

Basangauda Nagangauda Vs. Basangauda Dodangauda

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Court : Mumbai

Decided On : Aug-19-1914

Reported in : AIR1914Bom202(2); (1914)16BOMLR699

Judge : Basil Scott, Kt., C.J.,; Beaman and ;Hayward, JJ.

Appeal No. : Second Appeal No. 525 of 1913

Appellant : Basangauda Nagangauda

Respondent : Basangauda Dodangauda

Judgement :

Basil Scott, Kt., C.J.

1. In my opinion Timava, the widow of Kardepa Dodangauda's brother, is a nearer heir of Dodangauda than his uncle's sons, the defendants.

2. I entirely agree with the reasoning and conclusion of Hayward J. upon the point. The compact series of heirs ends with the brother's son (Mitakshara, Ch. II, Section V, pi. 2 J Mayukha, Section VIII.'pl. 18).

3. The grand-mother's place is specially fixed and this alone gives her preference over unspecified Sapindas in the line of the father. I can find no reason for treating the brother's widow as a Sapinda to be postponed to all males capable of inheriting in the line of the grand-father. On the contrary the position that brother's wives are

Sapindas in the line of the father for all purposes results clearly from the following passage in the Acharakanda of Vijnaneshvara which was discussed in Lallubhai Bapubhai v. Mankuvarbai I.L. R (1876) Bom. 388. and very recently by the Judicial Committee in Ramchandra Martand v. Vinayak Venkalesh Infra.:-' In like manner...brothers' wivas also are (Sapinda relations to each other), because they produce one body (the son), with those (severally) who have sprung up from one body (i. e., because they bring forth sons by their union with the offspring of one person, and thus their husband's father is the common bond which connects them).' Mr. Justice Hay ward has referred to Kesserbai v. Valab Raoji I.L. R (1879) Bom. 188. and Nahalchand Harakchand v. Hemchand I.L. R (1884) Bom. 31. I will only add in support of his conclusion reference to Russoobai v. Zoohkhabai I.L. R(1895) Bom. 707. and Tricum Purshottam v. Natha Daji (1911) 13 Bom. L.B. 863; I.L.R. 36 Bom. 120, In the first of these cases the judgment was delivered by Sir Charles Sargent, one of the Judges who decided Ram-chandra v. Krishnaji Unreported 8. A. No. 624 of 1888. referred to in Rachava v. Kalingapa I.L.R. (1892) 16 Bom. 716. He said of a step-mother: ' It is a necessary inference from.... Lallubhai Bapubhai v. Mankuvarbai that she is entitled to inherit as a gotraja sapinda. The latter case, as explained by the judgment in Rachava v. Kalitigapa, must be taken as deciding that the widows -of gotraja sapindas in the case of collaterals are to be preferred to the male gotrajas in a more remote line, and a fortiori the widow of a male gotraja in the ascending line...will have that preference over such collateral.' The uncle's sons are indeed mentioned in pi. 4 of Ch. 11, Section 5, of the Mitakshara but they cannot be regarded as specially mentioned in the succession so as to preclude the operation of the above rule. In Tricum Purshottam v. Natha Daji (1911) 8 Bom L.R. 863. Chandavarkar J. said : ' If once it is conceded that a half-sister is a Gotraja Sapinda she stands aearer to the propositus in the line of heirs than a paternal uncle.