
(1959) 12 MAD CK 0042

In the Madras High Court

Case No : Letter Patent Appeal No. 26 of 1956

The State of Madras

APPELLANT

Vs

Ramanatha Rao and Another

RESPONDENT

Date of Decision : 18-12-1959

Acts Referred:

Citation : AIR 1960 Mad 436 : (1960) ILR (Mad) 800 : (1960) 73 LW 299 : (1960) 2 MLJ 55

Hon'ble Judges : P.V. Rajamannar, C.J.; Basheer Ahmed Sayeed, J

Bench : Division Bench

Judgement

Basheer Ahmed Sayeed, J.

(1) This appeal is against the judgment and decree of our learned brother, Ramaswami Gounder J., dated 11-10-1955 in A. S. No. 523 of 1951, reversing the decree and judgment passed the learned Subordinate Judge of Mayuram, in O. S. No. 47 of 1949. The State of Madras, represented by the Collector of Tanjore, is the appellant.

(2) The first respondent to this appeal, Ramanatha Rao, is the son of one Kasinatha Rao. He along with his brother, Krishnajeel Rao, claimed to be entitled to the properties in their capacity as the mathrubandus of Jagannathan, the last male owner of the suit property. The said Jagannathan was an illegitimate son of Singaravelu by this concubine, one Dhanabagyathammal. The said Jagannathan died on 1-8-1945, leaving certain lands and houses and moveable properties situate mostly in the village of Manadakudi in the Ayyampettai vattam and also in Marudavancheri.

These properties originally belonged to Singaravelu Pillai, who died on the 10th February 1943, leaving a divided brother, Krishnaswami Pillai, besides the illegitimate son, Jagannathan. In O. S. No. 60 of 1943, on the file of the District Munsif of Mayuram, the said Jagannathan claimed title to and possession of the properties which formed the subject matter of the suit, out of which this appeal

has arisen. The suit was directed against the said Krishnaswami Pillai, the divided brother of Singaravelu Pillai and his lessees.

That suit was decreed in favour of the said Jagannathan on the 31st January 1944, as evidenced by the copy of the judgment marked Ex. B. 2 in the suit. The decree passed in the said suit appears to have been confirmed on appeal in A. S. No. 50 of 1944 on the file of the court of the Subordinate Judge of Mayuram. The judgment in the appeal is marked as Ex. B. 3 in the suit. The appellate decree also became final by reason of the dismissal of the second appeal preferred by the appellant in that first appeal, and Jagannathan became entitled to and was in possession and enjoyment of the properties decreed in his favour till he was murdered on 1-8-1945. He died unmarried and left no issue.

(3) After Jagannathan's death, the question arose as to who were his heirs entitled to succeed to the properties, which he, as the illegitimate son inherited from his putative father, Singaravelu. Ramanatha Rao, the first respondent, claimed to be Dhanabagyathammal's mother's sister's son. The said Dhanabagyathammal, as already stated, was the concubine of Singaravelu Pillai, and the mother of Jagannathan. On the death of Jagannathan, Ramanatha Rao performed the obsequies, and issued printed invitations for the ceremonies connected with the deceased. He took residence in the house left by Jagannathan and obtained ration card therefor.

He also got into possession of the other properties. He leased out the lands of one Kunchithapatham Pillai, the undivided son of Murugayya Pillai, the village munsif of Ayyampettai vattan under a lease deed, Ex. A. 6, dated 19-9-1945, for a period of seven years. The said Jagannathan also paid kist for the lands and obtained kist receipts, Exs. A. 7 and A. 19 to A. 24. Ramanatha Rao and his brother, the two respondents in this appeal, are the sons of one Rama Bai, wife of Kasinatha Rao.

According to them, Rama Bai had a sister by name Kannammal, wife of one Madhava Rao. they had an only daughter, viz., Dhanabagyam, the mother of Jagannathan, and the concubine of Singaravelu. It is in this way that the two respondents in this appeal claimed to be the heirs of Jagannathan as his mathrubandhus, i.e., they are Jagannathan's mother's mother's sister's sons.

(4) When such was the case, the State Government would appear to have started escheat proceedings against the properties left by Jagannathan, and after making enquiries, declared by an order, G. O. No. 1320, Home Department, dated 9th April 1948, published in the Tanjore Gazette and also in the newspaper, "Yadarthavachani" Ex. A. 10, that the properties of the late Jagannathan had escheated to the Government.

(5) Thereupon the lessee of Ramanatha Rao, viz., Kunchithapatham surrendered possession of the lands to the Government on the 17th September 1948. It transpires that the Government leased out the lands, once again, to Kunchithapatham himself, and one Singara Pillai under a deed, Ex. B. 4 on

24-9-1948. Aggrieved by the order and by the subsequent action of the Government, Ramanatha Rao, notified to the Government of his proposed suit for recovery of the properties. On 7-5-1949, the moveables in the house of Jagannathan were also sold in auction by the Government.

(6) In the meanwhile, there seems to have been proceedings against the first respondent by the creditors of Jagannathan for recovery of the debts due by Jagannathan from out of the assets left by him. These suits were S. C. S. Nos. 18 and 19 and 226 of 1946 on the file of the District Munsif's Court, Mayuram. Decrees were obtained, and there have been execution proceedings and some of the properties of Jagannathan were also sold in public auction, and purchased by one Nataraja Pillai, another son of the village munsif, Murugayya Pillai of Ayyampettai vattam. It is not necessary to refer in detail to these proceedings.

(7) After the expiry of the notice under S. 80 C.P.C., the said Ramanatha Rao filed O. S. No. 47 of 1949 against the Government making his brother Krishnajeel Rao, the 2nd defendant and two others as defendants 3 and 4. The State Government also filed a suit O. S. No. 74 of 1949, against the village munsif, Murugayya Pillai, and his two undivided sons, to recover a sum of Rs.1045-14-3 representing the income and profits realised by them from the lands leased to them, for the period 1-8-1945 to 17-9-1948, after deducting the kist etc.

We are not concerned with the suit filed by the Government in this appeal, though both the suits were tried together and the learned Subordinate Judge of Mayuram disposed of both the suits by a common judgment. In O. S. No. 47 of 1949. Ramanatha Rao sued the Government for a declaration that he and his younger brother, Krishnajeel Rao, were entitled as the heirs of the late Jagannathan to his properties described in schedule A and B to the plaint, and also certain moveables and monies in court described in schedule C to the plaint. Ramanatha Rao prayed for a decree for possession of the properties with mesne profits subsequent to the suit.

(8) Ramanatha Rao's case, in particular, was that he and his younger brother, the second respondent, were the sons of Rama Bai, who was Jagannathan's mother's mother's sister. That Jagannathan having died unmarried and issueless, his properties devolved upon Ramanatha Rao and his brother as his mathrubandhus. Ramanatha Rao claimed that he had performed the funeral obsequies; that he was in possession of and enjoyment of the properties left by Jagannathan; that he was actually living in the house left by Jagannathan; that he had exercised acts of ownership in respect of the lands by leasing them out to Kunchithapatham Pillai, the son of the village munsif, that his right was recognised in court proceedings in S. C. S. Nos. 18 and 19 of 1946 and in execution proceedings of O. S. No. 285 of 1945 on the file of the District Munsif Court, Mayuram.

He contended that the properties could not be taken over by the Government under the Law of Escheat; that the rejection of his claim by the Collector and the

Government was illegal; that this house was also wrongfully sealed by the Tahsildar, and his efforts to get the seal removed were all of no avail to him.

(9) In the suit, the State Government pleaded that Jagannathan died without an heir, that neither the first nor the second respondents were related to Jagannathan's mother, Dhanabagyam in any way; that even assuming that they were so related, as the said Jagannathan was an illegitimate son of Singaravelu Pillai, his paternal or maternal relations could not inherit to his estate; that the first and second respondents were not heirs of Jagannathan according to Hindu Law, and, therefore, could not claim his properties.

Further, the complaint of the State Government was that the first and second respondents were put up as the heirs to the last male holder, Jagannathan, by the village headman of Ayyampattai vattam and his sons with a view to continue to enjoy the properties themselves; that the said village munsif and his sons had surrendered the property to the Government; and the heirship of the first and second respondents was not recognised in any prior suit, and the claim of the respondents being fraudulent and collusive, the respondents could not claim any right or title therein; that the sale in public auction held by the Government was valid, and that the plaintiff and or his brother were not entitled to any relief. The second respondent, as could be expected, remained *ex parte*.

(10) Defendants 3 and 4 were impleaded as the mortgagee and purchaser in court auction respectively, of certain items of properties left by Jagannathan. The third defendant remained *ex parte*, while the fourth defendant contended that the sale in his favour of items 1 to 7 of B schedule was valid, that the plaintiff was estopped by his own conduct from disputing it; that he was not a necessary party to the suit, and that the plaintiff was not entitled to recover possession of the land from him. But, later on the 25th July 1950, the plaintiff prayed that the defendants 3 and 4 may be struck off the records, and they were struck off accordingly, and they do not figure any more in these proceedings.

(11) The learned Subordinate Judge framed three issues on the pleadings, the material amongst them being whether the plaintiff and the second defendant were the nearest heirs to the deceased Jagannathan, and whether they were entitled to the suit properties. Both the suits having been tried together, Exs. A. 1 to A. 30 were marked for the plaintiff, who examined himself, his mother, Rama Bai and five other witnesses, in addition to the first defendant in O. S. No. 74 of 1949, who was examined as P.W. 8

On behalf of the Government, nearly 14 exhibits viz., B. 1 to B. 14 were marked. No oral evidence was let in on behalf of the Government. Taking into consideration the oral and documentary evidence in the case, the learned Subordinate Judge found that the plaintiff, and the 2nd respondent, his brother, were not the heirs to the deceased Jagannathan, and were, therefore, not entitled to the suit properties. In the result, he dismissed O. S. No. 47 of 1949 with costs, while decreeing O. S. No. 74 of 1949 also with costs.

Aggrieved by this decree and judgment the plaintiff preferred an appeal against the judgment and decree of the learned Subordinate Judge in this court, being A. S. No. 523 of 1951. This appeal was heard and disposed of by our learned brother, Ramaswami Gounder J., in an elaborate judgment. After discussing the evidence in the case as to the relationship of the plaintiff and his brother to the late Jagannathan and also the legal question as to whether by reason of such relationship the plaintiff and his brother were entitled to succeed to the estate left by Jagannathan, Ramaswami Gounder J., came to the conclusion that the relationship between the late Jagannathan and his mother Dhanabagyammal and the plaintiff and the second defendant was that of Dhanabagyam's mother's sister's sons; that was a bandhu relationship, and that such relationship was complete.

The claim of the plaintiff, the learned Judge held, was, through the mother as a cognatic relation, and holding that the plaintiff and the second defendant were entitled to succeed to the estate of Jagannathan, he reversed the decision of the learned Subordinate Judge, and allowed the appeal with costs in both the courts, made payable by the Government. Against this decision, the State Government has preferred his Letters Patent Appeal.

(12) The learned Government Pleader urged in the first instance, that there was no satisfactory documentary or oral evidence, to establish the claim of the first respondent in this appeal that he and his brother were the mathrubandhus of Jagannathan, the last holder of the property. His contention was that the learned Judge had erred in accepting the evidence of P. Ws 1 to 6 whose testimony had been described as artificial, unconvincing, discrepant and contradictory by the learned Subordinate Judge.

We have been taken through the depositions of the witnesses, who gave evidence on behalf of the plaintiff and also through the discussion of the learned Judge of the recorded evidence of the plaintiff's witnesses. Having considered the evidence and the observations of the learned Judge, we do not think that we can agree with the contention of the Government Pleader that the connecting link between the said Jagannathan and the plaintiff and his brother has not been established in the case.

Exs. A. 1 to A. 3 and also A. 14 to A. 18 have been referred to, in particular, by the learned Government Pleader, and he contended that these exhibits also do not prove to any extent that the plaintiff and his brother are in any way related to the late Jagannathan, the last holder of the properties. These exhibits are said to have been written by P.W. 7 at the instance of Jagannathan to his relations, and the person referred to as "Thambi" in these letters is said to be Jagannathan himself. In our opinion, these exhibits do lend support to the claim of the respondents that they are related to the late Jagannathan as mathrubandhus; and they are of no assistance to the appellant.

(13) A point was been made that Jagannathan's putative father was a Mahratta

brahmin and his mother was a Vellala woman, and there could not have been any relationship between a Maharatta Brahmin and a Vellala woman. We do not see any force in this contention. In so far as Jagannathan was only an illegitimate son born to Dhanabagyam, and the evidence is to the effect that Dhanabagyam was the daughter of Madhava Rao and Kannammal, and that the mother of the present respondents was Rama Bai and the sister of Kannammal, it is to be held that the link between Jagannathan and the present respondents through the mother of Jagannathan is well established.

The learned Government Pleader has taken exception of the observations of Ramaswami Gounder J., that the onus lay on the State Government to show that the last proprietor died without an heir, in order to enable the State Government to take by escheat the properties left by Jagannathan. The learned Judge has observed that the State Government had not chosen to lead any evidence, either denying the relationship set up by the respondents, or to show that the mother of Jagannathan was not the daughter of Madhava Rao and Kannammal; but that she belonged to a Vellala family.

We do not agree with the contention of the learned Government Pleader, when he urges that the observation of the learned Judge that the Government failed to adduce any evidence in support of its claim that the said Jagannathan died without any take heirs and that the Government became entitled to take over the properties left by him under the law of escheat. We are of the opinion that the State Government ought to have established that the deceased Jagannathan died without heirs, before it could take proceedings under the Law of Escheat.

The finding of the learned Judge (Ramaswami Gounder J.) that the two respondents in this appeal are the deceased Jagannathan's mother's mother's sister's sons, and that therefore, they were in the position of mathrubandhus of the deceased Jagannathan's is quite warranted, and is well founded.

(14) In the next place, the learned Government Pleader urged that even if the respondents were held to be the sons of Jagannathan's mother's mother's sister, still under the Hindu law, so far as the mother and her illegitimate children are concerned, there could be no cognatic heritable relationship enabling one to succeed to the properties of the other, and that that relationship cannot continue even amongst the descendants of such children. In other words, the learned Government Pleader contended that under the Hindu Law, collateral or cognatic relations could not trace succession to an illegitimate son, and that heritable relationship could not be extended to collaterals in the case of illegitimate offsprings.

Reference has been made in this connection to Mayne's Hindu Law, paragraph 563 at page 677, and the learned Government Pleader urges that the ordinary rule of succession under the Hindu Law could not be applied to this case, because the deceased Jagannathan was not a legitimate son, but was only an illegitimate son of his mother, who was only a concubine of Singaravelu. While advancing this

contention, it has to be observed, that the learned Government Pleader ignores the fact that the respondents in this appeal claim title to the properties left by Jagannathan not on the ground that they are agnatic relations, but because of their cognatic relationship with the said Jagannathan as bandhus through his mother.

So long as Jagannathan and the present respondents are Hindus, and this fact is not defined, irrespective of the fact whether Jagannathan was legitimate or illegitimate, there could be no question that the principles of Hindu law would be applicable to the present case, and succession to the estate left by Jagannathan will be governed only according to the principles of Hindu law. In the present appeal, there is no question of respondents being illegitimate, but illegitimacy only applies to Jagannathan, and if the respondents have succeeded in establishing that they are in the line of heritable bandhus, there is no reason why they could not be entitled to succeed to the properties left by the deceased Jagannathan.

The contention of the learned Government Pleader would appear to be that the Hindu Law of Succession could be applied only to the case of legitimate descendants and not to a case where the propositus was an illegitimate issue. The passage relied upon by the learned Government Pleader in the commentary of the learned author Mayne on Hindu Law at page 677 is to the following effect:

"The rules of inheritance relating to sapindas, samanodakas and bandhus are based upon marriage and legitimate descendant descent. The illegitimate son of a Sudra is the only exception and his rights are also restricted."

It is difficult to see how this passage is of any assistance to the learned Government Pleader on the facts of the present case. The latter part of the passage states that the illegitimate son of a Sudra is the only exception to the general enunciation in the earlier part. But the earlier part of the passage clearly says that the rules of inherence relating to sapindas, samanodakas or bandhus are based on marriage and legitimate descent. Bandhus are certainly included in the list of heirs set out in the earlier part of the said passage relied upon by the learned Government Pleader.

If Jagannathan was the son of Dhanabagyam the exclusively kept concubine of Singaravelu, there could be no question of any illegitimate descent between Dhanabagyam and her son Jagannathan. It must be remembered that in the present case, the respondents claimed only through the mother's mother of Jagannathan, who was no other than the sister of the mother of the respondents. Though Jagannathan might have been the illegitimate son of Singaravelu, still it cannot by any means be contended that Jagannathan was not the son of Dhanabagyam. The one certain factor is that Jagannathan was born to Dhanabagyam, and that being so, if Dhanabagyam could succeed to the estate left by Jagannathan as his mother, and if Dhanabagyam's properties could be succeeded to by her mother, then certainly on the death of Dhanabagyam's

mother, if there are no other heirs, her sister and her children in succession will be entitled to inherit the properties of Jagannathan's mother's mother.

That is how bandhu relationship comes into existence, and this relationship is not in any way affected by the last holder having been an illegitimate son of his putative father. Respondents' relationship is traced only through the mother of the illegitimate son and not through his father. This distinction is very vital and the learned Government Pleader seems to overlook this in his argument that the Hindu Law of Succession could only be applied to the case of legitimate descendants and not to the case where the propositus has been an illegitimate issue.

If this contention were to be accepted, then the rights of all mathrubandhus to succeed to the properties left by the last holder will have to be scrapped out of the Hindu law of Inheritance. On the other hand, not merely the text books of Hindu law, but decisions of courts in this country and the Privy Council, have all recognised the right of mathrubandhus to the properties of a Hindu who has left no other heirs in the order of priority set out in the Hindu law of inheritance, to succeed to his estate. In Viswanatha Mudali and Another Vs. Doraiswami Mudali and Another, , a Bench of this court has held applying the ruling in Mayna Bai v. Uttaram, 2 Mad HCR 196, that the legitimate descendants to two sons of a Hindu dancing woman are under the Hindu law entitled to succeed to each other. the Bench has observed,

"Though the Sruthis and Smritis are applicable only to the Aryans, yet the text writers have extended the law to all the residents of India, and the courts have applied the Hindu law to all the races inhabiting this vast country in the absence of proof of any special or local custom. The Dravidians of Southern India who are of Turanian origin had settled in India long before the Aryans entered it. They had their own laws and customs which are prevalent even today. The Aryans when they settled in this part of India attempted to introduce their customs and laws but they were never completely successful.

The laws relating to family relations and succession and inheritance laid down by Manu and the commentaries like Yagnavalkya and Vignaneswara, were never accepted as binding by all the people. It was the East India Company's courts that held for the first time that the laws contained in the ancient Sruthis and Smrithis were applicable to all Hindus in Southern India in the absence of any custom or customary law governing any class of people.....

In course of time the courts have come to regard Manu and the commentators as authoritative exponents of the law applicable to all the inhabitants of this country, who do not profess any distinctive faith like Muhammadanism or Christianity. The customary law was considered as an exception to that contained in the Sruthis and Smritis. Under the loose term "Hindu" all class of people are brought within the pale of "Hindu Law" as expounded in the texts of the various Sruthis and Smrithis and their commentators. It therefore follows that people

who have been born in India and who were of the Hindu faith and whose customs and manners are those of Hindus are governed by the Hindu law.

In the case of a dancing woman or a Hindu prostitute, her religion is Hindu and her customs, manners and observances are Hindu, and her sons are Hindus and the Hindu law therefore is applicable to them.

The caste and persuasion of the mother determine the rights of her son, if illegitimate."

(15) This Bench further overruled the contention that collateral relationship was traceable only through the father, i.e., in other words, that it was only in the case of agnatic relation that the principle was applicable, and that an illegitimate son cannot inherit to his father's collateral relations and that

"in the case of Muniappa Mudali and Muthuswami Mudali the father being unknown agnatic relationship does not exist and therefore there can be no collateral succession among their descendants.

"It is well settled that an illegitimate son cannot claim to inherit to his father's collaterals. He cannot claim to succeed to the legitimate son of his father but can succeed only to his father and the father can succeed to him."

In *Jogar Nath Gir Vs. Sher Bahadur Singh*, , it was held that a Hindu mother, governed by the Mitakshara law, could inherit the estate of her illegitimate son, and that succession of the mother to her illegitimate son is in consonance with the scheme of inheritance under the Mitakshara law. The Bench observed,

"Illegitimacy in the sense in which it is now understood was not at all recognised under the ancient Hindu law, with its numerous varieties of marriages and still more numerous varieties of sons; and the question of illegitimacy could come in only if there was a legal impediment to marriage on account of relationship; or there was an infringement of the rule of caste by a woman of a higher caste marrying a man of a lower caste. But the position has been considerably modified in view of the fact that many forms of marriage and varieties of sons are obsolete, in the sense that, unless allowed by custom, they are not now recognised by law."

In *Meenakshi Ammal and Another Vs. Ramaswami Josier and Another*, , *Varadacharir J.* has held

"that the general principle of the Hindu law is undoubtedly to limit heirship to legitimate issue but in the case of illegitimate sons amongst Sudras a special exception has been made by the texts. One should ordinarily have thought (on the analogy of the principle *ex pressio unius*) that this itself is a clear indication against recognising similar exceptions by way of analogy."

The learned appellate Judge has referred to the decision of this Court in *Meenakshi Ammal and Another Vs. Murugayya Mooppanar*, , wherein *Krishnaswami Aiyangar J.*, has observed as follows:

"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."

After referring to these observations, the learned Judge has considered the development of the law as it applied to the cognatic blood relationship that exists between the mother and the illegitimate child, and has come to the conclusion that if succession is claimed through cognatic relationship, there could be no difficulty in accepting such a claim. We are in agreement with the reasoning of the learned appellate Judge which is in complete accord and consonance with the trend of the decisions which recognise the line of heirs known in Hindu law as *mathrubandhus*.

(16) Our attention has been invited to the decisions in *Rachakonda Venkata Veeraraghavayya and Another Vs. Pinapala Sreenivasa Rao and Others*, , *Yendamuri Veeranna Vs. Yendamuri Satyam and Others*, , *Sadu Ganaji v. Shankerrao Deoraoji*, ILR (1955) Nag 467 : AIR 1955 Nag 84, *Pandurang Ganpatrao Raut and Others Vs. The Administrator General of Bombay*, , *Vennamuddala Venkata Challyamma alias Venkata Lakshamma Vs. Cheekati alias Gaddam Subbarao and Others*, , and *Yeditha Venkanna Vs. Nakka Narayanamma and Others*, , as touching the point now argued before us.

(17) In *Rachakonda Venkata Veeraraghavayya and Another Vs. Pinapala Sreenivasa Rao and Others*, , *Chandrasekhara Aiyar, J.* held that an illegitimate son had no right to trace succession collaterally, and that he could not be regarded as heir to the estate of the last male holder and his suit brought on that footing had to be dismissed. This decision does not have much application to the facts of the present case.

(18) In 1947 1 Mad LJ 301 : AIR 1948 Mad 10, *Harwill J.*, has held that when under the Hindu law a daughter or a son is referred to, the law-givers have contemplated only a legitimate son or a legitimate daughter,

"Illegitimate children have no rights at all in succession except in the two specified special classes of cases. Hence an illegitimate son of a daughter cannot be considered under the Hindu law as the daughter's son and would not be entitled to the rights and privileges of a daughter's son."

We do not think that the facts in this case are the same as in the case before us. Therefore this decision is not of any great relevancy to the question to be deduced in the present case.

Pandurang Ganpatrao Raut and Others Vs. The Administrator General of Bombay, , it was decided that under the Hindu law, collaterals of the mother are not entitled to succeed to her illegitimate daughters. The case before us is not however of a collateral of the mother seeking to succeed to her illegitimate daughters. In the present case on the death of *Dhanabagyathammal* her mother's mother succeeded to her estate and on her death her sister and in turn

her sister's son would be entitled to succeed to the estate left by her.

As already observed this is a case of succession being claimed by a mathrubandhu and provision is specifically made in Hindu law recognising the claims of mathrubandhus. Only, if these respondents are declared not to be mathrubandhus, then the question of their not being entitled to the estate would arise. But in so far as we have held that these respondents are mathrubandhus, their claim cannot be resisted by the appellant.

(20) In *Vennamuddala Venkata Challamma alias Venkata Lakshamma Vs. Cheekati alias Gaddam Subbarao and Others*, , to which one of us was a party it was held

"that members of the dancing girl community who adopt the Hindu faith and Hindu customs and manners must be treated as persons governed by the ordinary Hindu law, but on account of the special kind of life led by them which is in important respects inconsistent with Hindu dharma on which ultimately Hindu law is based, they are governed largely by custom and usage often not in consonance with Hindu law. When there is no proof of a custom directly applicable to any particular case of disputed possession, the general rules of Hindu law may be applied by analogy as rules of justice and equity. It cannot be said that a girl adopted by a woman of the dancing girl community becomes entitled to all rights of collateral succession unless there is a custom pleaded and proved to that effect." We are afraid, the principle of the above decision does not help to any extent the learned Government Pleader who contests the right of the mathrubandhus like the respondents to succeed to the estate of their mother's mother's sister,

(21) In ILR (1955) Nag 467 : AIR 1955 Nag 84, the decision was to the effect that the illegitimate son of a daughter is not entitled to inherit the stridhanam property of his maternal grand mother, either on the analogy of the principles of Hindu law or on the special text, or on the ground of justice, equity and good conscience. We do not think that the facts of this case are "ad idem" to the facts of the present case. Even this decision has no application to the point that is now under discussion.

(22) In *Yeditha Venkanna Vs. Nakka Narayanamma and Others*, , a Bench of this Court held that where a married women died leaving behind her a sole illegitimate daughter and certain stridhana properties the illegitimate daughter would succeed to the stridhana properties in preference to the brother of the husband of the deceased. It further held that illegitimacy was no bar to the succession to a woman's stridhana. neither the language of the Hindu law texts, nor the application of any rule of interpretation would justify the exclusion of illegitimate children of a Hindu married woman from succeeding to their mother's estate.

The Bench also held that as between a legitimate and an illegitimate daughter, even if a legitimate daughter survived, she would not exclude the illegitimate

daughter but would only be entitled to share equally with her. The Bench upheld the view taken in *Angammal v. Venkata Reddi*, ILR 26 Mad 509, and that decision was not fully considered in *Meenakshi Ammal and Another Vs. Murugayya Mooppanar*, and *Meenakshi Ammal and Another Vs. Ramaswami Josier and Another*, . We are inclined to agree with the view held by this Bench and it makes the nearest approach to the facts of the present case.

(23) In the order of succession among bandhus and particularly mathrubandhus under Mitakshara law as given in Mullah's Hindu Law, the mother's mother's sister's son is mentioned as a heir being item 8 in the line of succession, as also in Mayne's Hindu law, 11th Edn. at page 969, the 8th item relates to the mother's mother's sister's son, who is entitled to succeed as a mathrubandhu.

(24) Mr. K. V. Venkatasubramania Iyer referred us to a text of Satatapa where among the 9 cognate relations, the 8th is said to be the mother's mother's sister's son entitled to succeed to the estate left by a female. The question then is whether this mother's mother's sister's son could be outlawed on the ground that the last owner of the properties died without leaving any heirs to succeed in the face of the trend of the decisions referred to above and also the commentaries on Hindu law as cited by the learned counsel for the respondents.

As has been observed by the learned appellate Judge and also as stated in the Commentary of Mulla at page 155 in paragraph 59 of the 12th Edn., where the State claims by escheat, the onus lies on the State to show that the last proprietor died without heirs, and since in our opinion the State Government has failed to establish that the last proprietor died without an heir, we are inclined to agree with the learned appellate Judge that the respondents are entitled to succeed in the suit, as they are the mathrubandhus of the last holder of the property.

(25) In this view we agree with the learned appellate Judge and hold that this appeal deserves to be dismissed, and it is accordingly dismissed with costs.

(26) Appeal dismissed.