

ALLAHABAD HIGH COURT

Naraini Kuar

Vs

Chandi Din

(J Edge, Kt., Straight)

07.12.1886

JUDGMENT

Edge, C.J. and Straight, J.

1. upon the question whether Ganesh Kuar's written statement of the 5th January 1875, was admissible in evidence, said: The next document was the written statement of Rani Ganesh Kuar, filed in an action brought against her and Babu Raghunandan Prasad by Piare Lal and Bhairon Prasad. This document was tendered in evidence with the object of showing that Rani Ganesh Kuar denied that Piare Lal and Bhairon Prasad were of the family of Chaudhri Naubat Ram. Pandit Sundar Lal contended that it was a statement within the meaning of sub-Section 5 of Section 32 of the Indian Evidence Act of 1872, and, as such, was admissible. We rejected this state-[470]ment, being of opinion that sub-Section 5 does not relate to statements made by interested parties in denial, in the course of litigation, of pedigrees set up by the opposite parties.[After referring to the evidence in detail, their Lordships came to the conclusion that the pedigree asserted by the appellant was proved. Their judgment continued thus:]

2. As has been already mentioned, Pandit Sundar Lal and Munshi Kashi Prasad contended that, even assuming the appellant's family tree to be established, their client Chandi Din, as the sister's son of Chaudhri Naubat Ram, would inherit in priority to Shib Lal or Bhairon Prasad. They relied on *Umaid Bahadur v. Udoi Ghand*¹ and the judgment of Mitter, J., in *Amrita Kumari Debi v. Lakhinarayan Chuckerbutty*², All that these authorities, as it appears to us, establish is that, according to the Mitakshara, which is the law prevailing in these Provinces as to inheritance amongst Hindus, a sister's son may be the heir of his mother's brother,--a proposition which appears at one time to have been doubted. They contended that although a sister's son was not a gotraja sapinda of his mother's brother, he was a sapinda similar to a daughter's son, and as a daughter's son would inherit in case of there being no son, grandson, great-grandson, widow or daughter living of the last owner, so similarly a sister's son would inherit before the more remote relations of his uncle's family.

3. On the other side, Pandit Ajudhia Nath contended that the sister's son, who was a bandhu, could not, according to the Mitakshara, take until the direct male line, down to and including the last samanodaca, that is, fourteen degrees of the direct male line, had been exhausted. In support of his contention, he referred to the Mitakshara, to Vijnanesvara, and to Mayne's Hindu Law and Usage, Sections 436 and 490. He also referred to *KooerGolab Singh v. Rao Kurun Singh*³, *Bhyah Bam Singh v. Bhyah Ugur Singh*⁴, and to *Lakshmanammal v. Tiruvengada Mudali*⁵ As Pandit Sundar Lal and Munshi Kashi Prasad failed to produce any authority showing that the view as to the rule of the Mitakshara, which has hitherto been accepted and is that contended for by Pandit Ajudhra [471] Nath, is not correct, we dismiss the contention with the observation that we see no ground for departing from the construction of the Mitakshara which has hitherto been accepted. We accordingly find that the respondents have failed to show that Chandi Din was the heir of Chaudhri Naubat Ram; and we find, in fact, that Chandi Din was not the heir of Chaudhri Naubat Ram and consequently the respondents have failed to prove that they are entitled to maintain this action. Under these circumstances, it is not necessary for us to express any opinion on the various questions of limitation and estoppel which have been argued in this case. We decree the appeal with costs against the respondents and the estate of the deceased plaintiff Nawab Mashuk Mahal. The suit will stand dismissed.

Cases Referred.

11. L. R., 6 Cal., 119
22 B. L. R., F. B., 28
310 B. L. R., 1
413 Moo. I. A., 373
51. L. R., 5 Mad., 241