

(1937) 08 MAD CK 0008
In the Madras High Court

Gaddam Ademma and Another

APPELLANT

Vs

Anam Hanuma Reddi declared major and guardian
discharged

RESPONDENT

Date of Decision : 12-08-1937

Acts Referred:

Citation : AIR 1937 Mad 967 : (1938) ILR (Mad) 260 : 173 Ind. Cas. 924 :
(1937) 46 LW 448 : (1938) 1 MLJ 232

Hon'ble Judges : Venkataramana Rao, J

Bench : Division Bench

Judgement

Venkataramana Rao, J.—The question raised in this appeal is whether the father's half sister's son or the maternal uncle's son is the

preferential heir to the estate of one dying intestate. The learned Subordinate Judge of Nellore was of the opinion that the maternal uncle's son is

the preferential heir. It is against this decision that this appeal has been preferred. It seems to us that this matter is concluded by the recent decision

of the Privy Council in Jotindra Nath Roy v. Nagendra Nath Roy (1931) 61 M.L.J. 442 : L.R. 58 IndAp 372 : ILR 59 Cal. 576 (P.C.). In that

case the conflict was between father's half sister's son and mother's sister's son and their Lordships held that father's half sister's son is the

preferential heir. The ground of the decision is this. Both are atma bandhus and between bandhus of the same class "the spiritual benefit they confer

upon the propositus is a ground of preference". This was the principle laid down in Muthusami v. Muthukumarasami (1892) 2 M.L.J. 296 : ILR 16

Mad. 23 which was re-affirmed. Their Lordships held that a greater spiritual benefit is conferred upon the propositus by the father's half sister's

son than by the mother's sister's son and as a measure of propinquity the

spiritual benefit which they respectively confer should be taken in deciding the question of preference. So far as the mother's brother's son and mother's sister's son are concerned there is no difference in the application of this principle. Following the said principle we allow this appeal and hold that the father's half sister's son is the preferential heir.

2. The decree of the lower Court is reversed and the case remanded to the lower Court for disposal of the further issues raised in the case. The appellant is entitled to the costs of this appeal which we fix at Rs. 150 from the respondents. As the appellants have filed the appeal in forma pauperis and as the court-fee if paid will have to be refunded we make no order as to the court-fee.