Privy Council Appeal No. 53 *of* 1943
Patna Appeals Nos. 38 *&* 39 *of* 1939

Chhaterpati Pratap Bahadur Sahi and others - - *Appellants*

v.

Lachmidhar Prasad Singh and others - - - - *Respondents*

Same

v.

Kumar Raghava Surendra Sahi and others

Consolidated Appeals

FROM

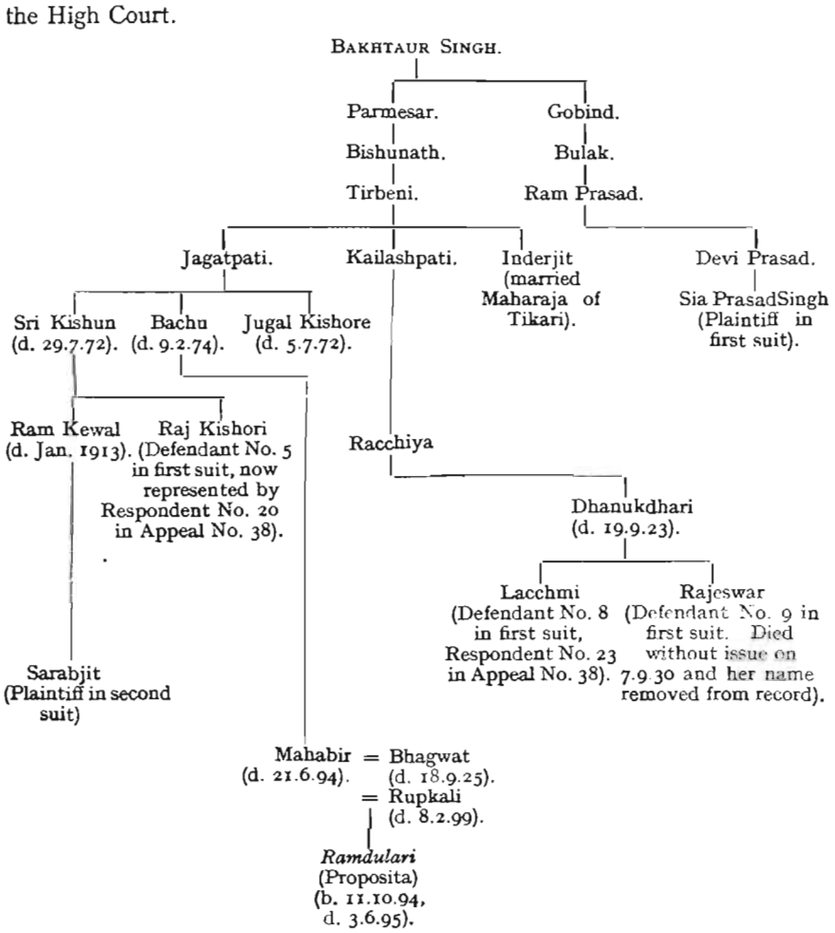
THE HIGH COURT OF JUDICATURE AT PATNA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 29TH JULY, 1946

Present at the Hearing:
LORD SIMONDS
MR. M. R. JAYAKAR
SIR JOHN BEAUMONT
[*Delivered by* MR. M. R. JAYAKAR]

These are two consolidated appeals from a judgment and two decrees of the High Court of Judicature at Patna, dated 9th May, 1939, confirming a judgment and two decrees of the Subordinate Judge of Gaya, dated 5th June, 1934.

The family with which this litigation is concerned is governed by the Benares School of the Mitakshara School of Hindu Law. It consists of two branches which have been settled for many years at Rusi and Kaira respectively. The annexed pedigree of the family is taken from one which was proved to the satisfaction of the Trial Court and was undisputed in the High Court.



The only question in these appeals is whether Sarabjit (a near cognate or bandhu) or Sia Prasad Singh (a more remote agnate or gotraja) was entitled to the property left by Ram Dulari Koer. Both courts in India have held that Sia Prasad Singh was so entitled.

The facts, out of which these appeals arise, briefly stated, are as follows:—

Jagatpati and Kailashpati were joint. They had a married sister Inderjit Koer. The two brothers died, and in December, 1863, Jagatpati's branch was represented by three sons, Sri Kishun, Bachu and Jugal Kishore, while Kailashpati's branch was represented by a son, Ram Racchiya. On 9th December, 1863, by two Pattas, Inderjit Koer made a grant to Bachu of an estate consisting of a number of villages, hereinafter referred to as the Lakhaipur Estate. Bachu, at the time, was joint with his two brothers and Ram Racchiya. A separation between them took place on 31st December, 1864. It was the appellant's case in the Trial Court that the grant of the Lakhaipur Estate was made to Bachu on behalf of himself and his two brothers. The Trial Court held that it belonged to Bachu alone, and this decision is not now disputed.

In July, 1872, Jugal Kishore and Sri Kishun died. In September, 1873, Bachu dedicated six villages out of the Lakhaipur Estate to a temple established by him. In 1874 Bachu died and was succeeded by Mahabir, his only son. Mahabir came to an agreement with Anandi Koer, widow of Jugal Kishore, who claimed that her husband had been joint with Bachu. By the said agreement she relinquished her estate in Bachu's favour in consideration of a maintenance grant. Bachu also came to terms with Ram Kewal Koer, a daughter of Sri Kishun, who had filed a suit against him and her sister Raj Kishori, claiming certain property, on the footing that her father had been separated from his two brothers.

Under the terms arrived at with Ram Kewal Koer, Mahabir transferred certain villages to her in full satisfaction of her claim. Mahabir also alienated six villages out of the Lakhaipur Estate to the temple. He died on 21st June, 1894, leaving two widows, Bhagwat Koer and Rupkali Koer. On 11th October, 1894, Rupkali gave birth to a daughter, Ramdulari Koer, who died on 3rd June, 1895.

At the time of his death, Mahabir was possessed of the Lakhaipur Estate (less the villages alienated by his father and himself as stated above). He also possessed other properties. Mahabir left a will dated 26th September, 1893, probate whereof was obtained by his widows on 5th January, 1895. The material provisions of the will are set forth in a judgment of this Board, reported in Law Reports 46 Indian Appeals, 259 at 265. The true date of that will is now admitted to be 26th September, 1893, and not 20th December, 1894.

In the Privy Council judgment the following passages occur:—

"By para. 1 the testator, after reciting that he had then no male issue but had two wives living, directed that if any child should be born of either wife, or if children should be born of both wives, they should after his death become possessors of all his movable and immovable properties, whether ancestral or self-acquired, whereby the name and reputation of his ancestors might be perpetuated and the religious merit of his family might be preserved. By para. 2 he directed that if at the time of his death his children should be minors his wives successively should act as their guardians and manage the estate.

* * * * * * * *

"The third and fourth paragraphs of the will are in the following terms:

"3. If there be no son born of either of my wives and only (a) daughter be born, in such a case also the management of the reasat shall be conducted by either the senior or the junior wife whoever

may be existing and her (the daughter's) guardianship and training and education shall be conducted as provided in paragraph 2. She will have the daughter married in a good family as is the custom in my family. My wives up to the terms of their respective lives shall remain proprietresses and possessors as provided in paragraph 2. After the death of both of them, my daughter shall become the proprietress, and she shall perpetuate the name and reputation of my family by residing in my house and maintaining the same as the absolute proprietress.

" 4. If by the will of Providence no male or female child be born to me, in that case, both my wives, one after another as provided in paragraph 2, shall remain, in concord, proprietors and managers and perpetuate the name and reputation of the family up to the terms of their lives. I also authorise my wives that, if both of them exist, they in concurrence, or if either of them die, the surviving wife alone, shall select according to her choice some worthy boy from my family or the families of my relatives and adopt him, who shall remain obedient and dutiful as a son up to the terms of the lives of my wives; and the said adopted son after the death of my two wives shall remain absolute proprietor in my place as my son, and he shall have all authority such as is possessed by me."

Rupkali died on 8th February, 1899; thereafter Bhagwat Koer was in sole possession of the property left by her husband. From 7th March, 1900, to 14th September, 1925, she purported to make certain alienations. These have all been held to be void in the present litigation, and no dispute was raised before their Lordships with reference to this question.

On 13th February, 1936, Bhagwat Koer purported to adopt Raghava Surendra Sahi, who was the first defendant in this case. In 1907 Dhanukdhari, the father of defendants 8 and 9, filed three suits challenging the adoption made by Bhagwat Koer and laying claim to the property left by Mahabir and to certain other property as the property of Jugal Kishore. The three suits gave rise to the Privy Council appeal above referred to. By a judgment delivered therein on 30th June, 1919, it was held, *inter alia:*

(1) That the adoption was invalid.

(2) That, on the true construction of Mahabir's will and in the events which happened, the estate was given to the testator's widows successively for life and, after the death of the survivor, to Ramdulari, so that Ramdulari became entitled at birth to a reversionary estate under section 106 of the Indian Succession Act, corresponding to section 119 of the later Succession Act of 1925 which governs the case.

(3) That Danukdhari was not entitled to any of the property he claimed: because, as regards the property left by Mahabir, he had not adduced evidence proving his claim to be entitled to Ramdulari's estate: and as regards the property left by Jugal Kishore, because Anandi Koer had relinquished her estate in favour of Mahabir. In September, 1923, Danukdhari died, and on 18th September, 1925, Bhagwat Koer died. The question then arose who was the reversionary heir to the estate to which Ramdulari had become entitled under the terms of Mahabir's will.

With reference to this question two suits were filed in the Court of the Subordinate Judge at Gaya. Suit No. 26 of 1930, afterwards suit No. 38 of 1932, was filed on 27th May, 1930, by Sia Prasad and Others against Raghava Surendra Sahi, the adopted son, Sarabjit and others, claiming the property left by Mahabir and challenging the alienations made by Bhagwat Koer. A few months later, on 5th July, 1930, Sarabjit and another filed suit No. 30 of 1930 in the same Court, against Sia Prasad and Others, claiming, *inter alia,* to be similarly entitled. These are the two suits giving rise to the present consolidated appeals. Three other suits were filed in the same Court by the alienees of Bhagwat Koer, claiming the properties the subject of such alienations.

Both Sia Prasad and Sarabjit died during the hearing of the above suits and their personal representatives were brought on the respective records.

On 5th June, 1934, the Subordinate Judge, after taking evidence, oral and documentary, by a judgment of that date decided all the five suits. In the course of his judgment he held that the alienations made by Bhagwat Koer of her husband's property were invalid and that on Ram Dulari's death Rupkali inherited the vested remainder of which Ramdulari was the owner, and after Rupkali's death the same passed to Bhagwat Koer as Ramdulari's heir. He further held that, according to the rules of Hindu Law, on Bhagwat Koer's death the property would revert to the heir of Mahabir as father of Ramdulari, that Sia Prasad was a gotraja sapinda (agnate) of Mahabir, and Sarabjit was a bhinnagotra sapinda (cognate); that Sia Prasad came within seven degrees of agnatic relationship, and Sarabjit within five degrees of cognatic relationship, but, as an agnate would exclude a cognate, Sia Prasad would be the preferential heir.

Appeals to the High Court at Patna were filed in each of the five suits, and were heard together by Wort and Agarwala, JJ., who, by concurring judgments dated 9th May, 1939, dismissed all the five suits and passed decrees accordingly.

After discussing subsidiary questions which are not material in this appeal, Wort, J., held, as regards the claim of the present appellants, that the arguments on which it was based had always been rejected, that the authorities were entirely against them, that the arguments were supported neither by authority nor by authoritative textbooks, which were unanimous in holding that sapindaship in cases like the present, and in the case of succession to males, depended entirely upon the same principles. Agarwala, J., held, in his concurrent judgment, that after considering the various texts and decided cases and the comments of Sanskrit scholars and jurists, as also judicial dicta, he had no hesitation in rejecting the contention that Sarabjit was to be preferred to Sia Prasad as an heir to Mahabir. He added that, even if the texts and commentaries were capable of being construed in the sense of this contention, he would hesitate to adopt that construction as it would undoubtedly have the effect of upsetting titles long founded on the contrary view.

The appeals were accordingly dismissed and decrees drawn up.

Two sets of appellants who represented the interests of Sarabjit, being dissatisfied with the two decrees of the High Court giving preference to Sia Prasad, severally appealed to His Majesty in Council and the two appeals were consolidated by order of the High Court.

The question in this case is whether the claim of a remote agnate is to be preferred to that of a less remote cognate. The parties are agreed and it is clear that in the case of a maiden the heirs to her stridhan are, first, her uterine brothers, secondly, her mother, and, thirdly, her father. It was contended for Sia Prasad that, after this order, the heir to the deceased maiden's stridhan is the same as the heir to her father's property. The contrary view suggested on behalf of Sarabjit was that the next heir to her stridhan is not the father's heir but his nearest relation by blood. In support of this contention, reliance was placed upon the following texts repeated in the argument before their Lordships, viz.:

(1) Manu Ch. 9, Verse 187.

(2) A text of Baudhayana quoted in the Mitakshara, Ch. II, Section XI, Placitum 32.

(3) Viramitrodaya's comments on the Mitakshara referring to Baudhayana's text.

(4) Mitakshara, Ch. II, Section XI (Colebrooke's Translation, P. 368).

(5) Yajnavalkya's text, Ch. 2, Verses 135, 136, quoted in Mitakshara, Ch. II, Section I, Placitum 2 (Colebrooke's Translation, P. 324).

As these authorities have been considered in the course of this judgment, it is unnecessary to make separate comments on them.

It cannot be disputed that, taking the term *sapinda* in a wider sense, both claimants, Sarabjit and Sia Prasad, are within the degrees of relationship from a common ancestor within which sapindaship is recognised, viz., up to the fifth degree on the mother's side in the mother's line, and up to the seventh degree on the father's side in the father's line, after which sapindaship, according to well-accepted canons, ceases (see L.R. 41 I.A. 290, 307). It is therefore urged for the appellants that, both claimants being sapindas within heritable degrees, no distinction could be made between them with reference to the succession to stridhan, and the nearer among them should be preferred to the remoter one. But, admitting the force of this argument, the distinction has to be borne in mind (which the Mitakshara and Viramitrodaya both accept, as is shown in the course of this judgment) between a bhinnagotra sapinda (connected through a female relation and otherwise called a *bandhu* in the Mitakshara) and a sagotra sapinda (connected through male relations and therefore bearing the same gotra as the last owner).

As pointed out in the judgments of the Courts below, no special rules relate to the succession to a maiden's property beyond the heirs specially enumerated in the several texts and such succession is governed by the rules which relate to the succession of a woman married in an unapproved form (I.L.R. 39 Cal. 319, 326, 333)—the reason apparently being that in both cases the woman is free from the *patria potestas* of the husband, in one case because she is unmarried, and, in the other, owing to the inferior form of marriage, in which the husband's dominion over her is not as complete as in the case of marriages in the so-called approved forms.

As the parties belong to the Mitakshara School, it will be necessary to consider what the position of the Mitakshara is with reference to this question, and then to find out whether and how far the views of the Mitakshara have been varied or modified by later commentators, like the Viramitrodaya, which are regarded as authorities in the Benares School.

The text on which the Mitakshara bases its commentary is that of Yajnavalkya, Ch. II, Verse 145: the Sanskrit text is to be found in Mandlik's Hindu Law, Yajnavalkya Smriti section, P. 139. Its translation, which is at P. 224, is as follows:—

> " The property of a childless woman married in the Brahma or any other (of the four approved forms of) marriage goes to the husband; in the remaining (four forms of marriage) it goes to the parents; but if she leave issue it goes to her daughters."

The further line of heirs is not mentioned in this text of Yajnavalkya but is elaborated in the commentary of the Mitakshara on this text in Ch. II, Section XI, Placitum 8 and following (Colebrooke's Translation, Pages 367 and following), which is as follows: (portions not material in the present case have been omitted in this quotation).

> " (8) A woman's property has been thus described. The author next propounds the distribution of it: ' Her kinsmen take it, if she die without issue '.
>
> " (9) If a woman die ' without issue '; that is, leaving no progeny; (the progeny is here described) the woman's property, as above described, shall be taken by her kinsmen, namely, her husband and the rest, as will be (forthwith) explained.
>
> " (10) The kinsmen have been declared generally to be competent to succeed to a woman's property. The author now distinguishes different heirs according to the diversity of the marriage ceremonies. ' The property of a childless woman, married in the forms (designated as approved) goes to her husband; but, if she leave progeny, it will go to her (daughter's) daughters: and, in other forms of marriage (designated as unapproved) it goes to her father (and mother) on failure of her own issue.'
>
> " (11) Of a woman dying without issue as before stated, and who had become a wife by any of the four modes of marriage (designated as approved) the (whole) property, as before described, belongs in the first place to her husband. On failure of him, it goes to his nearest

(tat pratyâsanna) kinsmen (sapindas). (Colebrooke's addition ' allied by funeral oblations ' has no basis in the original.) But, in the other forms of marriage (unapproved) the property of a childless woman goes to her parents, that is, to her father and mother. The succession devolves first (the reason has been before explained) on the mother and then on the father. On failure of them, their next of kin (tat pratyâsanna) take the succession."

Then follows the Viramitrodaya, which is undoubtedly regarded as one of the most important commentaries on the Mitakshara (see *Ramchandra Martand Waikar* v. *Vinayak Venkatesh Kothekar* (1914), L.R. 41, I.A. 290) and as a treatise of high authority at Benares and receivable as an exposition of what might have been left doubtful by the Mitakshara and declaratory of the law of the Benares School. (See *Girdhari Lall Roy* v. *the Bengal Government* (1868), 12 Moore's I.A. 448.) It will therefore be useful to find out what light it throws on the views of the Mitakshara on this question. The Viramitrodaya observes (Ch. V, Part 2, Placitum 9, G. Sarkar's edition, Sanskrit text, P. 97, translation, Pp. 240, 241):

" The property of a childless woman married in the Brahma or the like form of marriage (approved form) belongs to her husband, and, on failure of him, to the husband's nearest relations. *For, the nearest to the owner being debarred by the husband, preference ought to be given to the nearest to the husband.*

" But if a woman be married ' in other forms of marriage ', i.e. in the Asura or the like, it goes to her father . . . amongst them also it goes to the mother in the first instance, and after her to the father, according to the principle set forth while explaining the term ' parents ' (pitarau) in the text of Yajnavalkya ' the wife and the daughter also, the parents, etc.'. *There being no other text against the application of that principle to the present case.*

" Besides it is expressly declared that the father inherits the property of a maiden on failure of the mother, so the same order is proper in this case also. Thus Baudhayana declares—' The wealth of a deceased maiden let the uterine brothers themselves take; on failure of them it shall belong to the mother; in her default, to the father '. On failure of the mother and the father, it goes to their nearest relations (tat pratyâsanna)."

(For a discussion of this text in relation to the doctrines of the Mitakshara, see *Tukaram* v. *Narayan Ramchandra* (1911) I.L.R. 36 Bombay, 339 (F.B.).)

It is clear from these passages that, so far from advocating a different view, the Viramitrodaya and also Baudhayana are in complete accord with the Mitakshara view that:

(1) It is the husband's heirs or the father's heirs as the case may be (and not the maiden's) who succeed.

(2) Such heirs will be those who are " their nearest relations " (tat pratyâsanna), the same expression as the Mitakshara has employed in the same context.

It is significant that in the course of the discussion in which it prefers the mother to the father, the Viramitrodaya relies upon the same text of Yajnavalkya, which lays down the order of succession to the separate property of a male. That text is in Ch. II, Verses 135, 136. The Sanskrit text is to be found in Mandlik's Hindu Law, Section Yajnavalkya Smriti, P. 138, and its translation is at P. 220, and is as follows:—

" The wife and the daughters, also both parents, brothers likewise, and their sons, jentiles (gotrajas) cognates (bandhus), a pupil and a fellow-student: on failure of the first among these, the next in order is indeed heir to the estate of one, who departed for heaven leaving no male issue. *This rule extends to all (persons and) classes.*"

It was contended before their Lordships that the Viramitrodaya, commenting on and explaining the above text of Yajnavalkya, intended to place agnates and cognates on the same footing in relation to the property

of a woman, but there is no indication of such an intention on its part. On the contrary. Dealing with the rights of persons whose interests are vested, the Viramitrodaya proceeds to observe (see Ch. III, Part I, Section 4; G. Sarkar's edition, translation P. 140):

> " In fact, when a person in whom right is vested dies, it is proper that his property should be inherited by his near relations. . . . When the owner of any property is dead, then if he leave no male issue, his property is inherited by his relations such as his wife, etc.: *this is what the text (of Yajnavalkya) means.*"

It is clear that by quoting the words " his wife, etc." the author, in support of his view, is referring to the text of Yajnavalkya quoted above (Ch. II, Verses 135, 136): " the wife and the daughters, also both parents, brothers uterine, and their sons, gotrajas, bandhus, etc.".

Further light is thrown on this question by the comments of Kamalakara, the eminent author of Nirnaya Sindhu and Vivâda Tândava. In the latter compilation he observes (see the Sanskrit text and translation appended to Ghose's Principles of Hindu Law, 1917 edition; the text is at P. 1155, line 23, and the translation at P. 1142 is as follows):

> " In default of the husband, the estate is obtained by his near relations (tat pratyâsanna: the same expression as the Mitakshara and Viramitrodaya have used), beginning with ' the lawfully wedded wife and the daughter, etc.', *as described in the text of Yajnavalkya in the rule about succession to sonless men.*"

In the above translations important words have been italicized.

Their Lordships agree with the opinion of Agarwala, J., that it has been generally understood that Kamalakara's view relating to the succession to stridhan, in default of husband, in the case of a woman married in the approved form, and in default of father in other cases, was that the heirs of the husband or father succeeded in the order laid down in Yajnavalkya's text relating to the succession to the property of a male. This text is decisive of the question at issue in this case, and the Trial Court, as also the High Court, Judges were entitled to rely on this text of Kamalakara as a great authority in the Benares School. Such authority cannot be doubted.

Sir Gooroo Das Banerjee, in his Tagore Law Lectures, Second Edition, Page 363, observes:

> " Kamalakara's opinion is entitled to be followed as authority in the Benares School, when it is not in conflict with that of any other authority, and in the present instance the rule based on his opinion has the further recommendation of being simple, as it makes the order of succession to stridhan correspond after a certain point, to that applicable to a man's property."

Similarly, West and Buhler (Volume I, P. 213), referring to the above opinion of Kamalakara, observe:—

> " This opinion seems to be based on the consideration that as the sapindas inherit only through the husband, they virtually succeed to property coming from him, and that consequently they must inherit in the order prescribed for the succession to a male's estate."

Kamalakara is also referred to as an authority in 39 Calcutta, 319, 331, 332, where Chatterjea, J., after quoting the text of Kamalakara mentioned above, observes:

> " So that, according to Kamalakara, the nearness of kinsmen in the rule laid down in the Mitakshara is to be determined according to the well-known text of Yajnavalkya relating to the succession of a male owner dying without male descendants."

In the face of these textual authorities and the concurrence of the Mitakshara the Viramitrodaya and Kamalakara, there is not much scope for the argument that the stridhan heirs of a maiden are different from the heirs of her father, or that these heirs are not the same as those enumerated in the ancient text of Yajnavalkya (Ch. II, Verses 135, 136), viz. " the wife, the daughters, also both parents, brothers likewise and their sons, gotrajas, bandhus, a pupil and a fellow student " who succeed to his property. If so, it is clear that bandhus (bhinnagotra) would be

excluded by gotrajas. It is to be noted that, as the High Court judgments point out, the said text of Yajnavalkya has been accepted by text writers as providing the general rule prescribing the order of succession in all cases of separate property. One has therefore to look for a clear authority that the rule contained in that text was not intended to apply to cases of stridhan property. As both the learned Judges of the High Court and also the Subordinate Judge observe, no such text or judicial decision abrogating the value of the text of Yajnavalkya in stridhan cases has been adduced and, as Wort, J., after a careful consideration of the text and judicial decisions, observes: " the authorities are entirely against this view, which has always been rejected. The argument is supported neither by authority, nor by the authoritative authors of text books, who are unanimous that sapindaship in a case such as we have before us, and in the case of succession to males, depends entirely upon the same rules ". Their Lordships see no reason to differ from this view and none of the textual authorities cited before them goes to prove that the unanimous view taken in this case by the three Judges in India is erroneous.

But the question does not rest here. It is carried further by the decisions of this Board, as also of the High Courts in India, which set this matter beyond all doubt. These have been exhaustively reviewed in the two separate and able judgments of the High Court, and as their Lordships agree in the main with their deductions and the conclusion at which they have arrived, their Lordships find themselves relieved of the necessity of discussing the law in any detail. Their Lordships will, therefore, deal briefly with some of these rulings to which their attention was invited by the appellants' Counsel. Their effect is to establish that it is now a well-accepted rule that the text of Yajnavalkya mentioned above also governs succession to the stridhan property in the same order of succession as is mentioned in the text.

In *Dwarka Nath Roy* v. *Sarat Chandra Singh Roy* (1911), I.L.R. 39 Calcutta 319, a sister as father's daughter, and a sister's son as father's daughter's son, were preferred to a father's brother's son.

This was followed in the case *Nanja Pillai* v. *Sivabagyathachi* (1911), I.L.R. 36 Mad. 116, where the daughter of a co-wife, that is the daughter of the father by another wife, excluded the father's brother's son. In this case the text of Kamalakara was accepted and relied upon (Page 118) and in the course of the judgment the different rulings of Bombay, Allahabad, and Calcutta, bearing on this point were briefly reviewed.

The very next year, this ruling was followed by another, reported in *Kanakammal* v. *Ananthamathi Ammal* (1912), I.L.R. 37 Mad. 293, where the same principle was laid down.

In the same year arose the case reported in *Kamala* v. *Bhagerathi* (1912), I.L.R. 38 Mad. 45, where a stepmother (father's widow) was preferred to the woman's mother's sister. It was further laid down that the mother's heirs would be the same as the father's heirs as, according to Hindu notions, the mother becomes by marriage a member of the husband's family. The case followed two rulings in Bombay, *Tukaram* v. *Naravan Ramchandra* (1911), I.L.R. 36 Bombay 339 (F.B.), *and Janglubai* v. *Jetha Appaji* (1908), I.L.R. 32 Bombay 409.

Seven years later the same principle was laid down in *Sundaram Pillai* v. *Ramasamia Pillai* (1919), I.L.R. 43 Mad., P. 32, where the father's paternal uncle's son was preferred to the father's sister. In this case the text of Brihaspati, Baudhayana and the Smriti Chandrika were discussed.

Then came the case of *Bai Kesserbai* v. *Hansraj Moraji* (1906), L.R. 33 I.A. 176, a decision of this Board, where a co-widow, as the wife of the husband, succeeded over the husband's brother or brother's son.

The learned Counsel for the appellant, who conducted the appeal with great fairness, admitted that to reverse the decision of the High Court in this appeal would involve the reversal of all these rulings which have been accepted as laying down the law for a long period. The remarks of Agarwala, J., are therefore pertinent that, even if the text and com-

mentaries were capable of being construed in the sense in which the appellant contends, the learned Judge would hesitate to adopt that construction, for it would inevitably have the effect of upsetting titles long founded on the contrary view.

Reference was made by the appellants' Counsel to the case of *Buddha Singh* v. *Lallu Singh* (1915), L.R. 42 I.A. 208, in support of his contention that, judged by the test of funeral oblations, Sarabjit would be the preferential heir over Sia Prasad. But, as the learned Subordinate Judge has pointed out, that ruling applies only to the case of sagotra sapindas and provides a test of preference when the rival claimants belong to the same class of sapindas and not when one of such claimants is a bhinnagotra sapinda and the other a sagotra sapinda.

A further argument was advanced by Mr. Sen Gupta for the appellants, raising points which were highly controversial and not presented for the consideration of any of the Courts below. For instance, he argued for the contrary rule, relying upon a statement of Nanda Pandit occurring in a comment in Stokes' Hindu Law Books, P. 446. Apart from the difficulty caused by this point being novel and raised for the first time before their Lordships, the authority of Nanda Pandit, the author of Dattaka Mimamsa, cannot be accepted as against the rules mentioned in Mitakshara and other commentaries (see Mayne's Hindu Law and Usage, 9th edition, paras. 30 and 31).

For these reasons, their Lordships are of opinion that the judgments appealed from are right and ought to be affirmed and these appeals ought to be dismissed. There will be one set of costs payable by the appellants to the first set of respondents claiming through Sia Prasad; respondents Maharaja Kumar Gopal Saran Narain Singh (respondent No. 21 in the first appeal and respondent No. 4 in the second) and Kumar Sayeeda Khatoon (respondent No. 22 in the first appeal and respondent No. 5 in the second) for herself as one of the three legal representatives of Syed Mohammad Wali (respondent No. 14 in the first appeal and respondent No. 20 in the second) will bear their own costs. Their Lordships will humbly advise His Majesty accordingly.

(51491) Wt. 8015—7 180 8/46 D.L. G. 338

In the Privy Council

CHHATERPATI PRATAP BAHADUR
SAHI AND OTHERS

v.

LACHMIDHAR PRASAD SINGH
AND OTHERS
SAME

v.

KUMAR RAGHAVA SURENDRA SAHI
AND OTHERS

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