

Privy Council Appeal No 2 of 1930.

Mahant Garuddas - - - - - *Appellant*

v.

Mahant Laldas and another - - - - - *Respondents*

FROM

THE COURT OF THE JUDICIAL COMMISSIONER, CENTRAL
PROVINCES.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 28TH FEBRUARY 1933.

Present at the Hearing :

LORD ATKIN.

LORD THANKERTON.

LORD MACMILLAN.

SIR JOHN WALLIS.

SIR GEORGE LOWNDES.

[*Delivered by* SIR GEORGE LOWNDES.]

The only question for determination in this appeal is as to rival claims to succession under the Hindu law between uncles of the whole and of the half blood.

The parties are Grihastha Gosains, known as Mahants, and are governed by the Benares School of the Mitakshara. Their relationship will sufficiently appear by the following abbreviated pedigree in which names of females are printed in italics :

Dularkuar = *Lakhmidas* = *Phulkuar*
| | |
Laldas Bajrangdas. Ramkrishnadas = *Rajkuar* Garuddas
|
Bhagwatdas.

The property in question consists of 28 villages of the Ilaka of Lormi in the Bilaspur District of the Central Provinces, which came to Ramkrishnadas on a family partition. On his death they

passed to his son Bhagwatdas, who died without issue on the 30th November, 1912. The villages then went to his mother, Rajkuar, as his heir, and on her death in 1914 to his paternal grandmother Phulkuar. She died on the 23rd October, 1922, when the disputed succession opened, the rival claimants being Garuddas, the father's brother of the whole blood, and Laldas and Bajrangdas, his half brothers. Garuddas obtained possession of the villages and Laldas sued him in the District Court of Bilaspur claiming a one-third share. Bajrangdas did not join in the suit but was brought in as second defendant.

The District Judge, following a decision of a single judge of the superior court in his Province, held Garuddas alone to be entitled to succeed, on the ground that as between sapindas in the same degree of descent from the common ancestor, those of the half blood were excluded by those of the whole blood. The decision in question was based upon the judgment of this Board in *Ganga Sahai v. Kesri*, 42 I.A. 177, to which more particular reference will be made hereafter. The suit was accordingly dismissed by the decree of the District Judge dated the 30th September, 1926.

Laldas appealed to the Court of the Judicial Commissioner. His appeal was heard by Hallifax and Mohiuddin A.J.C. who, differing from the District Judge, held that as between uncles no preferential right attached to the whole blood, and that the parties were therefore entitled to share equally. They accordingly set aside the decree of the lower Court and passed a decree in favour of Laldas for a one-third share of the property with costs. No corresponding relief was given to Bajrangdas on the ground, apparently, that he had paid no court fee. The decree of the Appellate Court was dated the 14th July, 1928.

From this decree Garuddas has appealed to His Majesty in Council. He is opposed by Laldas the original plaintiff. Bajrangdas has not appeared.

The material text of the Mitakshara, Ch. II, s. IV, paragraphs 5 and 6 is in the following terms :—

“ 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 mothers. If there be no uterine brothers those by different mothers inherit the estate.”

The question is whether this text enunciates only an exception to the general rule, confined to the case of brothers of the propositus, or whether it states a principle applicable to all sapindas in the same degree of consanguinity. The former view has been adopted by the Bombay High Court : *Vithalrao v. Ramrao*, I.L.R. 24 Bombay, 317, followed in 1926 by *Shankar Baji v. Kashinath Ganesh*, I.L.R. 51 Bombay 194 ; the latter, by the High Courts of Allahabad, Calcutta and Madras : *Suba Singh v. Sarfaraz Kunwar* I.L.R. 19 Allahabad 215 ; *Sham Singh v.*

Kishun Sahai, 6 Calcutta Law Journal, 190 ; *Nachiappa Gounden v. Rangasami Gounden*, 28 Madras Law Journal, 1.

The learned Judicial Commissioners in the present case followed the earlier Bombay authority without considering the other cases above cited, though they were all elaborate and exhaustive judgments, and in the Allahabad and Madras cases were decisions of the Full Bench.

The rival authorities were before this Board in *Ganga Sahai v. Kesri*, 42 I.A. 177, to which reference has already been made. The decision in that case was that a paternal uncle of the half blood inherited in preference to the son of a paternal uncle of the whole blood, but Mr. Ameer Ali in delivering the judgment of the Board commented on *Suba Singh's* case (*supra*), and with reference to the passage from the Mitakshara above quoted he says that there seems to be "in principle" no reason to differentiate between the brother of the propositus and the brother of his father. He continues :—

" Having regard to the general scheme of the Mitakshara. their Lordships think that 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 High Court in *Suba Singh v. Sarfaraz Kunwar* to ' sapindas of the same degree of descent from the common ancestor.' "

Dealing with *Ganga Sahai's* case the learned Judicial Commissioners thought it impossible to find in the judgment of Mr. Ameer Ali any approval " even by the most distant implication " of what may be called here for convenience the Allahabad doctrine. Their Lordships would themselves have come to the opposite conclusion. Had this not been intended the judgment could hardly have characterised the preference of the whole blood to the half blood as confined to members of the same class of sapindas ; it would almost obviously have been referred to as confined to the case of brothers.

The matter however is put beyond doubt by a more recent decision of this Board which was not available to the learned Judicial Commissioners ; *Jatindra Nath Roy v. Nagendra Nath Roy*, 58 I.A. 372. That was a case between bandhus. *Ganga Sahai's* case was referred to and the passage quoted above from Mr. Ameer Ali's judgment was cited, clearly as laying down a rule of general application among sapindas, and the principle involved was held applicable even in the case of bandhus. From this it follows that as between paternal uncles of the propositus the whole blood will exclude the half blood.

For the reasons given their Lordships are of opinion that the appellant is solely entitled as the heir of Bhagwatdas to the villages in dispute. They will therefore humbly advise His Majesty that the decree of the Appellate Court should be set aside, and that of the District Judge, dated the 30th September, 1926, restored. The first respondent must pay the appellant's costs in the Judicial Commissioner's Court and before this Board.

In the Privy Council.

MAHANT GARUDDAS

or

MAHANT LALDAS AND ANOTHER.

DELIVERED BY SIR GEORGE LOWNDES.

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