
(1919) 04 MAD CK 0001
In the Madras High Court

Yellavajhula Surayya

APPELLANT

Vs

Yellavajhula Subbamma and Others

RESPONDENT

Date of Decision : 11-04-1919

Acts Referred:

Specific Relief Act, 1877 — Section 42

Citation : (1920) ILR (Mad) 4 : (1919) 37 MLJ 405

Hon'ble Judges : Sadasiva Aiyar, J; Napier, J

Bench : Full Bench

Judgement

Sadasiva Aiyar, J.—The plaintiff is the appellant. The material facts found are: The 1st defendant's husband Chinna Sambayya had two

undivided brothers, namely P. Sambayya and G. Sambayya. P. Sambayya was the eldest, G. Sambayya was the second brother, and the 1st

defendant's husband C. Sambayya was the youngest. P. Sambayya died issueless about the year 1877. G. Sambayya who was born blind about

1847 had, however, been invested with the sacred thread (the parties being Brahmins by birth) as if he had no such disability and lived in

commensality with his younger brother C. Sambayya in undivided family communion after the death of the eldest brother P. Sambayya. G.

Sambayya died in December 1911 when he was about 65 years old. His younger brother C. Sambayya, the 1st defendant's husband had

predeceased him in November 1906 leaving his widow the 1st defendant as his heir. Soon after the 1st defendant's husband's death on the 19th

January 1907, the blind Brahman G. Sambayya, executed the will Exhibit VII as follows: "" I am now 60 years old. I am born blind. Your husband

is my undivided brother. I am unmarried. My younger brother has no male issue. He left only two daughters. I execute this will in a sound and

disposing state of mind so as to make my entire property devolve on you after my death with powers of alienation by gift and sale. For the

continuation of the line, you are authorised to adopt any boy whom you please whenever you desire. If you do not desire to adopt, you should

have the right of alienation by gift and sale, as you please, in respect of the entire property mentioned herein. This will is to take effect after my

death." At the foot of the will, the particulars of the property bequeathed are given and they are said to be in possession and enjoyment of the

testator. One of the houses in Panduvva village is stated to have been purchased by the blind testator in November 1900 and to have remained in

his possession.

2. The testator was "an active and intelligent man taking part in all family transactions and contributing to the maintenance and improvement of the

family." As a matter of fact "he seems to have been entirely managing the family affairs during his life-time and the 1st defendant's husband was a

mere figurehead." "As a Vaidic Brahmin he would be officiating at ceremonies and going about for Sambhavanas and Dhakshinas on marriage and

other occasions not only when they took place in his own village but also in adjoining villages. His blindness far from being a disqualification, was a

recommendation to his being paid double the usual Dhaleshinas paid to other Brahmins. He appears to have been well versed in the Brahmanical

puranic and other religious literature" and appears to have been, "in the habit of expounding them to the villagers. He took part in the cultivation of

the lands and he sold lands, purchased lands, incurred debts by mortgaging lands, executed simple debt bonds and discharged them all on behalf of

the family." (See documents beginning in 1881, Exhibit II and ending with Exhibit XIX, dated 1910). The 1st defendant has been in possession of

the properties after the death of her brother-in-law (G. Sambayya) in 1911.

3. The plaintiff is the undivided agnate cousin of G. Sambayya and of C. Sambayya. He treated the blind man as the surviving full owner of the

family properties after the death of the 1st defendant's husband. The plaintiff even got a decree against the blind man in 1910, the liability of the

blind man being based on his ownership of his family lands.

4. The present suit was brought in July 1915 on the following averments:

(a) The blind Sambayya had, according to Hindu Law, no ownership right in the

plaint properties. His younger brother who died in November

1906 was sole owner at his death. His widow the 1st defendant in 1906 inherited the properties with a widow's interest.

(b) The will of blind Sambayya of January 1907 in respect of the properties, which did not, as above shown, belong to the blind man, giving the 1st

defendant absolute powers of disposal by gift, sale etc., cannot legally confer, on her such powers and she can only have a widow's interest as her

husband's heir in those properties.

(c) The authority to adopt given to her by such will could not lawfully be given to her by the blind man.

5. On those averments, the plaintiff prayed for a declaration that the 1st defendant, "" save a widow's estate to be enjoyed for life, has acquired no

absolute rights of sale, gift, etc., in respect of the schedule properties under the will alleged to have been executed"" by the late G. Sambayya.

6. The plaintiff does not pray in the plaint for setting aside the will nor does he seek a declaration that the power to adopt given by the will is

invalid. In paragraph 7 of the plaint, he says: "" The 1st defendant not having as yet made any adoption in pursuance of the said authority, the

plaintiff has no relief to seek for in this suit in that behalf.

7. Both the Lower Courts dismissed the plaintiff's suit.

8. The Subordinate Judge framed six issues. He begins the 5th paragraph of his judgment by referring to issues IV and VI alone. The 6th

paragraph professes to consider the first issue alone, and the 7th paragraph the second issue alone. The Vth issue is, ""whether the suit is barred"";

and I take it that the issue was not pressed by the plaintiff, The second part of the second issue raises the question whether some of the plaint

properties were the self acquisitions of Guddi Sambayya. But there is no express finding on that part of the issue. The third issue states the question

of estoppel and though the third issue as such is not referred to in paragraph 7 of the judgment of the Subordinate Judge, I find that paragraph

which professes to consider only the second issue, also gives a finding that the plaintiff is estopped by his conduct (in having brought the suit in

which the plaint Exhibit XIX was filed and the decree Exhibit XV was passed) from asserting in the present suit that the blind Sambayya was not

the sole owner of the properties by survivorship on the death of Chinna

Sambayya. On the first issue, the Subordinate Judge held that the rule of exclusion of a born blind man from inheritance along with his brothers, and from coparcenery with his brothers and from the right of survivorship had become obsolete. On the first part of the second issue, the Subordinate judge held that by the assertion of joint ownership with his brother and by enjoyment accordingly as managing member, the blind Sambayya had acquired a prescriptive right as joint owner before Chinna Sambayya's death in 1906 (and hence had exclusive title by survivorship at Chinna Sambayya's death).

9. On the IVth and Vth issues, the Subordinate Judge held that the plaintiff being merely a contingent reversioner to Chinna Sambayya's estate and having a mere spes successionis had no right to sue for any declaration u/s 42 of the Specific Relief Act unless waste or alienation by the widow is alleged and proved and that as no such waste or alienation is alleged in this plaint, the plaintiff was not entitled to maintain the present suit.

10. On appeal the learned District Judge agreed with the Subordinate Judge on all these points and dismissed the appeal.

11. The questions therefore for consideration in this second appeal are:

1. Has the rule of Hindu Law which prevents a person born blind from claiming interest along with his brothers as a co-owner in ancestral

properties become obsolete?

2. Did Guddi Sambayya acquire by prescriptive enjoyment the right in the plaint properties as co-owner with his brother Chinna Sambayya and

did he possess such co-ownership right on the date of the death of Chinna Sambayya and could he legally acquire by long enjoyment as co-owner

such a title?

3. Is the plaintiff estopped by his conduct from denying Guddi Sambayya's title as co-owner and also title as exclusive owner after Chinna

Sambayya's death ?

4. Is the plaintiff, as a mere contingent reversioner to Chinna Sambayya's estate, not entitled to sue for a mere declaration as to the limited nature

of the 1st defendant's title in the plaint properties ?

12. As regards the rule of Hindu Law itself, the most important text is that in Manusmriti, Ch. IX, Section 201, Manu being recognised as the

highest authority on Hindu Law next to the Sruti or Veda : ""Eunuchs and outcastes, persons born blind or deaf, madmen, idiots, the dumb and

Nirindriyas are excluded from a share of the heritage."" (I have not translated the word "Nirindriyas" in the quotation. The English translators

following some commentators have translated the word as meaning ""such as have lost the use of a limb."" I shall later on show that the interpretation

and translation are wrong). Yagnavalkya Ch. II, verse 140 excludes a blind man (Andha) and not merely a man born blind (Jatyandha). He also

excludes a Pangu (crippled in both legs) and a man incurably diseased (Avichikitsya Roga) and adds "" Adyas "" (and the like persons). Verse 141

shows that the personal disqualification of a blind man does not stand in the way of his son sharing the inheritance in his place except in the case of

the outcaste's son, who, in Yagnavalkya's days, would himself have been an outcaste. Not only is the son entitled to take his disqualified, father's

place but the disqualified man himself can reopen the partition (notwithstanding the rule that an estate once vested cannot be divested) if the ground

of his disqualification is removed. The Mitakshara says, ""If the defect be removed by medicine or other means * * * * the right of participation

takes effect by analogy to the case of a son born after separation"". The Vyavahara Mayukha says, ""If after division, virility or the other absent

qualification be regained by medicine or other means, the person will receive his share like an after-born son."" See Full Bench Decision in Kalidas

Das v. Krishnan (1869) 2 Ben. L.R. 143. I need not consider whether the Mitakshara is right in saying that Yagnavalkya did not mean more than

Manu and that he intended to exclude only persons born blind and not persons who were anyhow blind at the time of the partition. In Murarji

Gokuldas v. Parvati Bai ILR (1876) Bom 177 that very learned judge, Westropp, C.J. (who consulted his equally eminent colleague West, J.

before delivering judgment) quotes the text of Manu, "the chief of the Rishis" and at page 185 he says, ""The word "Nirindriyas" in that text, which

Sir William Jones has rendered " such as have lost the use of a limb, Mr. Colebrooke has in his translation of the Mitakshara rendered thus: "those

who have lost a sense [or a limb]." * * * Vachaspati Misra in his Vivada Chintamani commenting on the text of Manu says:--"Those who have lost

the use of a limb signifies those who have been deprived of a hand, a leg, or any other member of the body. Such persons are not competent to

perform ceremonies relating to the Vedas and Smriti. They are consequently not entitled to inherit paternal property." Then Westropp, C.J.

indicates his inclination on the matter thus: " Even assuming that Manu meant by "Nirindriya" to indicate deficiency in a sense, organ, limb, or

member. I take it that the learned Chief Justice was not prepared to agree with the commentators and translators that Manu used "Nirindriya" in

that sense. This fortifies me in my opinion that Nirindriya does not convey that meaning but another meaning which I will mention later on. Then the

learned Judge says, "Nilakanta, in the Mayukha, Ch IV, Section XI quotes, amongst other texts, that of Manu, with this remark : that, as to the

words "have lost a sense (Nirindriya), they mean "deprived of the nose or the like". The translator Mr. Borrrodaile (possibly following the Smrithi

Chandrika Ch. V. pl. 61) after the word " nose", adds in a parenthesis "or smell", but that is merely conjectural. * * * * *. It is hardly probable

that, if supervening deficiency in the more valuable senses of sight or hearing, or in the organ of speech or in the reasoning faculty, were not

permitted by Manu to work disherision, he regarded a deficiency in the minor senses of taste, touch, and smell as sufficient to produce that effect".

At page 189, the learned Judge refers to a text of Brihaspati : "Manu holds the first rank among legislators, because he has expressed in his code

the whole sense of the Veda; no code is approved which contradicts the sense of any law promulgated by Manu" * * *. Upon a question as to

which the Smritis vary so much as that of disqualification for inheritance we think that the pre-eminence assigned by Brihaspati to Manu should not

be forgotten.

13. The learned Chief Justice finally concludes that congenital blindness alone is a disqualification according to the highest authority (Manu) and as,

in that case, the blindness was not congenital the blind testatrix did inherit her husband's estate and the legatees of the blind testatrix accordingly

succeeded in the appeal. Of course, the direct point decided in that case was that a person not congenitally blind could inherit. The question

whether a person congenitally blind could inherit according to the shastras and even if he could not; whether that rule of the shastras had become

obsolete was not directly decided though it was unhesitatingly assumed that the rule according to the shastras was that a person born blind was

incapable of sharing the inheritance.

14. Now comes the question whether that rule is obsolete. I need not say that a rule becomes obsolete when the reason of the rule disappears

through change of circumstances and environments in the society which was governed by that rule. Now what is the reason for the exclusion by

Manu and other Smriti Writers of a born blind man ? Manu refers to a man born blind and a man born deaf by the Dwandva Samasic phrase

Jathyandha Badhirau." He classes them along with eunuchs, outcastes, madmen, idiots, dumb and nirindriyas but does not state that the latter

should be such by " birth." In fact, madmen and outcastes need not at all be by birth. It is also impossible to give any plausible reason for giving a

share to a man who was incurably idiotic or lunatic on date of partition while refusing it to one who was such from birth. Before going further, I

shall at once deal with the meaning of the expression "nirindriyas." The word is clearly taken from the vedic text which says that Soma should not

be given pure to women as they are nirindriyas. The text occurs in Taitt : Samhita VI Kanda, V Prapathaka, 8th Anuvaka : "Soma when taken to

women did not manifest himself. Then by means of clarified butter they attacked him. By this attack, Soma became destitute of indriya (virility,

strength to breed) and they took this weak Soma for the Patnivat Agni. Hence women are unvirile (nirindriya) and destitute of inheritance." It will

be seen that the text itself was not intended to lay down any rule of inheritance but to lay down that women should not be given pure Soma but

Soma weakened by ghee (just as the Kshatriya was given Nyagrodha juice instead of soma and so on). The statement in the Veda is not an

injunction about inheritance according to the Mimamsa Rules of interpretation but is a Nityanuvada (the statement of a known fact or established

convention) justifying the real injunction. Baudhayana quotes this text in his Sutra " Arhati Stree Na dayam nirindriya Adayascha Striyo Mathayiti

Srutheh". The meaning is that a woman is not entitled to inherit because a text of the revelation says "females are nirindriyas and are incompetent to

inherit". Here the word "nirindriyas" can never mean "devoid of sight, hearing, touch, smell or taste or mind" as women generally possess these.

Every translator has translated it as meaning that females are devoid of sufficient strength or prowess or capacity in their senses. I shall in this

connection quote another text of the Sruti found in the Kathopanishad : ""
Peethodaka Jagadhatrhah Dugdha doha "Nirindriya", Anandanamathe

Lokah Tan Sa gachati Ta dadat"". Nachikethas finds fault, in this Upanishad text,
with his father who made useless gifts because the gifts were of

Nirindriya"" cows which had become too old (they were incapable of yielding milk
or manure) and were too feeble to take food and drink. In this

text ""Nirindriya"" clearly means (as in the other vedic text), "" wanting in the
required vital strength to be indicated by vigour of activity of the five

senses of perception and five senses of action and the unifying eleventh sense of
mind"". It is also to be noted that if " Nirindriya" in the texts of

Manu and Yagnavalkya means "" devoid of any sense or organ of
sense"" (including "" sense"" of action), it will be a tautology as pointed out by

Westropp, C.J., because the deaf and the blind had been mentioned just
previously. I am also very glad to have some support from Dr. Jolly in this

matter. He says (Tagore Lectures of 1883 page 272), ""Another difference of
opinion, besides the one resting on the varying number of texts

quoted in each digest, has been called forth by the philological difficulties
besetting the interpretation of some of the terms used in the old texts on

exclusion from inheritance. No other among those terms is so ambiguous as the
phrase " those who are Nirindriya any how" in a text of Manu (IX,

201), which is quoted in all digests. Occurring as it does, at the close of a list of
excluded persons, the word "nirindriya" may be supposed to be a

general term denoting bodily infirmities or defects of every other kind than those
specifically mentioned in the previous list. Thus, in another text of

Manu (IX, 18) the same word " nirindriya" is used with reference to women, and
means "destitute of strength". I feel therefore no hesitation in

saying that "nirindriya" means "devoid of sufficient capacity and vital strength in
the organs of sense. In fact, the exclusion of woman from

inheritance (except the wife, the daughter and the mother who were afterwards
brought as favoured by special texts) has been expressly based on

the above text of Veda which speaks of women being " Nirindriyas" (and not
because they cannot perform vedic rites as they are entitled,at least,

to join their husbands in performing such rites. The very name of a woman in
Sanskrit is "Abala" or "one without strength." Barring exceptional

amazons and geniuses, women were, till quite recently known as the ""weaker
sex"" and the ""frailer"" sex and just as ""the right hand"" is the strong

hand employed in useful activities, (the left hand being merely used as supplemental), so women were to be protected and cherished but prohibited

from being entrusted with any responsible work. "Women were regarded under the Teutonic Laws as necessarily dependent and the traces of this

order of ideas still remain in the English law. The proper guardian was the husband, father, brother or son, the nearest agnate or the king's Court".

(The well-known text of the Smritis that a woman is unfit during her whole life period to be independent and that father, husband and sons control

her till death may be recalled in this connection). (" So, under the early Roman Law. See Mommsen's History of Rome Vol. 1). Impotent

persons, outcastes, mad men, idiots and the born blind and deaf were persons generally incapable and even unwilling to transact business or to

manage property and the exclusion of all these was based clearly on their presumed incapacity. There are many other grounds for exclusion from

inheritance mentioned by Manu, Yagnavalkya, Brihaspati, Apasthamba, Narada and Devala. One ground was "affliction with an incurable

disease." Two others were "irreligion and being guilty of degrading sins." Manu says in sloka 214, "All those brothers who are addicted to vice,

lose their title to the inheritance." Narada says : "An enemy to his father and one who is addicted to vice take no shares of the inheritance even

though they be legitimate". Manu says in sloka 202 : "But it is just that the heir who knows his duty, should give all of them food and raiment for

life without stint, according to the best of his power. He who gives them nothing sinks assuredly to a region of punishment". Sloka 203 says: "If the

eunuch and the rest should at any time desire to marry, the issue of such as have children, shall be capable of inheriting." That the deaf and the

dumb were assumed to be defective in mind also (owing to the best avenues of knowledge being closed to them) till very recent times is, if I may

say so, notorious, That eunuchs were as a class content to be slaves obeying their masters' orders provided food and raiment were given to them

is also well known, but according to Manu if a eunuch was desirous of marrying and married accordingly and then raised progeny on his wife by

another (as was allowed in olden times), his son was entitled to share in the inheritance in his place. The Smnthe-Chandrika and the Sarasvathi

Vilasa have attempted to base the disqualification of heirs on the ground of the disqualified's incapacity to perform religious rites prescribed by

Vedas and Smritis. Surely, sudras were never entitled to perform vedic ceremonies nor chandalas and other depressed classes. The laws of

inheritance and exclusion from inheritance apply not only to the three castes of Dwijas (entitled to perform vedic ceremonies) but to all Hindus. It

therefore seems impossible to base the exclusion on incapacity to perform vedic ceremonies.

15. As regards agamic religious practices, surely a blind man is not excluded by the sastras from singing devotional songs or weaving garlands for

temple worship and so on. The man born blind is not necessarily or usually an idiot. Manu has no doubt said in chapter II, sloka 99 that even when

one among the organs of a vedic student fails, his divine knowledge passes away as water flows through one hole in a leathern bottle. But blind

boys are studying and have studied the Vedas and Sastras (like Dirghatamas of old and the blind pandit of phenomenal learning and memory of

very recent times who a few years ago dictated the Pranava Veda to the well known Benares scholar Babu Bhagavan Doss) and in modern days

there is no difficulty in teaching the blind to read. In this case itself, Guddi Sambayya was not excluded from vedic rites or social intercourse or

from the management of affairs. Some orthodox commentators excluded persons suffering from elephantiasis, atrophy and marasmus from

inheritance but no Hindu would suggest in these days the exclusion from inheritance of a man suffering from elephantiasis etc., nor would the Court

uphold such a contention. In the same way Apasthamba and Gautama exclude from inheritance sons who acquire wealth by following irregular

professions and Devala excludes a hypocrite and an impostor. As Jolly says at page 281 : ""In a primitive state of society, in which collective forms

of property were generally prevalent, a natural reluctance would be felt against recognising a disabled family member out of whom no work could

be got as an equal sharer with his capable co-parceners. A wide extension of the reasons for exclusion from inheritance is common to several

archaic legislations. I will terminate this lecture with a summary of an interesting analogy to these archaic provisions in our law. In the rules of the

Sachsenspiegel on this head, as in that old North German law book, the contents of which are closely analogous to the old laws of the Anglo

Saxons, an interesting analogy to these old archaic provisions in our law is to be found:

1. Outcastes, illegitimate children, monks and nuns, one who has killed his father or other relative, whose presumptive heir he is, or who has

forcibly dispossessed him, or robbed him of his property; these persons are entirely incapable of inheriting.

2. Dwarfs, helpless cripples, persons of neutral sex, and lepers are equally disqualified, but their next-of-kin have the duty of maintaining them.

3. The deaf, the dumb, the blind and the lame, as well as those who have no hands or feet, may inherit ordinary property, but they cannot succeed

to any feudal estate.

16. The analogy of these rules with the corresponding provisions of the Indian Law is self evident.

17. Further, even in old times the blind and lame men were not incompetent to perform religious works. Apararka the well known commentator on

the Mitakshara says at page 264, ""Though there is incompetence to perform religious works of the Patita, there is no such incompetence of the

blind, the lame and others. They have no right to perform special rites, which include parts requiring seeing the sacrifice and the like, still there is no

general incompetence to perform all religious works. They surely have the right mentioned in the Grihya Sutras to Ishta works (that is, works

performed with fire consecrated according to Vedic or Smriti rules). They can be married,½ "" From this text (Manu's text) showing the marriage

of the impotent etc., their investiture with the sacred thread is understood. * * Supposing that the born blind etc., have no right to perform Ishta

ceremonies, because of want of marriage and Upanayanam, still they have right to Poorta or conservatory works (such as digging tanks) like the

Sudras." Therefore these persons are not disqualified because of their incompetence to perform religious works but because of special texts.

Viswarupa says, ""Some say, the word "Pangu. and the rest are used as illustrative of all persons incompetent to perform Agnihotra and the like

sacrifices. That is wrong as wealth is the subject of human purpose and because we find the capacity of the unlearned who are incompetent (to

perform the above sacrifices) declared. Therefore these are disqualified to take shares because of express texts denying their rights. Their

disqualification to take a share is not because of their incompetence to perform sacrifice etc."" I think this completely disposes of the theory of

exclusion being based on incompetence to perform religious works.

18. Then, it was argued that because the blindness was due to sin in the former birth and it has not been expiated; therefore there is exclusion from

inheritance. This again cannot be the true ground of exclusion as the adoption of a religious order (like Naishtika Brahmachariya, Vanaprastha or

Sanyasa) also excludes from inheritance according to Devala who includes such a Lingee along with a mad man and a blind man. Viswarupa in his

commentary of Yagnavalkya says "" the disqualification to take a share is not * * because they bear the sign of grave sin in a previous birth.

According to tradition, the blind and the rest who are not Patita may take grand paternal property. The incompetency to give more than what is

necessary for maintenance when one is able to do so should be understood to be a mere declaration of what is proper and not a rule, To that

effect is the text of Manu, "if the eldest or youngest of several brothers is deprived of his share or if either of them dies, his share is not lost." This

shows that because of the incompetency of a disqualified person to dispose of shares obtained by him, there is resumption of what is properly

obtained by him. Therefore his share is not lost. Thus these persons are themselves alone disqualified. But if there are Aurasa and Kshetraja sons,

these are entitled to allotments if free from similar defects. Their daughters must be maintained likewise until they are made over to their husbands.

(Yagnavalkya II, 142). I cannot conclude this subject better than by quoting from that vety learned and very level-headed text-writer Jagadis

Chandra Ghose (who is fortunately or unfortunately not a Brahmin by birth). ""The rule probably owed its origin to the difficulty of keeping the

property from the attacks of the strong in those troublous times when might was right. * * * But the old rule of exclusion on the ground of physical

deformity was limited by these three ancient law givers"" (Gautama, Vasishta and Apastamba, the Sutra writers) ""to the case of the Insane and of

the Kliba or one of a neutral gender according to the interpretation of Vignaneswara,"" (These three did not mention the blind). ""These persons

were placed in the category of minors, and others incapable of transacting legal business * * * * * Now it is quite possible that during the long

centuries when Buddha's rational and merciful religion prevailed in India, all these theories"" (incapacity to perform rites, former sins etc.) ""fell into

disrepute except the doctrine that natural deformities were the consequences of grave sins in past existences. We find that during these times and in

times following them, the rule was as is laid down by Gautama, Vasishta and Apastamba that only the insane, the Kliba and the patita or outcaste

for grave sins only, were excluded. ""The Burmese Manu also lays down, that if one shall have a severe disease, shall be unable to walk, shall

stutter or be dumb, let the share such child is entitled to, be set aside, and let its relations support it. If he be blind or deaf, but perfect in his

intellect, let him have his proper share, But as mad, dumb and lame people and those who have disease of the eyes, may be relieved by medicine,

let their portion be regularly set aside for them."" * * * * ""Several commentators, such as Medatithi and Vachaspati Misra, have laid down that

persons excluded from inheritance are those who are excluded from vedic as well as Smarta ceremonies, and are thus incapable of marrying. The

Saraswathi-Vilasa says in this connection, "the inner meaning is" that deformed persons if they are eligible for marriage, are share-takers." * * *

Therefore, the proper way to determine, whether a person is excluded from inheritance, is to ascertain whether he is debarred from marrying."" As

the prohibition of marriage of blind persons became obsolete long ages ago it would naturally follow that their exclusion from inheritance must have

likewise become obsolete long ago. Now, this is the view of the Subordinate Judge (an experienced Hindu Judge.)

19. As Macnaghten says at page 133, ""It will be seen from the above specimens, that questions connected with loss of caste, and consequent

privation of the right of inheritance, are not by any means frequently litigated. I do not recollect having met with any others. Were these

disqualifying provisions indeed rigidly enforced, it may be apprehended that but very few individuals would be found competent to inherit property,

as there is hardly an offence in jurisprudence, or a disease in nosology, that may not be comprehended in some one or other of the classes. A

cursory inspection of the sub-joined catalogue of disqualifications will suffice to verify this assertion."" And then he gives the disqualifications which

include "a man destitute of virtue, a son who has no sacred knowledge, nor courage, nor industry, nor devotion, nor liberality, and who observes

not immemorial good customs one who neglects his duties" and so on. It seems to me that the principle of exclusion is conclusively indicated by

Viswarupa, "" incompetency to dispose of his proper share and especially by the text of Baudhayana which says ""persons incapable of transacting business, blind men, idiots, those who were immersed in vice or afflicted by incurable diseases and those who neglect their duties, let the heirs supply with food and apparel"". Further, Deepakalika (another commentator on Yagnavalkya) says that a Jada (one of the excluded heirs) means one without energy to perform the duties of his own station in life. "" According to Apastamba, a son who ""dissipates wealth by his vices should be debarred from participation even though he be the first born. "" I do not think it necessary to pursue this further. It is well known that commentators give all sorts of fanciful reasons as the reason of a rule of law while the real reason stares them, so to say, in the face. The strict injunction to maintain and protect disqualified heirs and the rule that their sons become sharers show that the exclusion was not intended as a punishment but as a protection to persons incapable of or unwilling to manage property and to deal in secular affairs with others (outcastes being incapable of dealing with their fellow beings) and also in order to prevent vicious persons from squandering wealth in Adharma. Giving shares to such persons would only lead to the property given to them being soon lost to them through their incapacity and unwillingness to hold it or to its being used in the promotion of Adharma.

20. As I said before, whether having regard to the reason of the rule and the change of environments and circumstances, the rule in question was likely to have become obsolete would form an important consideration for arriving at the right conclusion in this matter. The days when large families (consisting of all the agnates and their wives) lived undivided under the protection of a Kulapathi and patriarch passed away long ago. The text of Manu as now found was not as Manu pronounced it but as Bhrigu (to whom he gave the general principles) expounded it to other Rishis. Most of the slokas of even Bhrigu's dictation have been lost and many ""pious"" forgeries have crept in through medieval priest-craft. These texts as to exclusion clearly date from the patriarchal days. That many blind men though born blind have become capable of managing affairs and were married with all vedic and other rites is shown by the life of the king Dhritharashtra and of the Rishi Dhirghatamas. The duty of maintaining a

disabled agnate (however remotely connected) must have gradually decreased in strength from the date when Manu gave his original injunctions. On

this question of a rule becoming obsolete owing to change of time and circumstances, I shall only say that it has been acknowledged by numerous

later writers that the strict rules in the older Smritis have to be relaxed in this Kaliyuga owing to such changes. Thus, though according to the older

Smritis a man who hates his father is excluded from inheritance, nobody will dream of denying that that rule has become obsolete and later

commentators have tried to explain away the rule as restricted to a man whose hatred extends to attempts on the life of his father. Manu says in

Ch. II, sloka 103 that a Brahmin who stands not repeating his gayatri in the morning twilight and sits not repeating in the evening twilight must be

precluded like a Sudra from all sacred observances. That is of course obsolete. According to Manu Ch. III, Slokas 17 and 19 a Brahmin who

takes a Sudra woman to his bed and begets a child by her loses his caste as a Brahmin and ""the law declares no expiation"" for his sin. This is of

course now obsolete as concubinage with dancing-girls and Sambandams with Nair ladies (the latter being, of course, not at all morally culpable if

monogamous) cannot be said to be unknown or even uncommon and no Brahmin loses caste thereby. Exclusion from inheritance on account of

vice or extravagance is of course now obsolete. Outcastes, etc., and similar persons are now entitled to inherit by Act XXI of 1850 which shows

that the British Legislature moved with the times 70 years ago, the old days when outcastes from Hinduism were necessarily excluded from all

secular activities having become obsolete after the numerous foreign invasions. Of course, nobody will now think that the loss of a limb or a sense

by a soldier or a hero will have the effect of excluding him from inheritance even if-that rule was ever in force. If all incurable diseases were really

causes of exclusion from inheritance, chronic consumption and diabetes have been and are probably even now such diseases but nobody would

think of holding that exclusion for such causes is not obsolete. In Venkata Subba Rao v. Purushottam (1902) ILR 26 Mad. 133, it was argued by

Mr. Ramesam (who unsuccessfully appeared for the respondent) that lameness which is subsequently acquired is a ground of exclusion, relying

upon the Mitakshara and Yagnavalkya who excluded a Pangu or ""cripple"" without the qualification by birth from inheritance. Bhashyam Iyengar, J.,

interjected the following remarks in the course of his argument. "Have you found any case in which the point was raised?" and when he got the

answer "none" and that in *Fittick Chundu Chatterjee v. Juggut Mohinee Dabee* (1874) 22 W.R. 348, the point was not raised but conceded

Bhashyam Iyengar, J., again remarked, "That shows that it is obsolete as a ground of exclusion. What do you say as to one who is an enemy of his

father?" Then in the judgment the learned Judges (Bhashyam Iyenger and Moore, JJ.,) say "Even assuming that under the Hindu Law texts in case

the lameness was congenital there would be a bar, a matter regarding which we give no opinion, it is admitted in the present case that the lameness

was not congenital. No case has been quoted where any Court has held that lameness congenital or otherwise is a bar to inheritance;" and then the

learned Judges reversed the decision of the Lower Courts, The learned Judges while inclined to hold that even as regards a cripple from birth, the

rule was obsolete, got over the difficulty by following *Fittick Chundu Chatterjee v. Juggut Mohine Dabee* (1874) 22 W.R. 348, where lameness

was held to be no bar unless it were proved that the person proposed to be excluded was a cripple from birth. In *Vedanayaga Mudaliar v.*

Vedammal ILR (1914) Mad. 591 : 14 M.L.J. 297, Subramania Aiyar, J., says: "Acts or omissions which entailed degradation under the Hindu

system of life were indeed many. They included not only heinous sins and crimes but numerous other things which are looked upon as innocent or

are tolerated in these times. It may well admit of doubt whether the injunctions connected with degradation (such as loss of the right of inheritance)

were ever enforced otherwise than by expulsions from caste now relieved against by legislation. However this may be, it is quite certain that even

so far back as the days of Dayabhaga commentator, Srikrishna Tarka-lankara, loss of proprietary rights as an incident to degradation had begun

to disappear). (See Tagore Law Lectures for 1884-85, page 426). Since the establishment of British rule in this country, no one seems to have

ventured to suggest in judicial proceedings that the sins attaching to the commission of even such serious crimes as robbery, murder, etc., entailed

by itself forfeiture of civil rights as a matter of Hindu Law, for though innumerable persons have from time to time been convicted by the Courts of

such offences, the reports contain no case recognising any such doctrine." I must however state that there is one case reported in *Sudder Adawlat*

Reports, p. 188 and decided in August 1858 (Choondoor Lutchmeedavee v. Narasimmah) where exclusion was not only suggested but was

argued and where three Judges including T.L. Strange stated (1) "that mere conviction for theft, though it excluded from inheritance under the

Hindu Law, would not carry that civil penalty in a British Court of Justice because the British Criminal Code sufficiently punished the offence with

distinct penalties and (2) that theft by plaintiff of part of the ancestral property to be divided disentitled him to share." I am very doubtful if the

decision will be followed now on the second point which the Judges decided on the strength of the opinion of the Junior Pandit ignoring that of the

Senior Pandit. The N.W. Provinces High Court in Kalka Pershad v. Budree Sah (1871) 3 N.W.P. HCR 267, decided in 1871 refused to lay

down that a man became disqualified because he wrongly misappropriated to his exclusive use part of the joint property or because he was

addicted to vice or hostile to his father. At page 270 occurs this significant passage: "the texts quoted by the Subordinate Judge which are

understood to have become obsolete in practice" etc. To resume the quotation from Vedanayaga Mudaliar v. Vedammal ILR (1904) Mad. 591 :

14 M.L.J. 297 "Plaintiff's case, therefore, derives no support from the rules dealing with the matter of degradation which, even assuming that they

were at one time more than mere moral injunctions, cannot now be treated as otherwise than obsolete". I might state in this connection that there

seems to have been no case in which the Courts have decided (as distinguished from assuming or opining or as having taken it as conceded in

argument) that congenital blindness does exclude from inheritance in these days. In other words, there is no case in which a congenitally blind man

has been made to lose his inheritance by the decision of a Court.

21. In Kayarohana Pathan v. Subbaraya Thevan ILR (1913) Mad. 250 : 25 M.L.J. 251, decided by Benson and Sundara Aiyar, JJ., the following

passages occur in the judgment : "It must be noted that the ancient writers excluded various other persons from inheritance to the paternal estate

along with those specifically enumerated in the Mitakshara" "How wide the reasons for exclusion were will appear from Colebrooke's Digest, Vol.

II, pages 424 to 435. Many of the grounds of exclusion would not now be enforced by the Courts, and are practically obsolete." (Neglect of

obsequies and duties towards ancestors were also grounds of exclusion). "It is doubtful how far the injunctions contained in the books are now

actually enforced in different parts of the country. In Steele's Law of Castes it is observed that the rules of exclusion are largely qualified by

custom, and that in seventy-two castes at Poona it was found that insanity excluded only unmarried persons, and that in eighty-three castes blind

persons married and having families might inherit." As regards the incurable disease of leprosy, the case in Kayarohana Pathan v. Subbaraya

Thevan ILR (1913) Mad. 250 following Rangayya Chetti v. Thanikachalla Mudali ILR (1895) Mad. 74, Anant v. Ramabai ILR (1877) Bom. 554

and Janardhan Pandurang v. Gopal Pandurangetal ILR (1865) 5 Bom. H.C.R. (A.C.J.) 145, confined exclusion to the case of leprosy of the

agonizing, sanious or ulcerous type." This case was followed in Raju v. Ramasawmi Naicken (1914) 16 M.L.T. 254 decided by the learned Chief

Justice and Seshagiri Aiyar, J. (Sundara Aiyar, J., based the rule of exclusion on the ground of unfitness for social intercourse which unfitness is not

caused by the milder forms of leprosy). I might add here that unfitness for social intercourse caused in former times unfitness for the proper

management of property and this latter is, as I have already shown, the real reason (or rather one of the two reasons) for the ancient rule.

22. In the view therefore of very learned and orthodox Brahmin Judges of the Madras High Court beginning from Subramania Aiyar, J., many

grounds of exclusion have become obsolete owing to change of time, circumstances and environments.

23. Mr. Ganapathi Aiyar quoted a passage from an old judgment of a very learned Hindu Lawyer that a Judge ought not to alter the existing law

on account of any inclinations towards social reform. I entirely agree. But if a rule of law has become obsolete, I do not think that a Judge is

prevented from laying down the law as it exists merely because the obsolete rule is socially unjust and his decision negating the old rule would

also promote social reform and justice. I do not deny that Judges are human and may be unconsciously biased in their decisions either by their

conservatism in social and political matters or by their radicalism in such matters. Even the tendency of their particular religious, philosophical and

cultural views might unconsciously affect their view of legal principles and questions. Owing to this, Judges, of the nationality of the litigants and

acquainted with the customs and social habits of the litigants are partly in a position of advantage and partly in a position of disadvantage as compared with Judges of a different nationality. When the English Common Law became a "wooden" system in many respects, the introduction of the "human" element by the Lord Chancellors in the Courts of Equity cannot be considered to have been an undesirable innovation. Even now when equity and law have become combined, the ideas of "justice, equity and good conscience" which vary with individual Judges do have an important part in the unconscious and gradual development of law. As regards questions of Hindu Law, I do not think that extreme conservatism is to be commended so long as the legislature is slow to move in the direction of recognising that customs have become obsolete or do require alterations. It is well known that while the Indian legislature was reasonably progressive in these matters till the days of the Age of Consent Act (passed during the time of Landsowne), it has since been afraid to move with the times and to suit itself "to the changing needs of society and custom in modern times.

24. Even Sir Bhashyam Iyengar was unable to have a Sisters' Inheritance Bill (long over due) passed in the local Legislature, While extreme conservatism may be a virtue in Judges where the legislature is capable of moving with the times, I do not think that it is going outside his functions for a Judge who finds that a rule or custom has become obsolete to declare and decide accordingly, especially where, as in this country, the legislature is for well known reasons, tardy in such matters. It cannot be deemed that their Lordships of the Privy Council have by their decisions gradually developed the law as to alienations by a managing member or by a father in a Hindu family. They have recognised that the growth of the law by judicial decision in the several High Courts on this question and allied questions has not been uniform owing to the Judges presiding over the respective High Courts having taken different views. See, for example, the judgment of the Privy Council in *Suraj Buns Koer v. Sheo Persad Singh* (1879) ILR 5 Cal. 148 P.C. The rights of contingent reversioners to bring suits as regards adoptions and alienations by Hindu widows have also been gradually developed. It has not been a matter of strictly following precedents but of "broadening" the law from precedent to precedent

and it may even be (where the process of such broadening has gone on too far) of reacting occasionally. (The Malabar Law as to the rights of

maintenance of junior members living apart from the Tarwad house is still in a fluid state and is broadening from precedent to precedent).

25. Coming back to the question now under consideration, most of (what I may call) the ante-diluvian rules of the Hindu Law of exclusion from

inheritance jar not only on the minds of persons educated in English but, so far as I know, on every ordinary Hindu mind and hence a large

proportion of those rules dealing with extravagance, non-performance of religious or caste duties, etc., became obsolete long ago. Under these

circumstances, the finding of the Subordinate Judge (accepted by the District Judge) in this case that the rule of exclusion through blindness, though

congenital, is obsolete cannot be said to be due to an unconscious bias in the mind of the Subordinate Judge in favour of social reform. I would

therefore decide the first question in favour of the respondent.

26. On the 14th question as to the right of the plaintiff to bring this suit as a person having a legal character or right against a person interested to

deny it (See Section 42 of the Specific Relief Act), I entirely agree with the opinion to be delivered just now by my learned brother and have

nothing to add. It becomes, unnecessary to consider the other two questions. (2) and (3).

27. In the result, the second appeal is dismissed with costs.

Napier, J.

28. My learned brother has set out the fact in this case and also the questions that arise for decision. I will deal with the fourth question first,

namely, "is the plaintiff as a mere contingent reversioner not entitled to sue for declaration as to the limited nature of the 1st defendant's title." It is

contended for the respondents that as the widow is admittedly entitled to a widow's estate and as there is no allegation of waste or improper

alienation, the suit does not lie. The difficult question has been the subject of several decisions both in the Privy Council and in this Court and it

must be admitted that it is not easy to reconcile them all. It seems to me that there are two questions involved which it is best to keep separate for

the purpose of arriving at a decision in any particular case. The first is whether a person in the position of this plaintiff is a person entitled to assert

his right and the second is whether any cause of action has arisen. In this case, the first question is, has a reversioner such a position that he can assert his status in other than those specifically provided for in illustrations (e) and (f) of Section 42 of the Specific Relief Act, namely, where a widow alienates property or adopts a son. The second is, whether the existence of a will conferring absolute title on a person otherwise only entitled as a widow gives a cause of action. In *Venkata Narayana Pillai v. Subbammal* ILR (1915) M. 406, it was held by the Privy Council that the reversionary right is during a widow's life-time a mere *spes successionis*, and that where the Indian law permits the institution of a suit the right to sue is based on the danger to the inheritance common to all the reversioners which arises from the nature of the right, It would follow from this view of their Lordships that no such person can bring a suit except under the provisions of the statute. In *Janaki Ammal v. Narayanasami Aiyar* (1916) ILR 39 M. 634, the Board uses slightly different language for the judgment contains the following passage:--"It is also true that a reversionary heir although having only those contingent interests which are differentiated little, if at all, from a *spes successions* is recognized by Courts of Law as having a right to demand that the estate be kept free from waste and free from danger during its enjoyment by the widow or other owner for life." There is another decision of the Board in the same year, *Sheo Parsaud Singh v. Ramnandan Prasad Singh* ILR (1918) Cal. 694; 31 M.L.J. 77, where their Lordships consider Section 42 of the Specific Relief Act with reference to the position of the alleged reversioner. But when that case is examined, it is clear that the decision of their Lordships against the reversioner's right turned on the fact that the will which they sought to avoid had been affirmed in a Court exercising appropriate jurisdiction and the propriety of that decision could not be impeached in those proceedings. The Court therefore held that there was in fact no intestacy and so the plaintiffs were not reversioners, and so could not sue. The next decision of the Privy Council is reported in *Sowdagar Singh v. Pardip Narayanan Singh* ILR (1917) Cal. 510 : 34 M.L.J. 67. That was a suit by a reversioner against a Hindu widow for a declaration that the deed executed by her under which she purported to convey the absolute interest in the property to another reversioner who ranked equally with the plaintiff was invalid. In holding that the suit lay, their Lordships use the

following language: "In these circumstances it appears to their Lordships that this is an exact illustration of that which Section 42 of the Specific

Relief Act was meant to provide for." It appears to me that the head note to this case is wrong. The head note is that u/s 42, illustration (e) the

plaintiffs were entitled to the declaration. Their Lordships of the Privy Council do not say so. Illustration (e) deals with alienations made without

legal necessity and has reference to the ordinary class of alienations for the widow's own benefit and not to what was in that case a surrender to

one of the nearest reversioners. Their Lordships say that the objection that it involves a finding that the plaintiffs in this case are reversionary heirs

will not prevent such a suit lying because such a declaration must be given in a case falling within illustration (e). But they do not say that this

particular case is within illustration (e). The result of these decisions of the Board seems to me to be that a reversioner although he only represents

the whole body of possible reversioners and although their interest is possibly only a spes successionis has on their behalf a legal character within

the meaning of Section 42 of the Specific Relief Act and is, in a proper case, entitled to sue.

29. This seems to be the view taken by this Court in the majority of cases. It was expressly so decided by a Bench in *Puttanna alias Keshava*

Bhatta v. Ramkrishna Sastri ILR (1906) Mad.195, where the learned Judges say that the illustrations do not limit the scope of the section. This

was followed in *Rama Aiyangar v. Gurusami Chetty* (1918) 35 M.L.J. 134, the learned Judges assuming that the brother of a testator had the

necessary legal character. We have been referred to a recent decision *Sri Rajah Rao Venkata Mahipathi Gangadhara Rama Rao Bahadur Garu v.*

Sri Rajah Rao Venkata Kumara Mahipathi Surya Rao Bahadur Garu (1918) 36 M.L.J. 169 in which *Seshagiri Aiyar, J.*, has used language which

seems to throw doubt on this proposition. If the learned judge really intended to hold that a reversioner has not that character it seems to me to be

at variance with the decisions of the Privy Council and of this Court which are binding on me.

30. The next question is in what circumstances is he entitled to sue. The first decision I would refer to is that of the Privy Council in a case reported

in *Sheo Singh v. Rai Dakho* ILR (1878) All. 689. There the question considered by their Lordships was as to the effect of a nuncupative will giving

power to adopt and a subsequent adoption by the widow as against the claim of the widow's husband's brother. This aspect of the case had not

been presented to the Lower Courts and their Lordships therefore declined to give a definite judgment on that point. But they use the following

language:--"It would not probably be disputed that, if a fictitious will in writing be set up, the heir upon a proper case being made might claim to

have the document cancelled". For "a claim under such a will is not a bare assertion of title, but the setting up of a specific act by which title to

property may be conferred". This observation is obiter certainly but it covers the present case exactly for a title to the property purports to have

been conferred and to be vested in the defendant in this suit by virtue of the will. In Jaipal Kunwar v. Indar Bahadur Singh ILR (1904) All. 238

another decision of the Privy Council has been relied on as inconsistent with that view. There a widow executed and registered a will purporting to

dispose of the absolute estate of her deceased husband. The Privy Council doubted whether this was a proper case for a declaration but declined

to interfere. It seems to me that this case does not help the respondents for a will is revocable and until the death of the testator it does not pass

any property. No interest has vested or been divested. Then as to the decisions of this Court in Sreepada Venkata Ramanna v. Sreepada Rama

Lakshmana ILR (1911) Mad. 592, it was held that the mere fabrication of an authority to adopt will not entitle a reversioner to claim a

declaration that the authority is not genuine, the reason given by the Bench being that the document in question merely conferred a power on the

defendant which may or may not be exercised by her. She may change her mind and refuse to act according to the document.

31. I think that this is in entire accord with the principles enunciated in Jaipal Kunwar v. Indar Bahadur Singh ILR (1904) All. 238. It was however

held by another Bench of this Court in Bobba Padmanabhudu and Another Vs. Bobba Buchamma, that such a suit does lie. Seshagiri Aiyar, J.,

rests his decision on that of the Privy Council in Saudagar Singh v. Pardip Narayan Singh ILR (1917) Cal. 510 but with great respect the learned

Judge does not notice that in the Privy Council case the widow had actually surrendered the property to one of the reversioners so that there was,

as in the case in Sheo Singh Rai v. Dakho ILR (1878) All. 689 complete vesting of title. Venkata Narayana Pillai v. Subbammal ILR (1915) Mad.

406 was a suit to set aside an adoption which of course falls within the specific provision of illustration (f) of Section 42. The case relied on by the

respondent, Sheo Parson Singh v. Ramnandan Prasad Singh ILR (1916) Cal. 694 as one in which relief against an actual will was refused has

already been explained as founded on the validity of the will having been established by a competent Court.

32. On these cases it seems to me that a distinction may be drawn between cases where title is alleged to have vested and where there is only a

power given or a right claimed, the actual exercise of which would divest the reversioners. It certainly may be that the setting up by the widow of

an authority to adopt is not sufficient to found a cause of action in a reversioner, and I am inclined to that view myself. But whether that is so or not,

where the testator has devised the whole interest of his property to a widow, the will operates at death to vest the property in her with the result

that though she may not be exercising powers higher than that of a widow, she has an absolute title. It seems to me that it is not necessary for her

to set up actively her title. The language of the section is, "Any person denying or interested to deny," and it cannot be disputed that the widow in

such circumstances is interested to deny. I am therefore of opinion that in the present case the suit lies, and that the appellant's contention on this

point must prevail.

33. Coming now to the main question in the case, my learned brother has formulated it as follows: "" Has the rule of Hindu Law which prevents a

person born blind from claiming interest along with his brothers as co-owner in ancestral properties become obsolete ?"" My learned brother

assumes that there was at one time a definite and well-established rule to that effect. The case was elaborately argued before us by Mr. Ganapathy

Aiyar and Mr. Ramesam and our attention has been invited to the doctrine laid down by all the sacred writers from Manu to Brihaspati and by the

commentators from Viswarupa to the author of the Smriti Chandrika. I agree with my learned brother that the proposition has been established.

There remains therefore only the question whether the rule has become obsolete. Mr. Ganapathy Aiyar suggested that the rule is found on three

propositions. The first is religious, namely, that such blindness is punishment for unexpiated sin : the second is ceremonial, that such persons are not

fit for religious ceremonies : the third is social, that they are incapable of transacting affairs. I have had the advantage of reading my learned

brother's exhaustive judgment on the points and, as I agree with it entirely, I will add only a few words.

34. He has dealt with all the three aspects and has applied these tests to other supposed disqualifications. He has shown that the religious basis has

not been uniformly applied to all disqualifications, and has farther demonstrated that such religious disqualifications can no longer be held

necessarily to affect rights of property. With regard to the second, he has pointed out that in fact the various supposed disqualifications have not

prevented the performance of religious ceremonies. There only remains therefore the theory that such persons are incapable of transacting affairs.

As a basis for deprivation of property this supposed disqualification fails by not being comprehensive and secondly, is contradicted by experience.

It is not comprehensive because admittedly the disqualification does not cover the case of a child who loses its sight after birth, and is not true in

fact because persons suffering from this as well as the other disqualifications to be found in the sacred writings are admittedly perfectly capable of

looking after their own affairs. From a Social point of view the rule was doubtless of sound application in a primitive state of society, and was much

for the benefit of the person who suffered as for the other members of the family. In archaic conditions of life a blind man could not take his share

in cultivation and in protection of the family. It was therefore not unnatural that he should be excluded from a share in the property. It was essential,

however, that he should not be allowed to starve and therefore the rule which required that he should be maintained by the family was a necessary

and proper provision. In modern days, however, owing to improved methods of education there is nothing to prevent a person born blind from

being taught how to transact business and to take his proper share in the responsibility of family affairs, and there is therefore no reason why such a

qualification should still continue.

35. Our attention has been invited to a number of cases where the various disqualifications have been considered by the Courts in India and we

have been pressed with dicta to be found in those cases. It is a most noticeable fact however that in very few cases has an alleged disqualification

been upheld and those chiefly where the disqualification is real in fact, such as the case of a deaf-mute from birth. The Courts have always been

astute to distinguish. Further than that we have dicta of learned Hindu Judges in cases that have been before this Court in late years. I refer

especially to the decisions in Venkata Subba Rao v. Purushottam ILR (1902) Mad. 133, Vedanayaga Mudaliar v. Vedammal ILR (1904) Mad.

591 : 14 M.L.J. 297, and Kayarhhana Pathan v. Subbaroya Thevan ILR (1915) Mad. 250. The view uniformly expressed by these Judges has

been that some ancient disqualifications can be held to be now obsolete. I entirely agree with my learned brother that it is open to this Court to

enunciate this view. In so doing Judges are only following the example of eminent Judges in England who have from time to time declared some old

rules of the Common Law to be now obsolete, and as my learned brother has pointed out there are observations in judgments of the Privy Council

tending in the same direction. In my opinion, now that the question has been raised and argued before us at great length with full citation of all the