

## **PRIVY COUNCIL**

Mt. Sahodra

Vs.

Ram Babu

P.C.A No. 46 of 1940

(Lords Russell of Killowen, Macmillan, Romer Sir George Rankin and Sir Madhavan Nair JJ.)

13.10.1942

### **JUDGMENT**

#### **SIR MADHAVAN NAIR J.**

1. This is an appeal from a decree of the High Court of Judicature at Allahabad dated 13th April 1937, which affirmed a decree of the Court of the Subordinate Judge at Muttra in favor of the plaintiff dated 18th September 1933. The only question for decision is one of law, viz., whether the words "sister's son" in Section 2, Hindu Law of Inheritance (Amendment) Act, 1929, which will hereinafter be referred to as "the Act," include the son of a half-sister ? Section 2 of the Act is as follows :

A son's daughter, daughter's daughter, sister and sister's son shall, in the order so specified, be entitled to rank in the order of succession next after a father's father and before a father's brother: Provided that a sister's son shall not include a son adopted after the sister's death.

2. The facts of the case are not in dispute and need not be referred to in detail. The parties are Hindus governed by the law of the Mitakshara. The property in the suit belonged to one Krishna Murari who was the last male owner. It was claimed by Ram Babu, the plaintiff, who is Krishna Murari's father's uncle's son. His claim was resisted by Mt. Sahodra, the defendant, for herself and on behalf of her son Dhanpat. Mt. Sahodra is the half-sister of Krishna Murari being his father's daughter, by his first wife. When succession opened, these were the two claimants to the estate, viz., Ram Babu and Dhanpat. Dhanpat died during the pendency of the appeal. Apart from the Act, Ram Babu as Krishna Murari's father's uncle's son would, as a sapinda, be entitled to succeed to the estate of Krishna Murari as the nearest reversioner, in

preference to Dhanpat his half-sister's son who is only a bandhu. Under the Act, however, the persons named in Section 2 inherit with gotraja sapindas, and a "sister's son" coming next after a "sister" enjoys priority in succession over the father's paternal uncle's son. If Dhanpat, as the son of the half-sister of Krishna Murari was entitled under the Act to inherit the suit property, then Mt. Sahodra as his mother would be entitled to succeed him under the ordinary law.

3. It was urged in the Courts in India that the words "sister's son" in Section 2 of the Act would include a half-sister's son and Dhanpat would therefore have a preferential claim to succeed to the estate of Krishna Murari but this contention was negated by the Courts following the decision in *Ram Adhar v. Mt. Sudesra*. In this appeal by the defendant, the same contention has been urged, the argument being that by the Act "sister" has been admitted as an heir under the Mitakshara law, that the term "sister" in Section 2 includes a half-sister, and by parity of reasoning the words "sister's son" would include a half-sister's son. It is to be regretted that the respondent has not been represented, but Mr. Khambatta who has argued the case for the appellant with skill and ability has placed before the Board fairly and fully all the relevant facts and arguments. There is divergence of judicial opinion among Courts in India regarding the construction of Section 2 of the Act. In *Ram Adhar v. Mt. Sudesra* the Full Bench of the Allahabad High Court held that the word 'sister' in Section 2, Hindu Law of Inheritance (Amendment) Act, 1929, does not include a half-sister, either consanguine or uterine.

4. The main grounds for the decision are, that the word "sister" in the English language ordinarily means a sister of the whole blood and that "if we hold that 'sister' in Section 2 of Act 2 of 1929 includes a half-sister, we shall be putting a sister and a half-sister in the same category" which would be against the spirit of the Mitakshara law under which a relation of the full-blood excludes a relation of the half-blood, and "shall be introducing a half-sister between the words 'sister' and 'sister's son'.... The learned Judges observed that the Act is an enabling Act which introduces certain persons as heirs who had no such place according to the ordinary interpretation of the Mitakshara law. Unless we have a clear reason to believe that the Legislature was introducing by implication a person not specifically mentioned as an heir, we have no right to give the word "sister" wider meaning than it would ordinarily bear.

5. They also observed:

If we hold that a sister includes a half-sister, then there will be no reason to

make a distinction between a uterine sister and a consanguine sister .... Ordinarily it would be repugnant to the notions of Hindus to recognize a woman as sister who has not the same father as the person himself.

6. This decision was followed by a Single Judge of the Oudh Chief Court in, *Mt. Kabootra v. Ram Padarath* and also by the Madras and Patna High Court: see *Angamuthu v. Sinnapennammal* and *Mt. Daulat Kuer v. Bishundeo Singh*. The judgment of Chatterji J., in the last mentioned case is noticeable as it contains the fullest statement of the various reasons that could be urged in support of the rival contentions. All these decisions held that "sister" in Section 2 of the Act does not include a half-sister. Besides the reasons given in 55 ALL. 7251 the other grounds mentioned in these decisions, shortly stated are, that the Act, inasmuch as it alters the law of succession to a certain extent should be strictly construed, that it proceeds on the principle of affinity, that the Legislature might have advisedly left out of consideration the "half-sister" and the position of the half-sister is distinct from that of the full-sister even in those provinces where she is an heir; all of which, it is said, would show that there is no justification for interpreting the word "sister" as including a half-sister. Differing from the above view, the Nagpur High Court in its Full Bench decision in *Amrut v. Mt. Thagan* held that a half-sister who is a child of the same father is an heir under the Hindu Law of Inheritance (Amendment) Act of 1929. The word 'sister' includes a sister by the same father even though the mother be different.

7. The Court proceeded on the view that under the Act a sister is an heir in all the provinces to which the Mitakshara law applied, that it should be interpreted according to the notions of Hindu law of which it forms a part, and that as a general rule the law of the Mitakshara recognizes no distinction between the full-blood and the half-blood except in a competition inter se. The learned Judges pointed out that as a sister succeeds as a father's daughter, a half-sister having the same father is an heir if the sister would be an heir. The same Court has also held that a half-sister's son is in the line of heirs and that a "sister's son" in Section 2 of the Act would include a half-sister's son: see *Shankar v. Raghoba*. In *Rameshar v. Mt. Ganpati Devi*. Tek Chand J., (with whom Dalip Singh J., agreed) doubted the correctness of the decision in stating with great respect I think that the conclusion of the learned Judges is expressed too broadly and I confess I have grave doubts as to the soundness of the decision and the reasons on which it is based.

8. The Act is described as, an act to alter the order in which certain heirs of a Hindu male dying intestate are entitled to succeed to his estate.

9. and the preamble is :

As the object of the Act is thus to alter the order of succession of certain persons therein mentioned, it is desirable to examine how the law stood with reference to their rights of succession before the Act, and how those rights have been altered by it. Before the Act, the only females recognised as heirs under the Hindu law except in Bombay and Madras, were (1) the widow, (2) the daughter, (3) the mother, (4) the father's mother, (5) the father's father's mother. Accordingly, "a son's daughter, daughter's daughter and sister"-the first three persons mentioned in the Act were not heirs at all, except in the presidencies of Bombay and Madras, where the first two of them ranked as bandhus. In Bombay, the third, a "sister" is expressly mentioned as an heir in the Mayukha; though not expressly mentioned as such in the Mitakshara, her right as an heir has long since been recognised. A sister is recognised as a gotraja sapinda both in the Mayukha and in the Mitakshara. In Madras, she was recognised as entitled to succeed as bandhu but only after the male bandhus. A 'sister's son, ranked everywhere as a bandhu before the Act.

10. Under the Act, all the above mentioned four persons, "a son's daughter, daughter's daughter, sister and sister's son" are ranked as heirs in a specified order of succession and placed next after a father's father and before a father's brother, thus enabling them to inherit with gotraja sapindas. The Act came into force on 21st February 1929. When it began to be enforced, the question arose in certain Courts in India, see *Mt. Bhagwan Dei v. Mt. Radha*, *Smt. Sakuntala Devi v. Kaushalya Devi*, *Rajpali Kunwar v. Surjurai* and *Dalsingar Singh v. Mt. Jainath Kuar* whether having regard to the language of the preamble, the provisions of the Act would apply not only to persons who were already heirs under the Mitakshara law, but also to those of the specified persons who were not heirs before the Act; because the Act, it was said, was merely intended to alter the order in which persons already recognised as heirs would succeed and not to create new heirs. The heading and Preamble of the Act do not accurately summarise its provisions, but having regard to the language of Section 1 (2) of the Act which says that it applies only to persons who but for the passing of the Act would have been subject to the law of the Mitakshara in respect of the provisions herein enacted..... the Courts concluded and, in their Lordships' view rightly, that it would apply to the persons specified so as to constitute them heirs even in those provinces where they were not heirs according to the prevailing view of the law of the Mitakshara. It will thus be seen that the Act has amended and altered the old order of succession in Hindu law. It affects all Hindus governed by the Mitakshara. Hence, it

appears to their Lordships that in the absence of an interpretation clause, the Court should interpret the terms of the enactment in the sense in which they are used in the Mitakshara law. In 55 IA 139,12in considering whether the natural "brother" of the deceased Hindu taluqdar who was an adopted son, was a "brother" within the meaning of Section 22 (5), Oudh Estates Act, 1 of 1869, as amended by Section 14, U.P. Act, 3 of 1910, and was consequently entitled to the estate in preference to the widow, their Lordships answered the question in the negative, on the ground that the personal law was applicable to the interpretation of the word "brother." They rejected the argument that the Act being expressed in English is its own dictionary. In the law of the Mitakshara, the principle is fundamental that the primary test on all questions of inheritance is propinquity in blood. "To the nearest sapinda the inheritance next belongs" *Raghuraj Chandra v. Subhadra Kunwar*. Applying this basic principle of succession, the Hindu law gives preference to the whole blood over the half-blood. As applied to brothers the rule is thus stated in the Mitakshara, chap. 2, Section 4, Placita 5 and 6: These run as follows :

(5) Among brothers such as are of the whole blood, take the inheritance in the first instance under the text 'to the nearest sapinda the inheritance next belongs,' since those of the half blood are remote through the difference of the mothers.

(6) If there be no uterine (or whole) brothers, those by different mothers inherit the estate.

(See Colebrooke's translation of Mitakshara.)

In *Garuddas v. Laldas* the board held that, "the Mitakshara chap. 2, Section 4, Vv.5 and 6, states a principle with regard to the preference of the whole blood to the half-blood applicable to all sapindas in the same degree of consanguinity."

In *18 Jotindranath Roy v. Nagendranath Roy* which was a case between bandhus it was held that in a Hindu family governed by the Benares school of the Mitakshara law, the father's half-sister's sons have preference as heirs over the mother's sister's sons. In the course of the judgment their Lordships observed :

In *Ganga Sahai v. Kesri* it is laid down 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 *19 All 215 : 1897 AWN 53 (FB)*, *Suba Singh v. Sarafraz Kunwar* to 'sapindas' of the same degree of descent from the common ancestor.'

11. In their Lordships' opinion the principle of the decision applies equally in the case of bandhus not descended from a common ancestor but claiming merely on the basis

of propinquity. Again the Mitakshra (chap. 2, Section 4, pl. 5 to 7) definitely prefers a half-brother to the son of a full-brother : see *12 Bom HCR 65, Krishnaji Vyanktesh v. Pandurang*. It follows that the law of the Mitakshara recognises no difference between relations of whole blood and those of half-blood which would include sisters and half-sisters as well, except when there is a competition amongst them inter se. This has been understood and acted upon as a general principle of Hindu law by the Lahore High Court in, *Guranditta v. Mt. Jiwani* in which it was held that a half-sister's son is an heir, according to its general principles. There is nothing in the Act itself to show that the interpretation of the word "sister" as including a "half-sister" sanctioned by the Mitakshara, is contrary to its intention, either express or implied. In *Lion Mutual Marine Insurance Association v. Tucker at p. 189*, Brett, M. R. observed :

It is I consider a well-settled rule that in construing a statute or a document it is not right to follow merely the words of the statute or a document, taking them in their ordinary grammatical meaning : but it is necessary also to apply those words to the subject-matter dealt with in the statute or document and then to construe them with reference to that subject-matter unless there is something which compels one not so to construe them. The rule is, I think, that the ordinary meaning of the words used in the English language must be applied to the subject-matter under consideration.

12. In their Lordships' opinion, the Act should be read as a part of the general Hindu law of Inheritance and when so read, it should be held as already explained, that the word "sister" used in it would include a half-sister. It is obvious that the object of the Act is to give effect to the principle of propinquity by bringing into the order of succession some of those persons more nearly connected with the porosities by ties of blood than others whose connexion with him though as sapindas is but remote. On the whole, in giving full effect to the principle of propinquity their Lordships cannot find any sufficient reasons to exclude the half blood as such. However, in thus interpreting the term "sister" as including half-sister one qualification should be made. It is said that if we hold that a "sister" includes a half-sister, there will be no reason to make a distinction between a uterine and consanguine sister and that it will be repugnant to the ordinary notions of Hindus to recognize a woman as a sister who has not the same father as the person himself. This objection does not seem to be insurmountable. In his annotation under placitum 5, in Section 5 of chap. 2 of the Mitakshara, the learned commentator Colebrooke refers to the following text of Nandapandita wherein he says :

Kinsmen (bandhus) are sapindas and these may belong to the same family or not. The daughters of the father and other ancestors must be admitted like the daughters of the man himself and for the same reason.

13. Following this text the sister was recognised as heir as gotraja sapinda in Bombay; though elsewhere she was not recognised as an heir except in Madras where she was treated as a bandhu. Their Lordships think that the description given by Nandapandita "the daughter of the father" is helpful in interpreting the term "sister" where, as in this Act, it is used to signify an heir with reference to persons governed by the Mitakshara. In their Lordships' opinion, the term "sister" in the Act would include a half-sister, i.e., a sister by the same father even though the mother be different; but cannot be extended beyond that to include one who has not the same father. It is stated as an objection that the full-sister and the half-sister must take together, if the word "sister" in the Act includes a half-sister; but this is too rigid a view. On ordinary principles, the difficulty will not arise; for, although as recognised under the Mitakshara, a sister will include a half-sister the latter will take the inheritance only when there is no full-sister to claim it. If the term "sister" in the Act includes a half-sister, then it must be held by parity of reasoning, that the term "sister's son" would include a half-sister's son. In this connexion their Lordships would draw attention to the decision in *15 Mad 300, Subbaraya v. Kylasa* where in holding that a half-sister's son is entitled to inherit under the Hindu law in force in the Madras Presidency, the learned Judges pointed out that the position of a half-sister's son in the line of heirs is the same as that of a sister's son. In the course of the judgment they stated as follows :

The relationship between the maternal uncle and his sister's son or step-sister's son is alike that of sapindas, for, in both cases, there is a common grandfather and the relation of sapindas arises from connexion as parts of the body.

14. In *Shankar v. Raghoba* the learned Judges of the Nagpur High Court observed :

Once it is accepted that the son of a half-sister occupies the same position as the son of a full-sister and consequently falls within that class, and once it is seen that the Hindu law does not speak of them separately in the texts, it must be taken that the Legislature was using language familiar to Hindu lawyers and meant to elevate all the persons who formed that particular class and who are ordinarily designated by the term "sister's son.'

15. Their Lordships find themselves in agreement with the above observations of the learned Judges of the Nagpur High Court. For the above reasons, their Lordships are unable to accept the conclusion arrived at by the learned Judges in *Ram Adhar v. Mt.*

*Sudesra* on which the decision under appeal is based. The Courts in India have not viewed the question from the correct stand-point. In their Lordships' opinion, Dhanpat, the son of the half-sister of Krishna Murari who succeeded to the estate under the Act having died, his mother has under the ordinary law inherited from him. In the result, their Lordships will humbly advise His Majesty that this appeal should be allowed and the decrees of the Courts in India should be set aside and the suit should be dismissed. The plaintiff will pay the defendant's costs in the High Court and in this appeal; but in the trial Court, each party will bear its own costs in consonance with its order.

Appeal allowed.

Cases Referred.

20 AIR 1933 Allahabad 491:145 IC 529:55 All 725:1933 ALJ 680 (FB),

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AIR 1935 Oudh 332 : 155 IC 94 : 1935 OWN 545 : 11 Luck 148

AIR 1938 Madras 364 : 182 IC 734,

AIR 1940 Patna 310 : 189 IC 883: 19 Pat 382 : 21 PLT 660,

25 AIR 1938 Nagpur 134 : 174 IC 211: ILR (1938) Nag 116 (FB),

AIR 1938 Nagpur 97 : 172 IC 858; ILR (1939) Nag 383,

AIR 1936 Lahore 652 : 166 IC 753 : ILR (1937) 18 Lah 525 ; 39 PLR 529,

AIR 1933 Oudh 231 : 150 IC 533 : 8 Luck 646 : 10 OWN 424,

AIR 1936 Lahore 124 : 162 IC 718 : 17 Lah. 356 : 38 PLR 673,

23 AIR 1936 Allahabad 507 : 168 IC 756 : 1936 ALJ 659 : 58 All 1041 (FB),

27 AIR 1940 Oudh 138 : 186 IC 753 : 15 Luck 229 : 1940 OWN 46 (FB),

AIR 1928 PC 87: 108 IC 673 : 3 Luck 76 : 55 IA 139 (PC),

20 AIR 1933 PC 141 : 142 IC 807 : 60 IA 189 : 29 NLR 204 (PC),

AIR 1931 PC 268 : 135 IC 637 : 59 Cal 576 : 58 IA 372 (PC),

2 AIR 1915 PC 81: 30 IC 265 : 37 All 545 : 42 IA 177 (PC),

24 AIR 1937 Lahore 11 : 168 IC 948 : 38 PLR 80

(1883) 12 QBD 176 : 58 LJ QB 185 : 49 LT 764 : 32 WR 546,

25 AIR 1938 Nagpur 97 : 172 IC 858; ILR (1939) Nag 383,

20 AIR 1933 Allahabad 491:145 IC 529:55 All 725:1933 ALJ 680 (FB),