

**(1916) 02 MAD CK 0063**  
**In the Madras High Court**

Rama Row and Another

APPELLANT

Vs

Kuttiya Gounden and Others

RESPONDENT

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**Date of Decision :** 01-02-1916

**Acts Referred:**

**Citation :** 34 Ind. Cas. 294

**Hon'ble Judges :** Seshagiri Aiyar, J; Coutts Trotter, J

**Bench :** Division Bench

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### **Judgement**

1. The suit is by the plaintiff\* as reversioners to recover possession. The last male owner was Venkataramana Aiyar who died some forty years ago. His widow Tulasi Ammal died in September 1908. The plaintiffs claim to be the sister's sons of Venkataramana Aiyar.

2. The defendants are alienees "from Tulasi Ammal. They denied the plaintiffs" relationship to the last male owner and pleaded that one Ranga Aiyar was the nearer heir, being a dayadi. They also claimed that some of the properties were Tulasi Animal's self-acquisition and that as regards the others their alienation was for justifiable purposes.

3. The District Munsif held that there were no nearer heirs than the plaintiffs whom he found to be the sister's sons of the deceased male owner, and that most of the alienations were not binding on them. He gave a decree for the major portion of the properties in this suit.

4. On appeal, the Subordinate Judge, without determining whether the plaintiffs were heirs, was of opinion that the plaintiffs should prove affirmatively that there were none nearer than themselves. He discussed the oral evidence given for the plaintiffs and the defendants and stated: "On the above evidence of defendants" witnesses Nos. 1 to 3 and the admissions of plaintiffs" witnesses Nos. 2, 3, 6, 8, 10, 13 and 14, I hold that it is made out that Ranga Aiyar and others are dayadies of the deceased Venkataramana Aiyar." It should be mentioned that this Ranga Aiyar has not gone into the witness-box to prove his relationship. The

conclusion of the Subordinate Judge is : As I find that the plaintiffs have not proved that there are no day aides of Venkataramana Aiyar now alive, whereas it is proved on defendants' side that Ranga Aiyar and others of Pallapalayam are Venkataramana Aiyar's dayadies and are alive, the first point should be found in the negative and against the plaintiffs." In the result, the decree of the District Munsif was reversed. Hence this second appeal.

5. In the first place, we are unable to agree with the Subordinate Judge in his view of the burden of proof. It is no doubt!) incumbent on a plaintiff seeking to succeed to property as a reversioner affirmatively to establish the particular relationship which he puts forward. He" is also bound to satisfy the Court that to the best of his knowledge there are no nearer heirs. He cannot be expected," to do anything more. It is for those who claim that their kinship is nearer than that of the plaintiffs to prove that relationship.! The decision in Gridhari Lall Roy v. Bengali Government 12 M.I.A. 448 which is relied on as compelling plaintiffs in similar circumstances to prove by positive evidence that by process of elimination they are the only possible claimants, has been very much misunderstood. When the facts of that case are. fully understood, no such proposition is deducible from it. We agree with the view taken by one of us on this question in a recent case, Secretary of State for India v. Subraya Karantha 31 Ind. Cas. 590. We think the lower Court was wrong on this point.

6. It was argued by Mr. Venkatrama Sastriar that the finding of the Subordinate Judge amounts to saying that Ranga Aiyar and the others referred to exclude the plaintiffs as samanodakas. On examining the evidence relied on by the Subordinate Judge, we find that no definite relationship is deposed to and that beyond saying that bathing pollution was observed, no tangible circumstance is spoken to as establishing the relationship. Mr. Rajagopalachariar who followed ventured to argue that samanodakaship connoted all gotrajas and that as there is evidence on which the Court below is entitled to find on this point, we should not interfere with the finding. As this argument raised an issue of considerable importance, we allowed the learned Pleaders on both sides a further opportunity to examine the Hindu Law texts bearing on the question.

7. We are indebted to Mr. Ramachandra Aiyar for the succinct summary he has given us of the authorities on the second occasion. There can be no question that Mann includes in the term samanodaka" all persons belonging to the same gotra. The sapinda-relationship is extinguished in the seventh generation; samanodaka-relationship lasts for all eternity, being extinguished only when the name and gotra are not known." Yajnavalkya, in sloka 135, says that the gotrajas come before the bandhus. The wife, daughters, both parents, brothers and likewise their sons, gotrajas (gentiles), bandhus (cognates), a pupil and a fellow-student."

8. Vijananeswara in his commentary (Mitakshara, Chapter II, Section 5, placitum 6) says : if there be none such, the succession devolves on samanodakas, and they must be understood to reach to seven degrees beyond sapindas, or else as far as the limits of knowledge as to birth and name extend. Accordingly what

Manu says : "The relationship of the sapindas ceases with the seventh person: and that of samanodakas extends to the fourteenth degree; or, as some affirm, it reaches as far as the memory of birth and name extends." This is signified by gotra," It is clear from the above passage that neither Vijnaneswara nor Brihat Manu gave his own sanction to extending the meaning of the term samanodaka to descendants beyond the fourteenth degree. The strong inclination towards unlimited heirship which characterised the writings of Manu and the Rishis did not find equal favour with the commentators. These latter, who understood the sentiments of the people, attached considerable importance to the customs that had grown up since the ancient Rishis gave the law. It is no wonder, therefore, that Vijnaneswara makes a halting allusion to what others say on the definition of the term samanodaka. He knew that persons belonging to the same gotra would not necessarily trace their descent from a common ancestor. It is common knowledge that persons of the same gotra belong to different sakhas. Some may be Yajur Vedis, some Rig or Sama Vedis, Further Vijnaneswara must have felt that people were more inclined to favour nearer blood relationship than descent in the same agnatic line, however remote. We are, therefore, of opinion that the Mitakshara does not enunciate the theory that samanodaka-relationship extends beyond the fourteenth degree; and as that authority is paramount on questions of inheritance in Southern India, we must hold that this relationship ceases with the fourteenth, Vaidyanatha Dikshitar, an author of great repute and authority in Southern India, in the Asouchakanda, restricts the term sama-nodaka to persons who come within fourteen degrees from the common ancestor. This author lived within 500 years and is held in great veneration all over the Presidency; and he apparently gives expression to the traditions of the people among whom he lived.

9. There is another point on which our conclusion against the view of the Subordinate Judge may be sustained. Even accepting the interpretation which Brihat Manu ascribes to "others", it is clear that unless a person is able to point to a common ancestor in the line of gotrajas, he is not entitled to come before bandhus. Both Manu and Yajnavalkya speak of janma and namna i.e., the gotra and the name. In the Telugu countries of Madras, the name is indicated by the house name or the inliperu. This is not in vogue in the southern districts. Even there people speak of the vamsam to which they belong. This would lead to tracing descent to a common ancestor. It would be something specific to go by. In this case no attempt has been made to show that Venkataramana Aiyar and Ranga Aiyar and the others who gave evidence had either the same house name or belonged to the same vamsam.

10. As regards the decided cases, Bai Devkore v. Amritram Jamiatram 10 B.S 372 is the only one which in any way supports the respondents' contention. In that case, the common ancestor was traced. This view of the Bombay Judges apparently did not find acceptance in Madras, as we have ascertained that Subramania Aiyar and Boddam, JJ., did not follow it in Appeals Nos. 120 and 124 of 1902. The observations of the Judicial Committee in Bhyah Ram Singh v. Bhyah Ugur Singh 13 M.I.A. 373 are very general. Their Lordships had not to

consider the meaning of the term samanodaka in that case. Kutti Ammal v. Radakristna Aiyan 8 M.H.C.R. 88 and Gridhari Lall Roy v. The Bengal Government 12 M.I.A. 448: 2 Suth. P.C.J. 159 only lay down that before the property escheats to the Crown all possible relations should be exhausted. The exact point at which samanodaka-relationship ceases was not in question in these cases. Ram Baran Rai v. Kamla Prashad 6 Ind. Cas. 698 is only authority for the way in which the fourteen degrees are to be computed. On the other hand in the case from which Kalka Prasad v. Mathura Prasad 5 A.L.J. 701 was the appeal heard by the Judicial Committee, the view taken was that Bai Devkore v. Amritram Jamiatram 10 B.S 372 had gone too far. Naraini Kuar v. Chandi Din (1887) A.W.N. 118 upholds the restricted construction of the term samanodaka.

11. Among the text writers, the general tendency is to confine the relationship to the fourteenth degree, although some would have it that so long as there is a possibility of a common ancestor being traced, the gotraja would exclude the bandhus. It has to be remembered that this indefinite extension of the meaning of the term is calculated to induce parties to place before the Court evidence of a very dubious and unreliable character.

12. On the whole we are of opinion that on authority and for reasons of expediency, it is not desirable to extend the meaning of the term samanodaka to persons beyond the fourteenth degree of relationship to the deceased; and that under no circumstances should a gotraja be preferred to a bandhu when the former is unable to trace his descent from a common ancestor.

13. As the Subordinate Judge has disposed of this case on a wrong view of the burden of proof, his decree must be reversed and the appeal will be remanded to the permanent Subordinate Judge of Trichinopoly for disposal on the merits with reference to the foregoing observations. Costs to abide the result.