

(1910) 04 AHC CK 0017
In the Allahabad High Court

Kesri Rohan and Others

APPELLANT

Vs

Ganga Sahai and Others

RESPONDENT

Date of Decision : 09-04-1910

Acts Referred:

Citation : 6 Ind. Cas. 364

Hon'ble Judges : Richards, J;George Knox, J;Banerji, J

Bench : Full Bench

Judgement

Banerji, J.—The suits, out of which this appeal and the connected Appeal No. 58 of 1907 arise, relate to certain property left by one Bahadur Singh. The plaintiffs in each case claim to be the next heirs of Bahadur Singh. The relationship between the parties appears from the following pedigree:

Mihin Lal _____
_____ | | | Ganga Prasad Gya Prasad Rajaram Nekram | | |
(branch extinct). | Bahadur Singh | | |
_____|_____
| | | | Pokha Singh Kesri. Gulab Singh Rohan. | | | Kallu. Ram Narain. |
_____|_____
_____ | | Jainlal Kalka Prasad. | Munshi Lai.

2. It is admitted that the four sons of Mihin Lal were separate and that after the death of Bahadur Singh his widow Musammat Lachhman Kunwar succeeded to his property. When Lachhman Kunwar died, Raja Ram, Jian Lal and Kalka Prasad were alive as also was Musammat Gulab Kunwar the step-mother of Bahadur Singh; she was admittedly not an heir to Bahadur Singh. The question is whether Raja, Ram was his heir or whether Jian Lal and Kalka Prasad inherited his property. Raja Ram and Jianlal died subsequently. The property in dispute is claimed on the one hand by the sons of Raja Ram and on the other by Kalka Prasad and by Munshi Lal, the son of Jian Lal. There was a controversy as to whether Raja Ram was the half brother of Gaya Prasad, the father of Bahadur Singh or his uterine brother, but the case has been argued on the assumption

that he was Gaya Prasad's half brother. It is admitted that Gaya Prasad and Ganga Prasad were born of the same mother. The question, therefore, is whether an uncle of the half blood succeeds in preference to the sons of an uncle of the whole blood. If Raja Ram was entitled to Bahadur Singh's estate in preference to the sons of Ganga Prasad, his sons are entitled to the property in question and their claim must succeed.

3. The question raised in this appeal was not decided in Suba Singh v. Sarfraz Kunwdr and the Court below is wrong in thinking that it was decided in that case. What was held in that case was that ""among sapindas of the same degree of descent from a common ancestor, those who are descended from the same mother as the propositus are nearer in propinquity than those descended from a different mother," (see p. 232) and that the distinction of whole blood and half-blood is not confined to the brother and his sons but extends further. The question which we have to determine in this appeal is whether when there is a difference in the degree of relationship, the rule of whole blood and half blood applies.

4. The order of succession after parents is thus laid down in the Mitaielihar:

On failure of the father brethren share the estate. (Chapter II Section 41).

Among brothers such as are of the whole blood take the inheritance in the first instance under the text (of Mannu). To the nearest sapinda the inheritance next belongs; since those of ".he half blood are remote through the difference of the mothers. (Section 5).

On failure of brothers also their sons share the heritage. (Section 7.)

In case of competition between brothers and nephews, the nephews have no title to the succession; for their right of inheritance is declared to be on failure of brothers. (Section 8.)

5. This rule of exclusion of nephews by brothers also applies to brothers of the half blood, and sons of brothers of the full blood inherit on failure of half brothers. (See West and Buhler's Hindu Law, p. 112 and Mayne's Hindu Law, Section Edition), Except in Bombay, where the authority of the Vyanahar Mayukha is supreme, this rule applies to all oases governed by the Mitakshara.

6. In Section 5, Chap. II of the Mitakshara, the rule of succession in default of brother's sons is laid down, the heirs being gotraja sapindas and after them bldrina gotra sapindas or bandhus. Among the former, the heirs are successively the paternal grand-mother, the paternal grand-father, the uncles and their sons." (Section 54). The word in the original" Sanskrit which has been translated as " successively" is karmena which means one after another. Among gotraja sapindas, therefore, the paternal grand-mother takes first; after, her, the paternal grand-father; after him uncles, that is, the paternal grand-father's sons, and in default of them, their sons. The son of the paternal uncle thus comes in after the paternal uncle, who whether he is of the whole blood or the

half blood, excludes the son of a brother of the whole blood. On the same principle, which is that of propinquity, a paternal uncle of the half blood excludes the son of a paternal uncle of the whole blood. The learned Advocate for the respondent contends that paragraph 4, Section 5, is intended to apply only to relations of the whole blood but there is no authority as far as we are aware in support of their contention and none has been cited. On the contrary the Madana Parijata by Visvesvar Bhatta, a commentary on the Mitakshara of great authority, clearly explains what the meaning of the rule is. The passage in the Madana Parijata bearing on the point is thus translated by Professor Sarabadhikari in the Tagore Law Lecture for 1880, p. 440: "Among the paternal uncles, the succession of uterine and half blood uncles should be regulated in the same manner as in the case, of brothers, that is, the paternal grandmother's sons first inherit^ and after them" the step-grand-mother's sons and in their default the paternal uncles" sons inherit in the same manner as brother's sons."? The same passage is quoted in Mandlik's Hindu Law, p. 384, foot-note, and is similarly translated. Reading the text of the Mitakshara by the light of this commentary, there can be no room for doubt that an uncle of the half blood succeeds in preference to the son of an uncle of the whole blood--the former being nearer in propinquity than the latter.

7. As Raja Ram was alive when the widow of Bahadur Singh died, he inherited the latter's property as he was Bahadur Singh's uncle, although of the half blood, and the plaintiffs respondents, who are lower in degree, have no right to his estate. Their suit ought, therefore, to have been dismissed and the claim of the sons of Raja Ram ought to have been decreed. I would allow this appeal, set aside the decree of the Court below and dismiss the suit of the plaintiff-respondent with costs.

George Knox, J.

8. I have had the advantage of reading and considering the judgment of my brother Banerji and have nothing to add.

Richards, J

9. I concur.

10. The appeal is allowed, the decree of the Court below is set aside and the suit of the plaintiffs dismissed with costs including in this Court fees on the higher scale.