

## **PRIVY COUNCIL**

Atmaram Abhimanji

Vs.

Bajirao Janrao

P.C.A.No.19 of 1932

( Lords Tomlin, J. Thankerton, Russell of Killowen, Sir Lancelot Sanderson and Sir Shadi Lal JJ.)

01.03.1935

### **JUDGMENT**

#### **SIR SHADI LAL J.**

1. The question of law, which arises in this appeal, is one of considerable importance and relates to the exact scope of the expression samanodaka as used in the Hindu law of inheritance. The facts bearing upon the question do not admit of any dispute. The property, which is in dispute between the parties, belonged to one Manikrao who died in October 1916. The plaintiffs are descended in the male line from one Tulsingh, who was an ancestor of Manikrao in the 22nd degree. They claimed the estate on the ground that they were entitled to succeed to it as the agnates of the deceased in preference to the defendant, Atmaram, who was his father's sister's son. The trial Judge negatived their claim, but on appeal his judgment was reversed by the Court of the Judicial Commissioner, Central Provinces and Berar, who have held that the plaintiffs come within the purview of the term samanodaka and have priority over the defendant who, being only a bandhu, cannot succeed in the presence of an agnate however remotely the latter may be related to the deceased.

2. The heirs of a Hindu governed by the Mitakshara School are (1) sapindas, (2) failing them, samanodakas, and (3) on the failure of both the above- mentioned classes, bandhus. The word sapinda includes blood relations to the 7th degree reckoned from, and including, the propositus; and it is obvious that the plaintiffs, who were related to the deceased Manikrao in the 22nd degree, are not his sapindas. They however claim to be samanodakas, and that class certainly includes all the agnates from the 8th to the 14th degree. But it is a debatable question whether agnates beyond

the 14th degree come within the ambit of samanodakas for the purpose of succession. It is to be regretted that the plaintiffs, who are respondents in the appeal, have not appeared to sustain their claim, but their Lordships have had the advantage of hearing the point fully and fairly argued by Mr. Parikh, and have themselves considered all that could reasonably be urged in support of the view taken by the Court of appeal in India.

3. Now, the word samanodakas, literally translated, means persons connected by equal libations of water; but Vijnaneswara, the author of the Mitakshara, abandoned the ancient doctrine basing the right of inheritance upon the right to offer funeral oblations and founded it upon propinquity. After detailing the heirs coming within the class of sapindas he states, in Ch. 2, Section 5, verse 6, the law relating to samanodakas in these terms :

"If there be none such, the succession devolves on samanodakas, and they must be understood to reach to seven degrees beyond sapindas, or else as far as the limits of knowledge as to birth and name extend. Accordingly, Vrihad Manu 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'."

4. The conflict of opinion alluded to in the above passage is not mentioned either in the Manu Smriti or in the Yajnavalkya Smriti. In Ch. 5, verse 60, Manu declares that sapinda relationship ceases with the 7th person and samanodaka relationship ends only when the origin and name are no longer known. That chapter however deals with social matters such as impurity on account of birth and death; and it is not clear whether the description of samanodaka adopted for prescribing rules in the domain of social observances was intended to define the word in its application to the law governing succession as stated in Ch. 9, verse 187. The word samanodaka is not mentioned in the Smriti of Yajnavalkya, who confers the right of inheritance upon gotraja (a person born in the same gotra, or a gentile), sloka 135, but gotraja was apparently intended to be used in the same sense as samanodaka in Manu Smriti. It was however recognised in course of time that the rule enunciated in the ancient texts, giving the right of inheritance to all agnates, however remote, and placing the cognates after them, was not in conformity with the feelings of the people; and "Vijnaneswara, when writing his commentary Mitakshara on the Smriti of Yajnavalkya, probably found that a usage had grown up restricting the samanodaka relationship to the 14th degree. He accordingly refrained from endorsing the all-

embracing rule of Yajnavalkya, and while mentioning it in the verse dealing with the subject, he gave prominence to the restricted scope of the word, and supported it by citing Vrihad Manu. It must be remembered that the commentators, while professing to interpret the law as laid down in the Smritis, introduced changes in order to bring it into harmony with the usage followed by the people governed by the law; and that it is the opinion of the commentators which prevails in the provinces where their authority is recognized. As observed by this Board in *Collector of Madura v. Mootoo Ramalinga Sathupathy*, , at p. 436, the duty of a Judge "is not so much to inquire whether a disputed doctrine is fairly deducible from the earliest authorities, as to ascertain whether it has been received by the particular school which governs the district with which he has to deal, and has there been sanctioned by usage. For under the Hindu system of law, clear proof of usage will outweigh the written text of the law."

5. Indeed, the Mitakshara "subordinates in more than one place the language of texts to custom and approved usage, *Bhyah Ram Singh v. Bhyah Ugur Singh*, 6. It is therefore clear that in the event of a conflict between the ancient text writers and the commentators, the opinion of the latter must be accepted. Now, the words 'as some affirm' used by Vrihad Manu in the extract quoted in the Mitakshara do not show that he himself was in favour of extending the meaning of samadodakas to include agnates beyond the 14th degree. He merely cited the opinion which was expressed by other writers. His own view is however contained in part 1 of the extract which confines the samanodaka relationship to agnates from the 8th to the 14th degree; and the author of the Mitakshara seems to have adopted the same view. There is certainly no indication that he gave his sanction to the rival view.

7. The rule confining the word to agnates up to the 14th degree has the merit of avoiding uncertainty and is also in perfect harmony with the sentiments of the people. The opposite view would lead to the incongruous result that an agnate related in the 100th degree or even remoter degree would be preferred to a cognate who may be nearly related to the deceased by the tie of blood, such as the son of his sister or of his father's sister. The judgments of the High Courts in India reveal a divergence of judicial opinion. The High Court of Bombay in *Bai Devkore v. Amritram Jamiatram*, (1886) 10 Bom 372, interpreted the word samanodaka to include all agnates without any limit of degree. This rule was sanctioned by Nilkantha, the author of Vyavahara Mayukha, whose authority is recognised in Gujarat. It appears that the case came from Gujarat, and that the learned Judges were influenced by the opinion of Nilkantha. The

judgment in that case was followed by the Allahabad High Court in *Ram Baran Rai v. Kamla Prasad*, which was governed by the Mitakshara school. That view has however been dissented from by the Madras High Court, who in their judgment in *Rama Row v. Kuttiya Goundan*, have pronounced against the extension of the samanodaka relationship beyond the 14th degree. Their Lordships have considered also several cases which contain dicta on the subject, but those dicta were not necessary for determining the dispute between the parties. In the judgment of this Board in *Mewa Singh v. Basant Singh*, AIR 1918 PC 49, that are observations to the effect that those who claim to be the reversionary heirs must bring themselves within the necessary number of degrees, namely, fourteen. The suit was however dismissed on the ground that the plaintiffs had failed to prove that they were related to the person whose estate was claimed by them.

8. Upon an examination of the available texts of the Hindu law, and the judicial decisions on the subject, their Lordships have reached the conclusion that according to the Mitakshara school of the Hindu law, which governs this case, samanodakas include only those agnates whose relationship to the deceased extends from the 8th to the 14th degree, and in the absence of any such agnate the estate devolves upon his bandhus. The result is that the appeal should be allowed, the order of remand made by the Court of the Judicial Commissioner set aside, and the judgment and the decree of the Court of first instance restored. Their Lordships will humbly advise His Majesty accordingly. The respondents must pay the costs incurred by the appellant here as well as in the Court of appeal in India.

Appeal allowed.

Cases Referred.

(1867-69) 12 MIA 397 (PC).

(1869-70) 13 MIA 373 (PC), at p. 390."

(1910) 32 All 594=6 IC 698,

1917 Mad 872 =34 IC 294=40 Mad 654,