

Musammat Besar Kuer - - - - - Appellant

v.

Bishundeo Singh and others - - - - - Respondents

FROM

THE HIGH COURT OF JUDICATURE AT PATNA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 24TH JUNE, 1943

Present at the Hearing :

LORD MACMILLAN

LORD PORTER

LORD CLAUSON

SIR GEORGE RANKIN

SIR MADHAVAN NAIR

[Delivered by SIR MADHAVAN NAIR]

This is an appeal *in forma pauperis* by special leave from a decree of the High Court of Judicature at Patna, dated the 22nd December, 1939, which affirmed a decree of the District Judge at Patna dated the 14th April, 1938, which affirmed a decree of the First Munsiff at Patna, dated the 18th March, 1937, and dismissed the plaintiffs' suit.

The first of the two plaintiffs who instituted the suit having since died, the second plaintiff is now the sole appellant before the Board; the defendants are the respondents.

The only question for decision in the appeal is one of law, viz., whether the word "sister" in section 2 of the Hindu Law of Inheritance (Amendment) Act (II of 1929) includes a half-sister by the same father. Section 2 of the Act is as follows:—

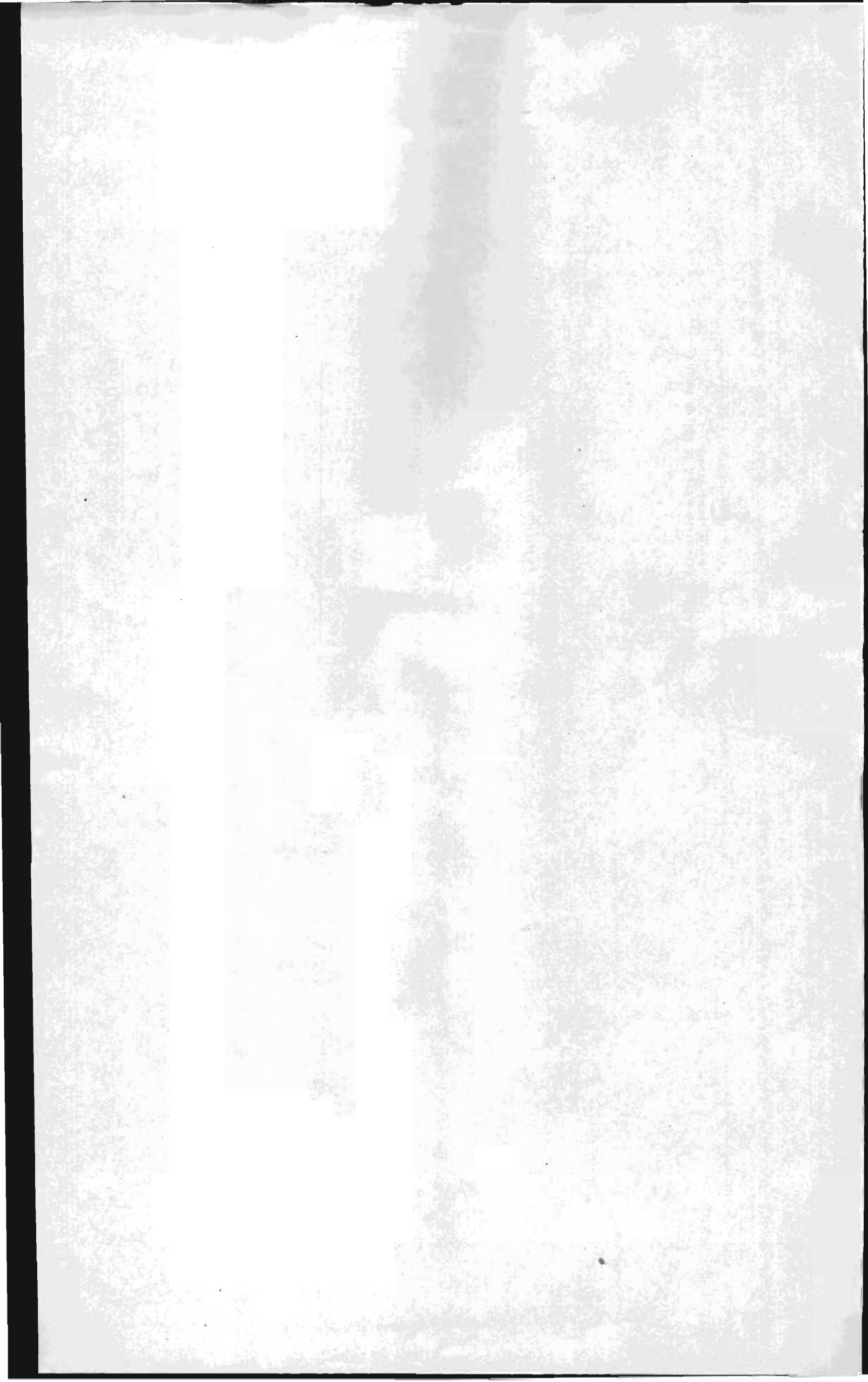
"A son's daughter, daughter's daughter, sister, and sister's son shall in the order so specified, be entitled to rank in the order of succession next after a father's father and before a father's brother:

Provided that a sister's son shall not include a son adopted after the sister's death."

The plaintiffs are governed by the Law of the Mitakshara. The appeal arises out of a suit instituted by the plaintiffs, the daughters of one Jaglal Singh, deceased, for a declaration that a sale deed dated 20th May, 1932, executed by their mother, the fifth defendant in favour of defendants one to four, is not binding on them, on the ground that it is not justified by legal necessity. Admittedly, Ramasray Singh, the deceased son of Jaglal Singh, was the last full owner of the suit property. On the finding arrived at by the trial Court, and accepted by the other Courts, that the plaintiffs are only half-sisters of Ramasray Singh, the Courts in India held that they were not his heirs entitled to the property and dismissed the suit. The decisions of the Courts were based on the ruling of the Full Bench of the Allahabad High Court in *Ramadhar v. Sudesra* (I.L.R. 55, All. 725), which held that "the word 'sister' in section 2 of the Hindu Law of Inheritance (Amendment) Act, 1929, does not include a half-sister, either consanguine or uterine." It is conceded that if the word "sister" in the Act does include a half-sister by the same father, then the plaintiffs' right to institute the suit cannot be resisted.

The above decision of the Allahabad High Court and those based upon it, have been declared to be wrong recently by this Board in *Musammatt Sahodra v. Ram Babu* (1942), L.R. 69 I.A., p. 145—an appeal from the Allahabad High Court—in which it was held that the word “sister” in section 2 of the Act includes a half-sister by the same father, though the mother be different; but cannot be extended beyond that to include one who has not the same father; and that “by parity of reasoning, ‘sister’s son’ in the section would include the son of a half-sister”. No useful purpose would be served by repeating in this judgment the various reasons given by their Lordships in that decision in support of their conclusion. It is admitted that this case falls within the above decision. However, it may be mentioned that in considering the relevant cases which have a bearing on the point, the decision of the Patna High Court, reported in 1940, A.I.R. Patna 310 (*Mt. Daulatkuar v. Bishundeo Singh*), which is the present case before the Board, was referred to by their Lordships. It follows from the decision in *Musammatt Sahodra v. Ram Babu* (*supra*) that the appellant is entitled to institute the suit as the heir of Ramasray Singh and that this appeal should be allowed.

The relief claimed by the appellant and her deceased sister was for a declaration that the sale deed is not binding on them; but having regard to the findings it is admitted that the fifth defendant is not an heir and has no right to deal with the property. Hence the question of legal necessity found in favour of the plaintiffs by the Subordinate Judge but not considered by the other Judges, does not now arise. The proper remedy against the contesting defendants—the vendees—would be a suit for a declaration of title and recovery of possession. But as the latter remedy has not been claimed in the plaint, it is agreed that the proper course in the circumstances is to set aside the decisions of the Courts below, and remit the case to the trial court for disposal according to law after giving the parties liberty to amend the pleadings. Their Lordships will humbly advise His Majesty that this appeal should be allowed, the decrees of the Courts in India set aside and the case remitted to the Court of the First Munsiff at Patna to give directions for the amendment of the pleadings and to dispose of the case. The second and fifth defendants will have liberty to file written statements, if they are so advised. The appellant will get costs up to date including the costs of this appeal.



In the Privy Council

MUSAMMAT BESAR KUER

2.

BISHUNDEO SINGH AND OTHERS

DELIVERED BY SIR MADHAVAN NAIR

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