v. Kalingapa*³; other learned Sanscritists interpret it to signify "an uninterrupted series" (of progeny or heirs). Their Lordships have no doubt that Vijnaneswara has used it in the sense of lineal male descendants. Sunavas translated by Mr. Colebrooke as "issue," connotes the same idea.

28. Having regard to the fact that this great legist, whose logical acumen judging from his work seems to have been remarkable, has used the term putra in previous parts of his book on inheritance in a comprehensive and generic sense, their Lordships find it difficult to conceive why he should arbitrarily and without any explanation have used the word towards the end in quite a different and restricted sense, or why, if his intention was to confine the descent in the case of the collaterals to the actual sons of brothers and uncles, he did not employ terms which would have exactly conveyed his meaning, such as *atmaja or auras*, which their Lordships understand, mean "son of one's loins" (See Mandlik, p. 380; and Sutherland's translation of the Dattaka Mimansa (Stoke's Hindu Law Books, p. 547). Nor can their Lordships appreciate the argument that the meaning of such words as *santana* and *sunavas*, which mean lineal male progeny without limitation should be arbitrarily cut down to two degrees.

29. There seems to be great force then in Sir Robert Finlay's contention that the limitation is to be found elsewhere. The rule of Manu supplies one limitation:- To three (ancestors) water must be offered, to three funeral cake is given, the fourth (descendant is) the giver of these (oblations), the fifth has no connection with them" ("Sacred Books of the East," Vol. XXV, v. 186, p. 36). The other is deduced by Mr. Harrington (see *Rutcheputty Dutt Jha v. Rajunder Narain Rae*⁴, the well-known author of the "Analysis," and one of the most erudite judges of the old Sudder Court of Bengal, from the enunciations of Vijnaneswara himself in paragraph 6, section 5, where he declares that the succession of the *sammanagotra sapindas* extends "in this

manner" to "the seventh degree." It is not necessary in their Lordships' opinion to examine the force of the criticism that has been levelled at Mr. Harrington's construction of Vijnaneswara's dictum, for if the view based on Manu's doctrine or rule be well founded, as the High Court has considered it to be, it would be sufficient to dispose of this appeal.

30. In this connection their Lordships desire to make another observation. If it be correct, as has been suggested, that the words *putra-pautra* ("son-grandson"), used by Vijnaneswara in section 1, Chap. I, did not comprehend originally a great-grandson, but that it has been included by the commentators, as the Viramitrodaya shows, on the strength of analogical reasoning, then, in their Lordships' opinion, the objection to the High Court's reading of text, based on the necessity of strict adherence to a literal interpretation, loses considerably its force, and the Courts are compelled to resort to other texts to extract the meaning of undefined expressions.

31. Turning now very briefly to the other authorities to which their Lordships' attention was called, they observe that *Apararka*, another scholiast of *Yainavalkya*, who flourished about a century later than Vijnaneswara, dealing with the same text on which the author of the *Mitakshara* has commented at such length, construes, as pointed out by the High Court, the expressions "brother's sons" and "uncle's sons" in a wider sense. That *Apararka*'s authority is acknowledged by the expositors of the Benares school is clear from the fact, to which Mr. Mandlik refers, that Visweswara Bhatta, the author of the *Subodhini*, a commentary on the *Mitakshara*, has used *Apararka*'s work among others for the compilation of his *Madanaparijata*. Parts of *Apararka*'s treatise and of the *Madanaparijata* have been translated by *Dr. Sarvadhikari* and are to be found in his *Tagore Lectures* for 1880.

32. Nanda Pandit, "an esteemed writer of the Benares school," and the author of the noted work on the Law of Adoption, called the *Dattaka Mimansa*, a standard treatise among the followers of the *Mitakshara* has written commentaries both on the *Mitakshara* as well as on the *Institutes of Vishnu*, a predecessor of *Yajnavalkya*, who is frequently quoted by Vijnaneswara. In this latter work, called the *Vaijayanti*, in giving the order among the sagotras, he states that "in the father's line, on failure of the brothers son, the brother's son's son is heir." and he bases this rule on the prescriptions of Manu already quoted. It is to be noted that this writer, who must have had Vijnaneswara's words in his mind, certainly did not limit the term *putra* to two decrees. *Varadaraja*, whose authority is said to be great in Southern India, and whose enunciations appear to be received with respect also by the expounders of the Penares

school has given expression to the same view. Vidyabhusan Shama Charan Sarkar, a learned Hindu scholar who for many years held the post of principal Oriental Interpreter in the High Court of Calcutta, and at one time occupied the chair of Tagore Law Professor in the Calcutta University, also deals with the subject in his well known work called the *Vyavastha Chandrika*.

33. This learned Hindu writer states in Principle 153 that "a brother's grandson succeeds in default of a brother's son," and refers to the decision of the Calcutta High Court in *Kureem Chand Garain v. Oodung Gurain*⁵, without taking any exception to its correctness. In the note to the Principle he states the reason why the brother's grandson succeeds on failure of a brother's son in these words :

"Because the term brother's son is inclusive also of the brother's grandson and because he is sapirda and the nearest of the persons understood by the term gotraja."

34. The significance, however, of the statement lies in the question which Shama Charan Sarkar propounds in the footnote :

"It may be asked that when in law the term 'son' (put-tra) is inclusive of the grandson and great-grandson why then the term "brother's son" does not include also the 'brother's great-grandson?"

35. The answer which he gives to his own question is both interesting and instructive. "The answer is," he says, "that in law calculation is made from the son of the common ancestor, which here is the father of both the deceased and his brother, consequently the term 'son' (of that ancestor) is inclusive of his great-grandson, who is the brother's grandson."

36. Dr. Raj Kumar Sarvadhikari, whose authority as an expounder of the Hindu Law has been recognized by the Calcutta High Court and this Board, in his Tagore Law Lectures, gives emphatic expression to the view that the word 'son' includes three degrees of descendants.

37. Davananda Bhatta, the author of the *Smriti Chandrika*, whose doctrines, however, are not recognized in Northern India holds the contrary opinion; and Visweswara Bhatta in the *Subodhini* certainly appears to say that the father's line ceases with the brother's son; and probably the same meaning is to be attached to his statements in the *Madanaparijata*. With regard to these two writers, their Lordships deem it necessary to observe that Devananda Bhatta, who is supposed to have been a contemporary of Apararka, admittedly differs from the author of the *Mitakshara* in several essential

rules of law. It seems, to say the least, doubtful whether an enunciation in the *Smriti Chandrika* can be safely applied, except perhaps by way of analogy, to explain a dubious or indeterminate phrase or term in the *Mitakshara*. The *Subodhini* stands on a different footing; it, no doubt, professes to be a commentary on the *Mitakshara*, but it is equally clear that in several instances it diverges from the acknowledged interpretations of its doctrines. The view of Visweswara Bhatta and Devananda Bhatta have been propounded with much force by Mr. Mandlik and Golap Chandra Shastri, both of whom take their stand on the literal construction of the word *putra*. This thesis has been elaborately worked out by the former writer, but in substance it amounts to this, that as Vijnaneswara has used the expression 'son' in conjunction with "brothers" and "uncles" it must be restricted to their direct male issue, and no extension of its meaning is permissible.

38. Their Lordships agree with the High Court of Allahabad that this reasoning proceeds on a very narrow basis and materially ignores the chief ground on which the opposite doctrine is based. Dr. Raj Kumar Sarvadhikari's construction appears to them to rest on a logical foundation, and his views seem to be consistent and clear. In effect he says that the *Mitakshara* propounds a definite scheme of succession; lineal male descendants of the deceased owner down to and including the third degree, who constitute the first class of propinquous relations (the nearest *sapindas*) inherit in succession in the first instance. In their default the widow and daughter take by express provision of the law. The daughter's son comes in similarly. In their absence the inheritance ascends; each ascending line begins with a female, and each has to be exhausted in accordance with the rule of propinquous sapinda-relationship before the next in order can take; so that the parents and "their three successive descendants" take first; then the paternal grandmother and the paternal grandfather and "their three successive descendants" come next, and so on.

39. It may be noted here that two recent Hindu writers of repute (Dr. Jogendra Nath Bhattacharjea, M.A., D.L., in his *Commentaries on the Hindu Law*, p. 444; Mr. Jogendro Chander Ghose, *Hindu Law*, p. 119) and Dr. Jolly, who was at one time Tagore Law Professor in the Calcutta University, and is one of the translators of "The Sacred Books of the East", are in substantial agreement with Dr. Raj Kumar Sarvadhikari.

40. As regards the decided cases there seems to be a conflict of opinion between the High Courts of Allahabad and Calcutta on one side and that of Madras on the other. The latter High Court has upheld the narrow construction propounded by the *Smriti*

Chandrika and the *Subodhini*, and though it purports to confine its interpretation to Southern India, the opinion it has expressed has a wider application and deserves, therefore, careful attention.

41. Their Lordships do not consider it necessary to refer to the earlier decisions of the *Sudder Dewany Adalut* of the North-West Provinces; they think it sufficient to treat the judgment of Mr. Harrington in *Rutcheputty Dutt Jha v. Rajunder (Supra)* as a starting point in the current of decisions in Northern India. The question at issue in that case related to the right of *Bandhus* or cognates under the *Mitakshara* to the succession to a deceased person in the presence of a *gotraja*. Mr. Harrington in dealing with the question examined exhaustively the meaning of the word *putra*, and came to the conclusion that it had been used by *Vijnaneswara* in a generic sense. His judgment was affirmed on appeal to this Board; and there appears to be no challenge of his interpretation of the law. It again received the approval of this Board in *Bhyah Ram Singh v. Bhyah Ugur Singh*⁶ Perhaps Mr. Harrington's view with regard to the continuation of each line of heirs to the seventh degree is open to the objection that it contravenes the rule of *Manu*. As already observed their Lordships do not, however, consider it necessary for the purposes of the present case to consider whether the principle suggested by him is correct or not.

42. In *Kureem Chand Gurain v. Oodung Gurain (Supra)* also the exact point in issue was not identical with the one involved here, but Mr. Harrington's construction of the word *putra* was accepted; and it was held that in the scheme of the *Mitakshara*, the term "brother's son" includes "brother's grandson."

43. In *Kalian Rao v. Ram Chander*⁷ the point at issue directly concerned the position of the brother's grandson in the line of descent, and the learned Judges of the Allahabad High Court (Burkitt and Chamier, JJ.) came to the conclusion that under the law of the *Mitakshara*, as accepted and expounded in the Benares school, the brother's grandson had the right of succession to the deceased before it ascended to the second line, *vis.*, the grand-parental line.

44. This decision has been followed in the case under appeal.

45. In the Bombay Presidency also the doctrines of the *Mitakshara* are recognized subject to the interpretation of the *Vyavahara Mayukha* of Nilkantha Bhatta, and although on many points there is considerable divergence between the Benares and the Maharashtra schools, as regards the question involved in the present case one decision at least of the Bombay High Court indicates an agreement with the Allahabad

High Court.

46. Mr. Justice Telang, a Sanscritist of high order, in *Rachava v. Kalingapa (Supra)* explains thus the order of descent among the gotrajas (enunciated in Chap. II, section 5, paragraphs 4-5 of the Mitakshara), although, as he points out, each ascending line begins with a female (gotraja) ancestress.

"In the Mitakshara, Chapter II, section 5, P1. 4-5, it is laid down that the propinquity of gotrajas is to be determined by lines of descent - that is to say, the inheritance is to go first in the line" (the word in the original santana literally, "continuation") "of the paternal grand-father, then in default of any one in the line, of the paternal great-grand-father, then of the paternal great-grandfather, and so forth."

47. The Madras High Court in two cases named respectively *Suraya Bhukta v. Lakhshminarasamma*⁸ and *Chinnasami Pillai v. Kunju*⁹ has held, as already stated, the direct opposite. The ratio decidendi in both judgments, which are elaborate and closely reasoned, is of a two-fold character; in the first place the learned Judges say that when a word purports to bear two meanings, one primary, the other secondary, it must be understood in the primary sense unless there is anything in the context to show that it was not used in that sense. In the second place they seem to consider the opinions of Devananda Bhatta and of Visveswara Bhatta in the Smriti Chandrika and Subodhini respectively as conclusively showing that the Mitakshara must be taken to limit collateral descent to two degrees in each line. Their Lordships have already made their remarks on these two authorities; they do not feel disposed to attach any canonical authority to the rule of the Subodhini. Curiously enough there is no reference in either of the Madras judgments referred to above to previous decision *Parasara Bhattar v. Rangaraja Bhattar*¹⁰, of the same Court to which Turner, C.J. was also a party. In that case the rule of the Smriti Chandrika was not accepted nor was the literal construction of the Mitakshara followed. It is usual in such cases where a difference of opinion arises in the same Court to refer the point to a Full Bench, and the law provides for such contingencies. Had that course been followed their Lordships would probably have had more detailed reasoning as to the change of opinion on the part at least of one Judge.

48. In *Surya Bhakta v. Lakhshminarasamma (Supra)* the Judges say they had "consulted their learned colleague, Mr. Justice Muttusami Ayyar," and acknowledged their obligation to him for his assistance. Their Lordships cannot help remarking that it is an undesirable course, which has not been approved of by this Board, to introduce

the opinion of another Judge not a party to the judgment for the purpose of enforcing the conclusion arrived at. The recorded opinion of Mattusami Ayyar, J. would have been of great value had he been associated in the decision.

49. However, the two Madras decisions have received the respectful consideration of their Lordships. They have already given reasons for holding that in the Mitakshara, as expounded in the Benares school, the word putra and its synonym employed by Vijnaneswara in connection with brothers and uncles must be understood in a generic sense as in the case of the deceased owner, and that the descendants in each ascending line, up to the fixed limit, should be exhausted at any rate to the third degree before making the ascent to the line next in order of succession.

50. It seems to their Lordships that there is another ground on which the plaintiff must fail. It is admitted that the defendant confers greater benefit on the deceased by the offerings he makes to the manes of the common ancestor. Now, it is absolutely clear that under Mitakshara, whilst the right of inheritance arises from sapinda-relationship, or community of blood, in judging of the nearness of blood-relationship or propinquity among the gotraja, the test to be applied to discover the preferential heir is the capacity to offer oblations. Mitra Misra, the author of the Viramitrodaya (Golap Chandra Shastri's translation, p. 91, Ch. 11, Part 1, Section 23A), an authoritative commentary, on the Mitakshara, lays down this doctrine in express terms. He says when there are many claimants to the heritage among gotrajas and the like (Dr. Raj Kumar Sarvadakari construes the word "like" as meaning "other classes of heirs") then the fact of conferring benefits on the proprietor of the wealth by means of the offering of oblations and the like only excludes those that do not confer such benefits." Dr. Raj Kumar Sarvadhikari renders the last part of this passage thus : "The benefit conferred on the late owner by the offering of the cake and the water determines the title to inheritance." ("Tagore Law Lectures," for 1880, p. 629.)

51. In the case of *Bhyah Bam Singh v. Bhyah Ugur Singh (Supra)* the Board affirmed this rule in the following words :-

"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."

52. For these considerations their Lordships are of opinion that the conclusion arrived at by the High Court is well founded, and this appeal should be dismissed with costs. and they will humbly advise His Majesty accordingly.

Appeal dismissed.

Cases Referred.

1. [1914] 42 Cal. 384 : 25 I. C. 290 : 41 I.A. 290 (P.C.)
2. [1880] 5 Bom. 110 : 7 I.A. 212 : 7 Ch. D. 445 (P. C.)
3. [1892] 16 Bom. 716
4. [1837-41] 2 M. I. A. 132 : 2 Suther 1 : Sar. 161 (P. C.),
5. 6 W. R. 158
6. [1867-69] 13 M.I.A.373 : 5 B.L.R. 293 : 14 W.R.1: 2 Suthur 330 : 2 Sar. 566 (P.C.).
7. [1901] 24 All. 128 : 1901 A. W. N. 189
8. [1882] 5 Mad. 291
9. [1912] 35 Mad. 152 : 21 M.L.J. 856 : 11 I. C. 885 : 10 M. L. T. 226,
10. [1878-80] 2 Mad. 202