

(1955) 10 MAD CK 0038
In the Madras High Court

Ramanatha Rao

APPELLANT

Vs

State of Madras and Another

RESPONDENT

Date of Decision : 11-10-1955

Acts Referred:

Citation : (1956) 69 LW 302 : (1956) 1 MLJ 579

Hon'ble Judges : Ramaswami Goundar, J

Bench : Division Bench

Judgement

Ramaswami Goundar, J.—The plaintiff, who is the appellant, brought the suit out of which this appeal arises for a declaration of his title to the suit properties and for possession of the same from the first defendant, the State of Madras. The second defendant is the plaintiff's brother. The plaintiff and the second defendant are the sons of one Kasinatha Rao and his wife Rama Bai. The properties in dispute in this suit admittedly belonged to one Singaravelu Pillai who died issueless in February, 1943. He was keeping one Dhanabhagyam as his permanent concubine, and by him she gave birth to two sons, Jagannathan and Saminathan. Dhanabhagyam and Saminathan left the village about the year 1930 and have not since been heard of. There is no controversy about that fact. After the death of Singaravelu, there were disputes in regard to these properties between his illegitimate son Jagannathan on the one hand, and the deceased's brother Krishnaswami Pillai on the other. That led to the filing of a suit by Jagannathan against Krishnaswami in O.S. No. 60 of 1943 in which various contentions were put forward by Krishnaswami. All those contentions were overruled by the learned District Munsif, Mayuram, who passed a decree in favour of Jagannathan. There was an appeal preferred by Krishnaswami in A.S. No. 50 of 1944 to the Sub-Court and that appeal was dismissed in November, 1944. (Vide the two judgments, Exhibits B-2 and B-3). There was a second appeal to this Court and that too was unsuccessful. The result of that litigation was that Jagannathan's title to these properties, as the illegitimate son of Singaravelu, was finally established. Unfortunately, Jagannathan, did not live long after the termination of that litigation, because he was murdered on 1st

August, 1945. He was unmarried and left no issue, and so, after his death, the question arose as to who were his heirs to succeed to the properties which he, as illegitimate son, inherited from Singaravelu.

2. As I said, the plaintiff and the second defendant are the sons of one Rama Bai and her husband Kasinatha Rao. According to their case, their mother, Rama Bai had a sister Kannammal, the wife of one Madhava Rao. They had an only daughter, viz., Dhanabhagam, the mother of Jagannathan and the concubine of Singaravelu, that is to say, the plaintiff and the second defendant claimed to be the heirs of Jagannatha as mathru bhandus, being Jagannatha's mother's sister's sons. A reference to any text book on Hindu Law will show that ordinarily they will be mathru bhandus entitled to succeed to the properties of Jagannatha. At page 49 of Mulla's Hindu Law (11th Edn.), item 8, mother's mother's sister's son is mentioned as an heir and at page 58 of the same book it will be found that mathru bhandus are sub-divided into two classes one of which is the mother's mother's father and his descendants. Now, if Jagannathan had been the legitimate son of Dhanabhagam, then the plaintiff and the second defendant, assuming the alleged relationship to be true, would be heritable bhandus to Jagannathan, and that was not disputed, by the learned Counsel for first defendant. But he contended that the relationship set up by the plaintiff and the second defendant had not been established by the evidence. He further urged the proposition of law that even if that relationship was established, inasmuch as Jagannathan was the illegitimate son of Dhanabhagam, under the principles of Hindu Law which recognises heirship based only on ground of legitimacy, the plaintiff and the second defendant will not be entitled to succeed. Before dealing with the question of law raised by the learned Counsel for the first defendant, it will be convenient to dispose of the question of fact, viz., whether the plaintiff and the second defendant are the sons of Jagannathan's mother's mother's sister.

3. Before considering the evidence, it is necessary to remember that under the Hindu Law it is only on the failure of all the heirs recognised by it, the Crown takes by escheat and where the Crown claims by escheat, the onus lies on the Crown to show that the last proprietor died without heirs (See page 75 of Mulla's Hindu Law, 11th Edn.). In this case, the first defendant has not chosen to lead any evidence either denying the relationship set up by the plaintiff and the second defendant, or to show that Dhanabhagam was not the daughter of Madhava Rao and Kannammal but belonged to a Vellala family as was urged during the arguments, or to show whether there was any other relationship or no relationship between the deceased Jagannathan, on the one side, and the plaintiff and the second defendant, on the other. All the evidence that is available on this question is on the side of the plaintiffs, who had examined P.Ws. 1 to 6 to establish that relationship. P.W. 1 is the plaintiff and P.W. 2 is his mother. P.W. 3 is a village munsif who owns a house in Tiruvarur, which is the plaintiff's place of residence. He knew the plaintiff's mother as well as her elder sister Kannammal and also the daughter of Kannammal, viz., Dhanabhagam. P.W. 4, another

neighbour, also knew the relationship between the plaintiff and the deceased Jagannathan, and he has also given evidence in support of the relationship set up by the plaintiff. P.Ws. 5 and 6 are ladies related to the parties. The plaintiff's father, Kasinatha Rao, was P.W. 5's mother's father's brother's son and P.W. 6 is the plaintiff's father's brother's daughter-in-law. All these witnesses have given evidence that the mother of the plaintiff and the second defendant, viz., Rama Bai, had a sister by name Kannammal and that Kannammal's daughter was Dhanabhagyam. I have been taken through the evidence of all these witnesses and I see no justification for the comment made by the learned trial Judge that their evidence was unconvincing or that it was artificial. On the other hand, I find that they were all persons competent to speak to the relationship; and further, the relationship specifically spoken to by them has not been subjected to any serious cross-examination. Nor was anything suggested to them that Jagannathan and the plaintiff were related in any other manner than that alleged by the plaintiff. It is true that in the previous litigation Jagannathan, while giving evidence, deposed that his mother Dhanabhagyam was Vellala and that his knowledge was based on what his father told him. It must be remembered that in that suit, the defendant, Krishnaswami, put forward the contention that Jagannathan's mother, Dhanabhagyam, had a Mahratta husband alive, and so Jagannathan must be the offspring of an adulterous connection and not entitled to succeed as illegitimate son; and so, it is quite possible, as was suggested by the learned Counsel for the plaintiff, that he gave evidence to the effect that his mother was a Vellala. It is significant that if she was really a Vellala woman, that suggestion was not put to any of the witnesses examined by the plaintiff in the present suit. It was not even suggested in the cross-examination of any of the witnesses who the real parents of Dhanabhagyam were, if they were not Kannammal and Madhava Rao. Apart from mere denial of the relationship set up by the plaintiff, the first defendant has not adduced any evidence nor has even made any suggestion, as to what other relationship there was between the plaintiff and the second defendant, on the one hand, and Jagannathan, on the other. It was not even suggested that Jagannatha's mother was not the daughter of Kannammal. Nor was it suggested that Kannammal was not the sister of Rama Bai, the mother of the plaintiff and the second defendant. Thus, the evidence is all one way and no serious attempt has been made by the first defendant to place before the Court what was the exact relationship between the plaintiff and the second defendant, on the one hand, and Jagannatha, on the other, or whether Dhanabhagyam was not the daughter of Kannammal and whether Kannammal was not the sister of plaintiff's mother Rama Bai. As I said P.Ws. 1 to 6 are persons competent to give evidence as to this relationship; and so far as I can see, there was nothing elicited in their cross-examination which will have the effect of throwing any doubt on the testimony they have given. Disagreeing with the learned trial Judge, I prefer to accept the evidence of P.Ws. 1 to 6 as establishing the relationship set up by the plaintiff.

4. There are also some circumstances in the case which corroborate the

relationship set up by the plaintiff. It will be seen that during the pendency of the previous litigation filed against Krishnaswami, the plaintiff was taking interest in it. P.W. 7, who was Singaravelu's Kariasthan and continued to be Kariasthan of Jagannathan, was writing letters to the plaintiff during the progress of that suit, both in the trial Court as well as in the appellate Court. Some of those letters are Exhibits A-1 to A-3 and A-14 to A-18. Then, on the death of Jagannathan in August, 1945, the obsequial ceremonies were performed by the plaintiff. He swears that he issued the invitation Exhibit A-4 for that purpose. He has also given evidence that he performed the obsequies. It was not suggested that anybody else performed those ceremonies. If the plaintiff had nothing to do with Jagannathan, it is not likely at all that the plaintiff would have performed the obsequial ceremonies. Not only that, on the death of Jagannathan, the plaintiff entered into possession of the properties of the deceased and granted a lease, evidenced by the registered document, Exhibit A-6, to one Kunjithapatham for a period of seven years. That the lease was genuine would admit of no doubt, because the rent for one year was paid and there is the endorsement on the document itself. The plaintiff also produced cist receipts, Exhibits A-7 and A-19 to A-24 showing payment of cist for these lands for the years 1946-1947 and 1948. While the plaintiff and his brother were thus in possession of the properties as heirs of the deceased Jagannatha, the Government took the view that Jagannatha died without leaving any heirs and his estate escheated to them, and so, they took proceedings and recorded statements from the lessee's father and brother that they had no objection to surrender possession and also from the lessee Kunjithapatham agreeing to deliver possession to the Government, which he accordingly did. Thus, the Government took possession of the lands from the plaintiff's lessee and it is difficult to understand by what legal process they did so. As regards the house, it would appear that it was put under lock and seal and the movables in the house were also seized and sold; that is to say the Government had taken forcible possession from the plaintiff and his brother of the properties to which they had succeeded as heirs of Jagannatha and thereby forced them to seek remedy in a Court of law. It may also be mentioned that after the death of Jagannatha, some of his creditors filed suits impleading the plaintiff and his brother as the legal representatives of Jagannatha and obtained decrees in 1946. (Vide Exhibits A-27, A-28, and A-29).

5. Thus while all the evidence tends to establish the relationship set up by the plaintiff, we have not got any evidence adduced by the Government to show that Jagannatha died without leaving any heirs and therefore they are entitled to his estate by escheat. On the evidence and the circumstances of this case, I am satisfied that the plaintiff and the second defendant are Jagannatha's mother's mother's sister's sons and as such, ordinarily, they would be entitled to succeed to his properties.

6. That leads to the question of law raised by the learned Counsel for the Government that the ordinary rule of succession cannot be applied to this case because the propositus Jagannathan was not a legitimate son but the illegitimate

son of his mother who was only a concubine of Singaravelu.

7. The contention was that because Jagannathan was the illegitimate son of Dhanabagymmal, there can be no heritable relationship between him and the plaintiff. But the plaintiff and his brother claim title to the properties of Jagannathan not on the ground that they are agnatic relations, but because of cognatic relationship, that is, as bandhus. It must also be remembered that though Jagannathan might be an illegitimate son, his mother was a Hindu, and so also, his putative father, and he was also brought up as a Hindu, and so, there can be no difficulty in applying the principles of Hindu Law. It was held in *Viswanatha Mudali and Another Vs. Doraiswami Mudali and Another*, that in the case of a dancing woman or a Hindu prostitute, her religion is Hindu, her customs manners and observances are Hindu, and her sons are Hindus, and the Hindu Law is therefore applicable to them. If, therefore, Jagannathan is a Hindu, and Hindu Law is applicable to him, and the succession to his estate is governed according to the principles of Hindu Law, it is difficult to see why the plaintiff and his brother, about whose legitimacy there can be no question, could not succeed to his properties if they are in the line of heritable bandhus. But the contention is that the Hindu law of succession can be applied only to the case of legitimate descendants and not to a case where the propositus, or the claimant is an illegitimate issue. For that contention, the learned Counsel for the first defendant placed reliance on a passage in Mayne's Hindu Law, nth edition, page 677, which is to this effect:

The rules of inheritance relating to sapindas, samanodakas and bhandus are based upon marriage and legitimate descent, The illegitimate son of a Sudra is the only exception and his rights are also restricted. In *Meenakshi Ammal and Another Vs. Murugayya Mooppanar*, , *Krishnaswami Ayyangar, J.*, also stated the general rule thus:

"I can find no warrant for holding that as a general rule, the system of succession under the Mitakshara Law is based on any relationship other than relationship through valid marriage and legitimate descent."

8. That, no doubt, was the strict rule of Hindu Law. But Courts were forced to engraft exceptions on that rule. If it were strictly applied, an illegitimate daughter could not succeed to the stridhanam of her own mother; nor could a mother succeed to her illegitimate daughter; and, similarly, a putative father could not succeed to his illegitimate son. The Courts recognised the obvious inequity of applying the strict principles of Hindu Law to such cases and were forced to make a departure from the rule. But in making that departure, the cases have proceeded on the principle that though there might be no agnatic relationship for want of lawful wedlock, there is always a cognatic blood relationship between the mother and the illegitimate child, so that, if succession is claimed through such cognatic relationship, there could be no difficulty in accepting the claim. In *Zipru v. Bomtya* ILR 1921 Bom. 424, one Vedue, a Sudra, had a son named Chintu by his married wife, and an illegitimate son named

Dhaklu by his mistress. Chintu died leaving a son, Zipru (the plaintiff). Dhaklu died without leaving any relations and it was with reference to the property of Dhaklu that the suit was brought. It was held that the son of the legitimate son could not inherit the property of the illegitimate son. There, the claim was based on agnatic relationship and the same was negated. In *Jagarnath Cir v. Sher Bahadur Singh* ILR (1934) All. 85, it was held that a Hindu mother governed by the Mitakshara law can inherit the estate of her illegitimate son. In *Dattatreya Tatya v. Matha Bala* ILR (1933) Bom. 119 it was pointed out that according to the Hindu lawgivers, the human body is made up of six parts, three being derived from the father and three from the mother, the bones, sinew and the marrow from the father, and the skin, flesh and blood from the mother. A man's body is, therefore, made up of parts to which both the parents contribute. These parts are pindas or components which go to make up the body. Those, therefore, who have in their body any particles which make up the body in common with others are sapindas. Therefore, the Mitakshara dealt with sapinda relationship with the father as also the sapinda relationship with the mother, so that it is not necessary, in order to have heritable blood, that inheritance should necessarily be traceable through the father. In that case, a woman died, leaving illegitimate children, and it was held that the illegitimate sister could succeed to the property of the illegitimate brother, though she was not a sister in the strict sense of the term, but because he was an offspring of the same woman who gave birth to the son. The ground of decision was that the particles of the mother's body abounded in the body of the children, who were therefore sapindas of each other. In *V. Subramania Iyer Vs. Rathnavelu Chetty and Others*, a Full Bench of our Court decided that where an illegitimate son, who, if he had survived his putative father, would have inherited his estate, dies leaving no issue, widow, or mother, his putative father is entitled to succeed as his heir. Kumaraswami Sastri, J., pointed out that the Smritis clearly assumed that there was heritable blood between the illegitimate son of a Sudra and his putative father, and that the illegitimate son was always considered as inheriting to his putative father. He was of opinion that in slokas 135 and 136 of Yagnavalkya relating to the inheritance to sonless Hindus, the word "pitha" should, for purposes of tracing succession to the illegitimate son of a Sudra, be taken to include a putative father. In this connection, reference may also be made to *Myna Bai v. Uttaram* (1861) 8 Moore I.A. 400 and *Myna Bai v. Uttaram* (1864) 2 M.H.C.R. 196. That was a case where an European Christian had two illegitimate sons, Thakuram and Ramaprasad by a Brahmin woman, and after the death of Thakuram, the question arose whether Ramaprasad could inherit to the deceased's estate. It was held that there was no authority against the existence of heritable blood between the woman and her illegitimate offspring and that the sons were cognate to her and to one another. The learned Judges observed.

Of the cognation between her and her offspring, there exists no doubt whatever.

In *Viswanatha Mudali v. Doraiswami Mudali* ILR (1926) Mad. 944 already referred to a prostitute died leaving two sons, Muthuswami and Muniappa. The plaintiffs

in that suit were paternal grandsons of Muthuswami. They, as well as their father, were legitimate children. Muniappa also died, leaving his great-grandson Murugesu, who was a legitimate lineal descendant. After the death of Murugesu, the question arose whether the plaintiffs would be his reversionary heirs. It was held that the legitimate descendants of two sons of a Hindu dancing woman are under the law entitled to succeed to each other. At page 952, Devadoss, J., observed:-

From the decision in *Myna Bai v. Uttaram* (1861) 8 I.A. 400 and *Myna Bai v. Uttaram* (1864) 2 M.H.C.R. 196, it is clear that Muthuswami Mudali and Kanchi Muniappa Mudali had heritable blood between them.

9. The same learned Judge further observed at page 955:

Seeing that there was heritable blood between Muthuswami Mudali and Muniappa Mudali did the tie cease to exist between Muthuswami's son and Muniappa's son ? If there was heritable blood between the fathers, it is difficult to understand why that should not continue in the case of the sons. If Muthuswami Mudali could succeed to Kanchi Muniappa Mudali, it is difficult to see why the legitimate son of Muthuswami should not succeed to Kanchi Muniappa.

10. In that case, there could not have been any agnatic relationship between the deceased propositus and the claimant; but cognatic heritable relationship was recognised and the plaintiff's claim was allowed. This decision would therefore negative the contention of the learned Counsel for the first defendant. In the present case also, the plaintiff and his brother claimed title to the suit properties not as agnatic relations of the deceased Jagannathan, but only as cognatic bandhus. There was cognatic heritable relationship between him and his mother, so that the fact that he was an illegitimate son did not matter, as the claim was made through such cognatic relationship. The learned Counsel relied on two other decisions of our High Court reported in *Krishna Mudaliar Vs. Marimuthu Mudaliar and Others*, and *Meenakshi Ammal and Another Vs. Murugayya Mooppanar*, . In the earlier case, a prostitute by name Valliammal had two sons, Muthu and Palaniyandi. The plaintiff appellant was the son of Muthu. Palaniyandi had a son by name Kunjan, who left a son by name Palaniyandi. The latter's son was Shanmugam who died possessed of the properties in dispute. Kunjan had a daughter, and she had four sons. It will be seen that daughter's sons would be nearer heirs than the appellant if he were regarded as a cognatic relation or bandhu; but, if he were an agnatic relation he would take precedence over that daughter's sons. It was held that to constitute sagotra sapindaship, there must be descent in an unbroken male line from a common male ancestor, and that in the case of the sons of a prostitute where the father is unknown, it was impossible to trace the descent to a common male ancestor. It was also held that Muthu and Palaniyandi were cognates and consequently the four sons of the elder daughter, of Kunjan were nearer in kin to Shanmugam than the appellant. I fail to see how that decision helps the contention of the learned Counsel for the first defendant. On the other hand, it only supports the proposition that the

illegitimate brothers and their descendants have got heritable cognatic relationship. In other words, this decision only affirms the principle laid down in *Viswanatha Mudali and Another Vs. Doraiswami Mudali and Another*, . In the other decision reported in *Meenakshi Ammal and Another Vs. Murugayya Mooppanar*, , the question was whether the illegitimate daughters of a Hindu woman are entitled to succeed to the stridhanam of their mother's mother. The appellants were the illegitimate daughters of one Dharmu Ammal who died earlier. She was the legitimate daughter of one Murugayi Ammal who left stridhanam property. The appellants claimed that under Hindu law, they were the nearest heirs of Murugayi who was also survived by one Venkatachalam Chetti, the grandson of her sister. In that case, it was recognised that an illegitimate daughter was entitled to inherit the stridhanam property of her mother. If so, it should logically follow that the illegitimate daughter of that daughter must be entitled to inherit the stridhanam property of the grandmother. But Krishnaswami Ayyangar, J., at page 744, explained the anomaly thus:

It is true that an illegitimate daughter has been held to be entitled to inherit the stridhanam property of her mother. This right will, however, be found on examination to be based not upon any ancient texts or rule of law, but upon custom and analogy.

11. Leach, C.J., pointed out at page 743:

It is clear that there is no authority which extends the right of an illegitimate daughter to succeed beyond the right to succeed to her mother's stridhanam.

12. If an illegitimate daughter has heritable relationship, and so entitled to succeed, it would be wholly illogical to disinherit the illegitimate grand-daughter. In fact in a recent Bench decision of our High Court reported in *Venkanna v. Narayanamma* (1953) 2 M.L.J. 652 : ILR (1953) Mad. 1235 while holding that where a married woman died, leaving behind her a sole illegitimate daughter and certain stridhanam properties the illegitimate daughter would succeed to the stridhanam properties in preference to the brother of the husband of the deceased, it was observed at page 1242 thus;

It is therefore not only not contested but it has been laid down in the decisions referred to that the illegitimate daughter of a Hindu woman is entitled to succeed to the stridhanam of the mother, though her right beyond succeeding to her mother's estate has not been recognised. Once it is held that there exists heritable blood between the mother and the illegitimate daughter, it is rather difficult to conceive how that ceases to exist beyond the mother, that is, where she claims entitled to inherit her grandmother's estate. The view taken in *Angammal v. Venkata Reddy* ILR (1902) Mad. 509, appears to us to be correct and that decision has not been fully considered in *Meenakshi Ammal and Another Vs. Ramaswami Josier and Another*, and *Meenakshi Ammal and Another Vs. Murugayya Mooppanar*, .

13. Thus, the exception made in favour of the illegitimate daughter could be

extended to the illegitimate daughter of a daughter, contrary to the decision in *Meenakshi Ammal and Another Vs. Murugayya Mooppanar*, . In *Shankararao v. Sadu Ganaji* AIR 1951 Nag. 400, the claim was to the stridhanam property of a deceased woman, Bainabai. She died, leaving behind her, her husband Ganaji and his illegitimate son, Sadu. She had also a daughter, by name Jani, who predeceased her, leaving behind an illegitimate son, Manikrao. It was held that an illegitimate grandson was entitled to succeed to his maternal grandmother on account of propinquity of blood in preference to the grandmother's illegitimate son. But, in a latter decision of the same High Court reported in *Sadu Ganaji v. Shankarrao* AIR 1955 Nag. 84 the contrary view was held that where a Sudra woman died, leaving behind stridhanam property, an illegitimate son of a daughter could not be considered as daughter's son and not entitled to succeed in preference to the woman's husband. It was observed that as regards propinquity of blood, the illegitimate son of a daughter could not be treated as sapinda of his mother's mother, because the sapinda relationship is based upon lawful marriage and legitimate descent. There was only one more decision referred to by the learned Counsel for the first defendant, namely, *Pandurang Ganpatrao Raut and Others Vs. The Administrator General of Bombay*, in which one Bhimabai died, leaving a will in respect of properties worth about a lakh of rupees. She was the illegitimate daughter of one Kashibai. The claimants were the grandsons of Kashibai's brother. The claim was negatived on the ground that there was no sapinda relationship between the claimants and the deceased woman. However, that case may be distinguished on the ground that the claimants were neither her husband's heirs nor her father's heirs entitled to succeed to her stridhanam properties.

14. An examination of these cases shows that so far as the mother and her illegitimate children are concerned, there is cognatic heritable relationship enabling the one to succeed to the properties of the other. That relationship continues even amongst the descendants of such children. In the present case, there was that relationship between the propositus Jagannathan and his mother, Dhanabhagyam, and the plaintiff and the second defendant were Dhanabhagyam's mother's sister's sons. The chain of Bandhu relationship was therefore complete. The position might have been different if the plaintiff had claimed as the agnatic relation or through Singaravelu. The claim is made through the mother, as cognatic relations.

15. The appeal is allowed with costs in both the Courts, payable by the first defendant-respondent.