

Privy Council Appeal No. 46 of 1940

Allahabad Appeal No. 22 of 1937

Mussammat Sahodra - - - - - Appellant

v.

Ram Babu - - - - - Respondent

FROM

THE HIGH COURT OF JUDICATURE AT ALLAHABAD

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 13TH OCTOBER, 1942

*Present at the Hearing :*

LORD RUSSELL OF KILLOWEN

LORD MACMILLAN

LORD ROMER

SIR GEORGE RANKIN

SIR MADHAVAN NAIR

[Delivered by SIR MADHAVAN NAIR]

This is an appeal from a decree of the High Court of Judicature at Allahabad dated 13th April, 1937, which affirmed a decree of the Court of the Subordinate judge at Muttra in favour of the plaintiff dated 13th September, 1933.

The only question for decision is one of law, viz., whether the words "sister's son" in section 2 of the Hindu Law of Inheritance (Amendment) Act, 1929—which will hereinafter be referred to as "the Act"—include the son of a half-sister. Section 2 of the Act is as follows:—

"A son's daughter, daughter's daughter, sister, and sister's son shall, in the order so specified, be entitled to rank in the order of succession next after a father's father and before a father's brother:

Provided that a sister's son shall not include a son adopted after the sister's death."

The facts of the case are not in dispute and need not be referred to in detail. The parties are Hindus governed by the law of the Mitakshara. The property in the suit belonged to one Krishna Murari who was the last male owner. It was claimed by Ram Babu the plaintiff, who is Krishna Murari's father's uncle's son. His claim was resisted by Musammat Sahodra, the defendant, for herself and on behalf of her son Dhanpat. Musammat Sahodra is the half-sister of Krishna Murari, being his father's daughter, by his first wife. When succession opened, these were the two claimants to the estate, viz.: Ram Babu and Dhanpat. Dhanpat died during the pendency of the appeal.

Apart from the Act, Ram Babu as Krishna Murari's father's uncle's son would, as a *sapinda* be entitled to succeed to the estate of Krishna Murari as the nearest reversioner, in preference to Dhanpat, his half-sister's son who is only a *bandhu*. Under the Act however, the persons named in section 2 inherit with gotraja *sapindas*, and a "sister's son" coming next after a "sister" enjoys priority in succession over the father's paternal uncle's son. If Dhanpat, as the son of the half-sister of Krishna Murari was entitled under the Act to inherit the suit property, then Musammat Sahodra as his mother would be entitled to succeed him under the ordinary law.

It was urged in the Courts in India that the words "sister's son" in section 2 of the Act would include a half-sister's son, and Dhanpat would therefore have a preferential claim to succeed to the estate of Krishna Murari, but this contention was negated by the Courts, following the decision in *Ram Adhar v. Sudesra*. (I.L.R. 55 All. 725.)

In this appeal by the defendant, the same contention has been urged, the argument being that by the Act "sister" has been admitted as an heir under the Mitakshara law, that the term "sister" in section 2, includes a half-sister and by parity of reasoning, the words "sister's son" would include a half-sister's son. It is to be regretted that the respondent has not been represented, but Mr. Khambatta who has argued the case for the appellant with skill and ability has placed before the Board fairly and fully all the relevant facts and arguments.

There is divergence of judicial opinion among Courts in India regarding the construction of section 2 of the Act. In *Ram Adhar v. Sudesra* (*supra*), the Full Bench of the Allahabad High Court held that "the word sister in section 2 of the Hindu Law of Inheritance (Amendment) Act, 1929, does not include a half-sister, either consanguine or uterine." The main grounds for the decision are, that the word sister in the English language ordinarily means a sister of the whole blood and that "if we hold that 'sister' in section 2 of Act II of 1929 includes a half-sister, we shall be putting a sister and a half-sister in the same category"—which would be against the spirit of the Mitakshara law under which a relation of the full blood excludes a relation of the half blood, and "shall be introducing a 'half-sister' between the words 'sister' and 'sister's son' . . ." The learned Judges observed that the Act, "is an enabling Act which introduces certain persons as heirs who had no such place according to the ordinary interpretation of the Mitakshara law. Unless we have a clear reason to believe that the Legislature was introducing by implication a person not specifically mentioned as heir we have no right to give the word 'sister' a wider meaning than it would ordinarily bear."

They also observed,

"if we hold that a sister includes a half-sister then there will be no reason to make a distinction between a uterine sister and a consanguine sister . . . ordinarily it would be repugnant to the notions of Hindus to recognise a woman as sister who has not the same father as the person himself." This decision was followed by a single Judge of the Oudh Chief Court in *Khabootra, Musammat v. Ram Padarath* (11 Lucknow 148) and also by the Madras and Patna High Courts. (See, *Angamuthu v. Sinnapennammal*, 1938 A.I.R. Mad. 364; *Mt. Daulatkuar v. Bishundeo Singh*, 1940 A.I.R. Patna 310.) The judgment of Chatterji J. in the last mentioned case is noticeable as it contains the fullest statement of the various reasons that could be urged in support of the rival contentions. All these decisions held that "sister" in section 2 of the Act does not include a half-sister.

Besides the reasons given in *Ram Adhar v. Sudesra* (*supra*), the other grounds mentioned in these decisions shortly stated are, that the Act, inasmuch as it alters the law of succession to a certain extent should be strictly construed, that it proceeds on the principle of affinity, that the legislature might have advisedly left out of consideration the "half-sister" and the position of the half-sister is distinct from that of the full sister even in those provinces where she is an heir; all of which it is said would show that there is no justification for interpreting the word "sister" as including a half-sister.

Differing from the above view, the Nagpur High Court in its Full Bench decision in *Amrut and others v. Mst. Thagan* (1938 I.L.R. Nagpur 115) held that "a half-sister who is a child of the same father is an heir under the Hindu Law of Inheritance (Amendment) Act of 1929. The word 'sister' includes a sister by the same father even though the mother be different." The Court proceeded on the view that under the Act a sister is an heir in all the provinces to which the Mitakshara law applied, that it should be interpreted according to the notions of Hindu law of which it forms a part, and that as a general rule the law of the Mitakshara recognises no distinction between the full blood and the half blood except in a

competition *inter se*. The learned judges pointed out that as a sister succeeds as a father's daughter, a half-sister having the same father is an heir if the sister would be an heir. The same Court has also held that a half-sister's son is in the line of heirs and that a "sister's son" in section 2 of the Act would include a half-sister's son. (See *Shankar and others v. Raghoba and others* (1938) A.I.R. Nagpur 97.)

In *Rameshar v. Ganpati Devi* (I.L.R. 18 Lahore 525), Tek Chand J. (with whom Dalip Singh J. agreed) doubted the correctness of the decision in *Ram Adhar v. Sudeshra* (*supra*), stating "with great respect I think that the conclusion of the learned judges is expressed too broadly and I confess I have grave doubts as to the soundness of the decision and the reasons on which it is based."

The Act is described as,

"An Act to alter the order in which certain heirs of a Hindu male dying intestate are entitled to succeed to his estate."

And the preamble is:—

"Whereas it is expedient to alter the order in which certain heirs of a Hindu male dying intestate are entitled to succeed to his estate."

As the object of the Act is thus to alter the order of succession of certain persons therein mentioned, it is desirable to examine how the law stood with reference to their rights of succession before the Act, and how those rights have been altered by it.

Before the Act, the only females recognised as heirs under the Hindu law except in Bombay and Madras, were (1) the widow, (2) the daughter, (3) the mother, (4) the father's mother, (5) the father's father's mother. Accordingly, "a son's daughter, daughter's daughter and sister"—the first three persons mentioned in the Act were not heirs at all, except in the presidencies of Bombay and Madras, where the first two of them ranked as *bandhus*. In Bombay, the third, a "sister" is expressly mentioned as an heir in the *Mayukha*; though not expressly mentioned as such in the *Mitakshara*, her right as an heir has long since been recognised. A sister is recognised as a gotraja sapinda both in the *Mayukha* and in the *Mitakshara*. In Madras, she was recognised as entitled to succeed as *bandhu* but only after the male *bandhus*. A "sister's son" ranked everywhere as a *bandhu* before the Act.

Under the Act, all the above-mentioned four persons, "A son's daughter, daughter's daughter, sister and sister's son" are ranked as heirs in a specified order of succession and placed next after a father's father and before a father's brother, thus enabling them to inherit with gotraja sapindas.

The Act came into force on the 21st February, 1929. When it began to be enforced, the question arose in certain Courts in India (see *Bhagwan Dei Musummat v. Radha Musummat* (1938) I.L.R. 8 Lucknow; *Shrimati Shakuntla Devi v. Kaushalya Devi* (1936) I.L.R. 17 Lahore 356; *Rajpali Kumwar v. Sarjurai* (1936) 58 All. 1041; *Dalsingar Singh and others v. Mt. Jainath Kuar and others* (1940) A.I.R. Oudh 138) whether, having regard to the language of the preamble, the provisions of the Act would apply not only to persons who were already heirs under the *Mitakshara* law, but also to those of the specified persons who were not heirs before the Act; because the Act, it was said, was merely intended to alter the order in which persons already recognised as heirs would succeed and not to create new heirs. The heading and preamble of the Act do not accurately summarise its provisions, but having regard to the language of section 1 (2) of the Act which says that "it applies only to persons who but for the passing of the Act would have been subject to the law of the *Mitakshara* in respect of the provisions herein enacted . . ." the Courts concluded and in their Lordships' view rightly, that it would apply to the persons specified so as to constitute them heirs even in those provinces where they were not heirs according to the prevailing view of the law of the *Mitakshara*.

It will thus be seen that the Act has amended and altered the old order of succession in Hindu law. It affects all Hindus governed by the *Mitakshara*. Hence it appears to their Lordships that in the absence of an interpretation clause, the Courts should interpret the terms of the enactment in the sense in which they are used in the *Mitakshara* law. In



*Raghuraj Chandra v. Subhadra Kunwar* (55 I.A. 139), in considering whether the natural "brother" of the deceased Hindu taluqdar who was an adopted son, was a "brother" within the meaning of section 22, cl. 5 of the Oudh Estates Act I of 1869, as amended by s. 14 of the U.P. Act III of 1910 and was consequently entitled to the estate in preference to the widow, their Lordships answered the question in the negative, on the ground that the personal law was applicable to the interpretation of the word "brother." They rejected the argument that the Act being expressed in English is its own dictionary.

In the law of the Mitakshara, the principle is fundamental that the primary test on all questions of inheritance is propinquity in blood. "To the nearest sapinda the inheritance next belongs." (Menu, 9.189.) Applying this basic principle of succession, the Hindu law gives preference to the whole blood over the half blood. As applied to brothers, the rule is thus stated in the Mitakshara chapter II section 4 *Placita* 5 and 6:—These run as follows:—

(5) "Among brothers such as are of the whole blood, take the inheritance in the first instance, under the text. . . . 'To the nearest sapinda, the inheritance next belongs.' Since those of the half blood are remote through the difference of the mothers."

(6) "If there be no uterine (or whole) brothers, those by different mothers inherit the estate." (See, Colebrooke's translation of the Mitakshara.)

In *Garuddas v. Laldas* (60 I.A. 189) the Board held that "the Mitakshara ch. II., s. 4, vv. 5 and 6, states a principle with regard to the preference of the whole blood to the half blood applicable to all sapindas in the same degree of consanguinity." In *Jatindra Nath Roy v. Nagendra Nath Roy* (58 I.A. 372) which was a case between *bandhus* it was held that in a Hindu family governed by the Benares school of the Mitakshara law the father's half-sister's sons have preference as heirs over the mother's sister's sons. In the course of the judgment their Lordships observed, "In *Ganga Sahai v. Kesri* (1915) L.R. 42 I.A. 177, 184) it is laid down that "having regard to the general scheme of the Mitakshara the preference of the whole blood to the half blood is confined to members of the same class or to use the language of the Judges of the High Court in *Suba Singh v. Sarafraz Kunwar* (1896 I.L.R. 19 All. 215) to 'sapindas of the same degree of descent from the common ancestor.'" In their Lordships' opinion the principle of the decision applies equally in the case of *bandhus*, not descended from a common ancestor but claiming merely on the basis of propinquity. Again the Mitakshara (ch. 2, s. 4, pl. 5 to 7) definitely prefers a half-brother to the son of a full brother: (See *Krishnaji Vianktuh v. Pandurang* 1873 12 Bom. H.C. 65.)

It follows that the law of the Mitakshara recognises no difference between relations of whole blood and those of half blood which would include sisters and half-sisters as well, except when there is a competition amongst them *inter se*. This has been understood and acted upon as a general principle of Hindu law by the Lahore High Court in *Guranditta v. Mt. Jiwani* (A.I.R. 1937 Lahore p.11) in which it was held that a half-sister's son is an heir, according to its general principles. There is nothing in the Act itself to show that the interpretation of the word "sister" as including a "half-sister" sanctioned by the Mitakshara, is contrary to its intention, either express or implied. In *Lion Mutual Marine Insurance Association v. Tucker* (1883, 53 L.J.Q.B. 185 and 189) Brett M.R. observed:—

"It is I consider a well settled rule that in construing a statute or a document it is not right to follow merely the words of the statute or document taking them in their ordinary grammatical meaning: but it is necessary also to apply those words to the subject matter dealt with in the statute or document and then to construe them with reference to that subject matter unless there is something which compels one not so to construe them. The rule is, I think, that the ordinary meaning of the words used in the English language must be applied to the subject matter under consideration."

In their Lordships' opinion, the Act should be read as a part of the general Hindu law of inheritance and when so read, it should be held as already explained, that the word "sister" used in it would include a half-sister. It is obvious that the object of the Act is to give effect to the principle of propinquity by bringing into the order of succession some of

those persons more nearly connected with the propositus by ties of blood than others whose connection with him though as sapindas is but remote. On the whole, in giving full effect to the principle of propinquity their Lordships cannot find any sufficient reasons to exclude the half blood as such. However, in thus interpreting the term "sister" as including half-sister one qualification should be made.

It is said that if we hold that a "sister" includes a half-sister, there will be no reason to make a distinction between a uterine and consanguine sister and that it will be repugnant to the ordinary notions of Hindus to recognise a woman as a sister who has not the same father as the person himself. This objection does not seem to be insurmountable. In his annotation under placitum 5 in section V of ch. II of the Mitakshara, the learned commentator Colebrooke refers to the following text of Nandapandita wherein he says: "Kinsmen (*bandhus*) are *sapindas* and these may belong to the same family or not. . . . The daughters of the father and other ancestors must be admitted like the daughters of the man himself and for the same reason." Following this text the sister was recognised as heir as *gotraja sapinda* in Bombay; though elsewhere she was not recognised as an heir except in Madras where she was treated as a *bandhu*. Their Lordships think that the description given by Nandapandita "the daughter of the father" is helpful in interpreting the term "sister" where, as in this Act it is used to signify an heir with reference to persons governed by the Mitakshara. In their Lordships' opinion, the term "sister" in the Act would include a half-sister, i.e., a sister by the same father even though the mother be different; but cannot be extended beyond that to include one who has not the same father.

It is stated as an objection that the full sister and the half-sister must take together, if the word "sister" in the Act includes a half-sister; but this is too rigid a view. On ordinary principles, the difficulty will not arise; for, although as recognised under the Mitakshara, a sister will include a half-sister the latter will take the inheritance only when there is no full sister to claim it.

If the term "sister" in the Act includes a half-sister, then it must be held by parity of reasoning, that the term "sister's son" would include a half-sister's son. In this connection their Lordships would draw attention to the decision in *Subbaraya v. Kylasa* (I.L.R. 15 Mad. 300) where in holding that a half-sister's son is entitled to inherit under the Hindu law in force in the Madras Presidency, the learned Judges pointed out that the position of a half-sister's son in the line of heirs is the same as that of a sister's son. In the course of the judgment they stated as follows:—

"The relationship between the maternal uncle and his sister's son or step-sister's son is alike that of *sapindas*, for, in both cases, there is a common grandfather and the relation of *sapindas* arises from connection as parts of the body." In *Shankar and others v. Raghoba and others* (A.I.R. 1938 Nagpur, 97), the learned Judges of the Nagpur High Court observed, "once it is accepted that the son of a half-sister occupies the same position as the son of a full-sister and consequently falls within that class, and once it is seen that the Hindu law does not speak of them separately in the texts it must be taken that the Legislature was using language familiar to Hindu lawyers and meant to elevate all the persons who formed that particular class and who are ordinarily designated by the term "sister's sons." Their Lordships find themselves in agreement with the above observations of the learned Judges of the Nagpur High Court.

For the above reasons, their Lordships are unable to accept the conclusion arrived at by the learned Judges in *Ram Adhar v. Sudeshra* (*supra*), on which the decision under appeal is based. The Courts in India have not viewed the question from the correct standpoint. In their Lordships' opinion, Dhanpat, the son of the half-sister of Krishna Murari who succeeded to the estate under the Act having died, his mother has under the ordinary law inherited from him.

In the result, their Lordships will humbly advise His Majesty that this appeal should be allowed and the decrees of the Courts in India should be set aside and the suit should be dismissed. The plaintiff will pay the defendant's costs in the High Court and in this appeal; but in the trial Court, each party will bear its own costs in consonance with its order.

In the Privy Council

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MUSSAMMAT SAHODRA

v.

RAM BABU

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DELIVERED BY SIR MADHAVAN NAIR

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