

(1912) 11 MAD CK 0065
In the Madras High Court

P. Seethai Ammal

APPELLANT

Vs

P. Nachiar Ammal and Others

RESPONDENT

Date of Decision : 06-11-1912

Acts Referred:

Citation : (1914) ILR (Mad) 286

Hon'ble Judges : Miller, J;Abdur Rahim, J

Bench : Division Bench

Judgement

Miller, J.—The plaintiff and the first defendant are both widows of the father of the last male owner of the property in dispute and they are both step-mothers of the last male owner; and the question is whether the plaintiff has any right to share in the property in dispute which has been conveyed to the first defendant by certain persons who alleged themselves to be the sons of the grand-father of the last male owner. The question so far as it turns on Hindu Law is whether a stepmother is entitled to succeed in any circumstance to the property of her step-son; and it has divided itself practically into two parts in this Court, first, whether she should not be given a right to succeed, as being in the class of gotraja sapindas and secondly whether, even if she has no right as a member of that class, still she is a sapinda within the meaning of that term in the Mitakshara and should be allowed to succeed, before the Crown at any rate, as a relation, though not as a gotraja sapinda. In his opening Mr. Soshagiri Ayyar suggested, but he did not press the contention, that the step-mother should be allowed to succeed as being equivalent or next door to the mother. I think it is clear that that contention cannot succeed in the face of the decisions of this and the other High Courts. The contention which he did press then was that as a gotraja sapinda she ought to be allowed to succeed. It seems to me that that question has been decided against him by a Full Bench of this Court in Mari v. Chinnammal ILR (1885) Mad. 107. It is suggested that we should treat that case as merely deciding that the step-mother is to be postponed to the paternal uncle; but it seems to me that there is nothing in that case either in the judgment of Sir Charles Turner, C.J. or in the judgment of Muttuswami Ayyar, J.

which suggests that they had in mind the necessity of deciding any question other than whether the step-mother is in the line of heirs at all. Perhaps I am wrong in saying that it is not suggested because the learned Chief Justice does suggest the question, whether if she is in the line of heirs she is not postponed to the paternal uncle. But the decision of the matter did not proceed upon any preference of a male sapinda to a female sapinda except in this sense that female sapindas unless they are named in the text of the Mitakshara are excluded altogether. That, I think, is what *Mari v. Chinnammal* (1885) Mad. 107 clearly lays down. No doubt both the Chief Justice who spoke for the majority and Muttuswami Ayyar, J. who agreed with him, though perhaps on slightly different grounds both those learned Judges took it that the step-mother was a sapinda within the meaning of that term as defined in the Mitakshara, but they do not base their decision excluding her from inheritance on the ground that, though a, sapinda, she must be postponed to the paternal uncle; they distinctly exclude her altogether and not merely postpone her. That is clear from the judgment of both the learned Judges. "The claim of the step-mother as a gotraja sapinda" (that is her right to succeed in that capacity) says the learned Chief Justice "has not been in my judgment established and" (for that reason) "the claim of the paternal uncle must be allowed" not that she might come in if the paternal uncle were not a preferential heir, but that her claim as gotraja sapinda had not been established. And Muttuswami Ayyar, J. says "Though I entertain no doubt that she is a gotraja sapinda in the Mitakshara sense of sapinda relationship, I do not think that all female sapindas are recognised to be heirs in this Presidency"; and then he gives certain instances and he suggests that if usage were in favour of the step-mother's claim he could not say that the Mitakshara actually? Declared against its legality, but he is not inclined to depart on that ground from the course of decisions upon the point. The result seems to be that the case we are asked to decide here has been decided by a Full Bench of this Court and that decision is clearly binding on us, and I for one am quite content to follow it and am not disposed to question it now. I therefore take it that it has been decided, so far as this Court can decide it, that the step-mother is not to be allowed to inherit to her step-son as gotraja sapinda.

2. Then I come to the second point which Mr. Seshagiri Ayyar raised, that is, whether she should not be allowed to succeed as a relation. Now it is very difficult for me to find any place in the scheme of succession laid down by the Mitakshara for relations who are not either those specially named or gotrajas or bandhus. No doubt there is a passage in *Kutti Ammal v. Radakristna Aiyar* (1875) 8 M.H.C.R. 8 which has been relied upon and which is criticised in *Jogdamba Koer v. Secretary of State for India in Council* ILR (1889) Calc. 367, which might suggest that the learned Judges there considered that all relatives however remote, whether they be sapindas or bandhus or not, have to be exhausted before the estate, can pass to the Crown. The passage might suggest that; but the decision in that case has been explained in this Court to be that a sister was there allowed to succeed as being a bandhu and, as has been pointed

out in *Lakshmanammal v. Tiruvengada* (1882) 5 Mad. 241, it does not necessarily follow from this passage that the learned judges who decided *Kutti Ammal v. Radakristna Aiyar* (1875) 8 M.H.C.R. 8 intended to suggest that there were other classes of heirs who were not in any of the classes mentioned in the *Mitakshara*. There is undoubtedly a passage in *Gridhari Lall Roy v. The Bengal Government* (1868) 12 M.I.A. 448, which lends support to the contention of the appellant. Taking a passage in the *Viramitradya* as reading that "maternal uncles and the rest" must be comprehended under the term *bandhus*. as otherwise they would be omitted and their sons would be entitled to inherit and after them they themselves, which would be objectionable, their Lordships say that if that be the correct reading, it would follow that even if the maternal uncle and others who are not mentioned in the text of the *Mitakshara* relied upon were excluded from the list of *bandhus*, that is to say, as I understand it, are not *bandhus*, still according to the *Viramitradya* they would inherit after the *bandhus*. But in that case it was not decided whether it should be taken to be the law that persons who cannot be classed as *bandhus* but were still relations could succeed after them. Their Lordships say, "it is,..., unnecessary to consider whether the title of any remote relation who could not be brought within the category of *Bandoo* or other class of heirs specified by the *Mitakshara* would prevail against that of the Crown;" and they held in the case before them that the maternal uncle of the father was a *bandhu* of the father and as such entitled to inherit as a *bandhu*. Therefore though that observation as to the construction of the passage in the *Viramitradya* certainly does suggest that their Lordships were prepared, if necessary, to consider the question whether there might not be relatives who might succeed though they were not *bandhus*, that case does not decide that there was any such class of persons who would be really found. I think it is very difficult as I said at the outset to find a place for any such class. the step-mother is certainly not a *bandhu*. If she comes in at all she must come in as *gotraja sapinda*, it is difficult to suggest where she comes, whether after all the *sapindas* or after the *Samaudahas* or after all the males *gotrajas* and *bandhus* as one class or otherwise.

3. The only other authority which has been cited to us as suggesting that there may be relatives who are not *bandhus* is *Sundrammal v. Rangasami Mudaliar* (1895) 18 Mad. 193, in which there is an observation. That has been explained in a later case *Venkatasubramaniam Chetti v. Thayarammah* (1898) 21 Mad. 263, where the learned Judges point out that the same Judges who speak in *Sundrammal v. Rangasami Mudaliar* (1895) 18 Mad. 193 of the sister's daughter as not being a *bhinnagotra sapindas* have subsequently in another case reported in the same volume *Balamma v. Pullayya* ILR (1898) Mad. 263, said that the sister is admitted on the ground that she may be considered a *bhinnagotraja sapinda* so that that case as it has been explained in later decisions of this Court does not afford any authority for the proposition that there is a class of relatives who are not *bandhus* or *gotraja sapindas* who can inherit. The case I have referred to--*Qndari Lall Roy v. The Bengal Government* (1868) 12 M.I.A. 448,

and the cases in this Court which have admitted certain female classes to inherit as bandhus do not go further than this, that the list of bandhus as given in the Mitakshara is not exhaustive, and. that others who can be brought within the class of bhinnagotra sapindas may be allowed to inherit as bandhus. That being the state of the authorities I certainly am not prepared to set up a different view that there may be another class of relations who are entitled to inherit. There is no suggestion: of that to my mind in the text of the Mitakshara, laying down that in the absence of bandhus certain strangers can inherit--a text supported by a citation from the work of Apastamba to the effect that in the absence of male issue the nearest kinsman is entitled to succeed and if there are no kindred, strangers can inherit: it has been argued before us that there is something in that text which, suggests that there may be persons who are kindred who are not either bandhus or sapindas or any of the special heirs described in the opening of chapter II, Section 2, of the Mitakshara,. But the text of Apastambas, we are told, relates to the nearest sapinda and whether that is so or not, whether the text distinctly refers to sapindas or not, there is no reason that I can see why we should in order to arrive at a proper interpretation of the term kindred in the text of Apastamba go outside those classes of persons who are mentioned as heirs by the Mitakshara. No other text has been cited nor any other decision of this Court, I think which warrants the bringing in of relatives who are not bandhus. And there is no case that I know of in the other High Courts which warrants it. On the other hand in *Jogdamba Koer v. Secretary of State for India in Council* (1889) 169 Calc. 367, it has been held that the brother's widow who is also a gotraja sapinda is not entitled to succeed in preference to the Crown. I hold then that so far as the Mitakshara Law goes and apart from usage the step-mother is not in, the line of heirs at all and if it were necessary to decide the point I should say that the property goes to the Crown in preference to her.

4. Then a question of *res judicata* was raised on behalf of the respondent on the ground that in a former suit a person alleging himself to be a nearer relation of the last male holder than the vendors of the present first defendant preferred a claim to the possession of the property now in question. The present plaintiff was the first defendant in the suit and the present first defendant was the second defendant therein, and the present plaintiff alleged that there were no dayadis of the last male holder entitled to succeed before her. The only finding in that judgment, as I understand that passage in the judgment, is that the plaintiff in that suit was not so near a relative of the last male holder as the vendor of the present first defendant. No doubt the Subordinate Judge in that case does say that the present first defendant's vendors were the nearest legal heirs, but I do not think that by saying so he intended to decide anything which was really in any way in question between the first two defendants. He does not discuss that in his judgment or decide it expressly and it was not necessary for him to decide that in order to dispose of that suit. Consequently I am of opinion that there is no bar by that suit.

5. Then the Lower Court was asked shortly before disposing of the case, after the first hearing and after the issues were settled to frame two new issues, one as to estoppel and the other as to the custom of the caste. As to estoppel I do not think there is any real ground for such an issue, and the Subordinate Judge was right in not allowing it to be raised.

6. As to custom no doubt what was asked for was an issue as to the custom of the Presidency. The petition runs "moreover according to the custom prevailing in the Presidency the stepmother is also heir according to Hindu Law." Really that does not suggest that the plaintiff was referring to any special caste custom. But I am not clear that we ought on that ground to refuse to allow the issue to be raised. It ought no doubt to have been presented in the pleadings or at the first hearing, but it was actually presented before the evidence was taken, before anything more had been done than to settle issues and set down the case for argument on the preliminary issue of law. In those circumstances am disposed to allow the plaintiff to raise a special issue, viz. "whether according to the usage of the caste to which she and the first defendant belong the step-mother is entitled to inherit to her step-son." I would ask the Subordinate Judge to take the evidence that may be adduced upon that issue and return a finding to this Court within a period of two months. If the finding is in the affirmative, that is, if by usage the step-mother is entitled to succeed, the Subordinate Judge will also return a finding on the two following issues: (1) Are Rangasami Chetti and Vasudevan Chetti mentioned in paragraph 3 of the first defendant's written statement heirs of Ramasami Ochetti the plaintiff's step-son and (2) if so, is the plaintiff by virtue of the usage established entitled to succeed in preference to them.

7. Evidence may be taken on these issues. Seven days will be allowed for objections after the return of the finding.

Abdur Rahim, J.

I agree.