
(1920) 07 MAD CK 0012
In the Madras High Court

Chinna Pichu Aiyangar alias K. Veeraraghava Aiyangar	APPELLANT
Vs	
Padmanabha Aiyangar and Others by their guardian Venkatarama Aiyangar	RESPONDENT

Date of Decision : 29-07-1920

Acts Referred:

Citation : (1921) ILR (Mad) 121 : (1920) 12 LW 397 : (1920) 39 MLJ 417

Hon'ble Judges : Sadasiva Aiyar, J; Napier, J

Bench : Full Bench

Judgement

Sadasiva Aiyar, J.—The facts have been set out in the judgment of my learned brother which I have had the advantage of reading before

writing this opinion of mine. I have considered in Subramania Mudaliar v. Ranganatham Chettiar (1918) 24 M.L.J. 301 the Sloka about Atma

bandhus, Pitru bandhus and Matru bandhus which is attributed to Baudhayana by one commentator and Vriddah Satatapa by others. I have

expressed my considered opinion in that case that the sloka is a childish and spurious text and that it is an illogical, incomplete and inconsistent

classification of bandhus. Mr. S. Srinivasa Aiyangar with great legal acumen and a wealth of legal terms of highly subtle meaning tried to establish

that the classification was not so illogical or inconsistent as I thought. I can only say that he has merely confirmed me in my view, though it may be

that the subtlety and, what he called, the intricacy of the ideas involved in the classification make it so elusive as to escape the grasp of ordinary

minds including my own.

2. As regards the case in Umaid Bahadur v. Udai Chand I.L.R.(1880).. Cal. 119 I recognise that it contains the opinion of a full Bench of 5 Judges

of whom Mr. Justice Romesh Chander Mitter was one. But as my learned brother points out, the passage in the judgment of the Full Bench

relevant to the question which we have to consider is an obiter dictum. There is no discussion of the subject, and the obiter dictum is laid down as

if it is an axiomatic truth. In the phrase "" Maternal grandfather either of his father and mother"", found in the relevant passage the word "" and "" seems

to be a clerical error for "or". The enumeration (in this sentence of the judgment) of the perspns within whose category the male claimant's male

ancestor (who is the nearest common male ancestor of the propositus and the claimant) should be found in order that male claimant can be

recognised as a heritable male bandhu is very incomplete. The persons enumerated are (1) the natural grandfather of the claimant (2) the maternal

grandfather of his father and (3) the Maternal grandfather of his mother (the claimant being lettered F in the tree found in the end of the judgment.

The Atma bhandus, Pitru bandhus and Matru bandhus as given by the text already referred to include the descendants not only of the three

ancestors mentioned in the above sentence in Umaid Bahadur v. Udai Chand I.L.R.(1880) Cal. 119 (which is the first sentence in the last

paragraph of the judgment at page 128) but also of several others. The full enumeration of the male ancestors of claimant F (whose descent is

traced through a female or females from the common male ancestor) should therefore have been as follows (confining ourselves to that text for the

moment.)

1. F's Paternal Grandfather Atma bandhus.

2. F's Maternal do. Do.

3. F's Father's Paternal Grandfather Pitru bandhus.

4. F's Father's Maternal do. Do.

5. F's Mother's Paternal grand-father Matru bandhus.

6. F's Mother's Maternal do. Do.

3. The male heritable bandhus should be found among the descendants of these six ancestors if the text is taken to impose a further restriction

already imposed by the general rule of restriction that where the claimant claiming through a common male ancestor has female or females

intervening in the line of descent, he should be within 5 degrees of the common

male ancestor. It is clear that several bandhus nearer than some of those enunciated in the text such as maternal uncle, "" sister's son and son's daughter's son of the propositus do not find a place in the text. I can only again express ray regret that in Umaid Bahadur v. Udai Chand I.L.R.(1880) Cal. 119 the learned Judges did not even indicate the chain of reasoning by which they arrived at the conclusion that the enumeration of bandhus in the text was not merely illustrative, but restrictive and if restrictive how far and on what principles the restrictions proceeded. The Atma bandhus mentioned in the text are descended from the paternal or maternal grandfather alone but it has now been settled by decisions that Atma bandhus might be the descendants of the father, such as sister's son or even of one's self such as son's daughter's son.

4. However, I am reasonably certain, that neither the old spurious text nor the commentators intended to impose any restriction on the number of heritable bandhus based on the limitation of the classes of the (male) ancestors of the claimant (in whose descent there is female intervention) from which ancestors the propositus ought also to be descended. But Umaid Bahadur v, Udai Chand ILR (1880) Cal. 119 by great ingenuity did derive three such classes as flowing from the text. Mr. Sarvadhikari extended them and such farfetched deductions remained unquestioned for long, I might here remark that the text classifies only the claimant bandhus of the propositus into 3 classes.

5. If propositus A is a bandhu (blood relation by cognate affinity) of the claimant B, claimant B is also clearly a bandhu of propositus A. The relation of bandhuship of the claimant to the propositus is alone considered in the text relating to the class of heritable bandhus. But a further ingenuity has been elaborated namely, that not only should the claimant be a heritable bandhu, that is, a bandhu restricted by the ingeniously evolved limitations deduced from the text but the propositus must also be a heritable bandhu of the claimant with the same limitations (that is, we must hypothetically assume that the propositus was living and claiming to succeed as heir to the claimant who must be supposed to be dead for that purpose). In other words a principle of so called ""mutuality"" was to be further considered in these cases. Ingenuity calculated to make this branch of the law so obscure as to lead to mere gambles in litigation cannot go further

than this. I therefore consider with the greatest respect that the conclusion in *Umai Bahadur v. Udai Chand* ILR (1880) Cal. 119 is fallacious. As I said in *V. Subramania Mudaliar and Another Vs. K.*

Ranganatham Chettiar and Others, "when two irrational principles become the foundation of all further reasoning, it is no wonder that a branch of law based upon reasons themselves founded upon unreason becomes most unsatisfactory." But I do not wish to differ from precedents unless I am convinced that any broad principles of equity, justice and good conscience are contravened thereby,

6. I feel that no such principles are at stake in considering these claims by remote relations to succeed to the property of a deceased man. In olden days when the ties of relationship were very strong, and when agnates even to the 14th generation sometimes lived together in one family commensality, the claim of a remote relation to succeed might have a basis in broad principles of justice, equity and good conscience. But in these modern days when even first cousins rarely live together, I do not see any justice or equity in claims to inherit made by very remote relations and I should be glad if legislation is initiated to prevent claims by bandhus not descended from the propositus himself or his father or his paternal grandfather or his maternal grandfather so that even the persons specially mentioned in the spurious text as pitru bandhus and matru bandhus may be excluded.

7. In the result I agree that the second appeal should be dismissed with costs. Napier, J.

8. In this suit the plaintiff claims to be entitled as an heir to a moiety of the estate of one Ramaswami Iyengar, deceased, and to set aside certain alienations as not binding on him. The sole question before this Court in second appeal is whether the plaintiff is a heritable bandhu and is entitled to the estate of the last male owner.

9. The District Munsif has found and there is no dispute on this point, that the last male owner is the plaintiff's paternal grandfather's mother's brother's grandson and has held that as such he is not entitled to inherit. The Lower Appellate Court accepted that view.

10. It is argued before us that the statement to this effect in Dr. Sarvadhikari's book on Hindu Law is not correct and that even if it was thought

good law previously the decision of the Privy Council in *Buddha v. Laltu Singh* ILR (1905) All. 604 renders this view no longer tenable. I do not

propose to consider the principles underlying sapinda relationship on which this plaintiff is excluded. It seems to me sufficient to say that the view

taken by this learned text writer is supported by a decision of the Calcutta High Court as long ago as *Umaid Bahadur v. Udai Chand*. I.L.R.(1880)

Cal. 119 In that case the question which is at issue here was not directly at issue but the Full Bench used this relationship as an illustration of a case

in which sapinda-ship did not exist, and the principle they laid down was as follows : ""Although F is within six-degrees from the common ancestor

yet B, the propositus not being a descendant of the line of the maternal grandfather either of F or of his father or mother they are not sapindas to

each either."" F in the Calcutta case would represent the plaintiff in this case. It is contended before us that this dictum is obiter which is true. But it

is used by the Bench as axiomatic of the principles governing the relationship between the bandhus. Mr. Srinivasa Iyengar for the respondents finds

authority for it in Chap. II, Section 6 placitum 1 of the *Mitakshara*. His argument is that cognates to be heirs must be one of the three classes

referred to in the passage i.e., related to the person himself, or to his father or to his mother.

11. He admits that the persons enumerated in the placitum can be extended ; but he contends that the classes cannot be extended. The appellant

contends that on a proper reading of the passage the plaintiff does come within the class.

12. I can only deal with this question on authority. If I found that the dictum in *Umaid Bahadur v. Udai Chand* I.L.R.(1880) . Cal. 119 had ever

been doubted or departed from the matter would be different. But where I find it treated as axiomatic and where there is no case in which it has

ever been doubted I cannot treat it as a mere obiter dictum.

13. In a later case in *Babu Lal v. Nankuram* I.L.R.(1894) Cal. 339 the decision in *Umaid Bahadur v. Udai Chand* I.L.R.(1880) Cal. 119 and the

rule expounded, in Dr. Sarvadhikari's book to the same effect were referred to with approval and the principles underlying bandhu relationship laid

down in that case accepted. It was suggested before as that the decision in *Umaid Bahadur v. Udai Chand* .L.R.(1880) I Cal. 119 was peculiar to

Calcutta. But Babu Lal v. Nankuram I.L.R.(1894) Cal. 339 shows that is based on the Mithakshara. Unless therefore a different view has to be

taken based on the authority of the Privy Council in Buddha Singh v, Laltu Singh ILR (1915) All. 604 the law laid down in Umaid Bahadur v. Udai

Chand ILR (1880)Cal. 119 must, I think, be followed. The appellant contends that the decision of their Lordships in that particular case that the

term "" Putra "" includes grandson and great grandson must be generally applied and relies on a passage at p. 616. The words are ""Having regard to

the fact that this great legist, whose logical acumen judging from his work seems to have been remarkable, has used the term Putra in previous

parts of his Book on Inheritance in a comprehensive and generic sense, their Lordships find it difficult to conceive why he should arbitrarily and

without any explanation have used the word towards the end in quite a different and restricted sense or why, if his intention was to confine the

descent in the case of collaterals to the actual sons of brothers and uncles, he did not employ terms which would have exactly conveyed his

meaning, such as Atmaja or Auras which their Lordships understand, mean "" Son of one's own loins.,"" He contends that their Lordships intended

to rule that in the Mithakshara, whether the words of the Commentator or an original text are being construed, the word putra must always include

grandson and great grandson. This is a very extreme contention. Their Lordships in that case were not dealing with sisters" or aunts sons but with

the case of sons ex parte paternal. It seems to me that the language of their Lordships at p. 623 is the real summing up of their Lordships" decision.

It is as follows: ""They have already given reasons for holding that in the Mitakshara, as expounded in the Benares School, the word "" Putra "" and

its synonym employed by Vigneneswara in connection with brothers and uncles must be understood in a generic sense as in the case of the

deceased owner, and that the descendants in each ascending line, up to the fixed limit, should be exhausted at any rate to the third degree before

making the ascent to the line next in order of succession.""--Their Lordships were un-doubtedly dealing with a case of succession among agnates as

laid down in Section 5 of Chapter II and it is, if I may say so, perfectly understandable that where the word putra is being used in connection with

sons of males it should always be given an extended meaning to include grandsons and great grandsons. But very different considerations arise in a

case of succession of bandhus and I do not think we are entitled from the general language used by the Privy Council on one page to apply the principles enunciated with regard to agnates" succession to a case of cognate kindred where such application would result in the destruction of the principle to be found in the section dealing with the succession of cognate kindred. There must surely be a profound distinction between relationship in persons belonging to a different gotra. I cannot therefore hold that the decision of their Lordships in Buddha Singh v. Laltu Singh ILR (1915) All. 604 has created a law of succession among cognates different from that which seems to have been accepted for a great many years. That is the view of the District Munsiff in this case and I see no reason to doubt that it is correct.

14. I would dismiss the Second Appeal with costs :--one set.