

Buddha Singh and ors. Vs. Laltu Singh and ors.

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Court : Allahabad

Decided On : Jul-06-1912

Reported in : 16Ind.Cas.529

Judge : Banerji and; Piggott, JJ.

Appellant : Buddha Singh and ors.

Respondent : Laltu Singh and ors.

Judgement :

Banerji, J.

1. This appeal raises an important question as to the order in which, according to the Benares School of the Mitakshara Law, gotraja sapindas succeed. The first plaintiff claims the estate of Sahib Sahai as his next heir under the following pedigree:

NAINSUKH MAL,

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Narpat Singh, Kunji Mal,

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|-----| Buddha Singh alias

| Chaturi Singh, plaintiff.

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Puran Singh, Raja Gur Sahai

| Musammat Rani Kishri

Budha Singh, kunwar,

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Laltu Singh, Sahib Sahai.

defendant No. 1.

2. The correctness of this pedigree is not admitted on behalf of the defendants but the case has been decided by the Court below on the assumption that it is correct and the appeal before us has been argued on the same assumption.

3. The last male owner of the property in dispute was Sahib Sahai. After his death, his mother, Rani Kishori Kunwari, was in possession till her death in 1907. It is claimed on behalf of the plaintiff, Budha Singh alias Chaturi Singh, that he being the grandson of the great grandfather of Sahib Sahai, the last owner, has a preferential right of inheritance as against Laltu Singh, the great grandson of Sahib Sahai's grandfather. The other plaintiffs are purchasers of part of the property from Budha Singh and are apparently financing the litigation.

4. The question to be determined is whether under the Hindu Law as prevailing in these Provinces, the great grandfather's grandson succeeds in preference to the grandfather's great grandson. The question is not free from difficulty and the authorities are to some extent conflicting.

5. The Mitakshara bases the order of succession on failure of sons and their descendants on the following text of Yajnavalkya:

The wife and the daughters also, both parents, brothers likewise and their sons, gotraja (gentiles), bundhu (cognates), a pupil and a fellow student. On failure of the first among these, the next in order is indeed heir to the estate of one, who departed for heaven leaving no male issue' (Aputrasyay (Chap. II, Section 1, Sections 1).

6. In Section IV of Chapter II, the author of the Mitakshara deals with the rights of brothers and Section V lays down the rule of 'succession of kindred of the same family name termed gotraja or gentiles.' In Section 1, it is stated that the gotraja (gentiles) are the paternal grandmother and relations connected by funeral oblations of food and libations of water (sapinda and samanadaka),

7. Paragraphs Nos. 4 and 5 are as follows: '4. Here on failure of the father's descendants (santan), the heirs are successively the paternal grandmother, the paternal grandfather, mother, father, the uncles and their sons.' '5. On failure of the paternal grandfather's descendants (santan), the paternal great grandmother, the great grandfather, his sons and their sons inherit. In this manner must be understood the succession of kindred belonging to the same general family till the seventh degree among the sapindas'.

8. The above is the translation of the original given in Setlur's Hindu Law Books on Inheritance and is more accurate than Mr. Colebrooke's translation.

9. Relying on the above texts, the learned Advocate for the appellant contends that in the ascending line of heirs, the paternal grandfather and his son and grandson succeed after the father, his son and grandson and, that after the paternal grandfather's descendants mentioned above, the paternal great grandfather, his son and grandson come in, that is to say, the heirs are the paternal grandfather and his two descendants and after them, the great grandfather and his two descendants and the grandson of the paternal grandfather only comes in as a gotraja sapinda under the last clause of Section 5. On the other hand, it is urged that the word son in the above texts includes the grandson and

great grandson, that the word *santan* must be taken to include three descendants and that in computing the heirs in the ascending line, three descendants of each ancestor should be computed. The former contention has for its support, besides the literal words of the texts of the *Mitakshara*, the opinion of Biswar Bhatt, the author of the *Subodhini*, and the *Madanparijat* among commentators and of Mr. Mandalik and Mr. (Map Chandra Sarkar among modern writers, whilst the latter contention is favoured by the authority of Apararka and *Vaijayanti* among commentators, and of Dr. Jolly, Mr. Mayne, Professor Sarbadhikari and other modern writers, to whom I shall presently refer in detail. I leave out of consideration the commentators who are of high authority in the *Maharashtra* and *Dravidh* Schools of the *Mitakshara* Law and do not carry much weight in these Provinces. The *Virmitrodaya*, which, next to the *Mitakshara*, is of paramount authority in the *Benares* School, does not discuss the question but simply repeats the words of the *Mitakshara*. The question thus turns on the interpretation of the words *santan* and *putra* in Sections 4 and 5 of the *Mitakshara* cited above; that is to say, whether by *santan* in Section 4 and Section 5 is meant, the descendants specifically mentioned in the preceding paragraphs and the word *putra* is to be taken in the narrow sense of 'son' and does not include the grandson. The appellant contends that the enumeration of heirs given in the above paragraphs should be strictly followed and that after the son of the paternal uncle, comes the line of the paternal, great grandfather. He says, as stated above, that the paternal uncle's grandson is a *gotraja* only under the last portion of Section 5. It may be taken as settled that the enumeration of heirs in the *Mitakshara* is not exhaustive. We have, therefore, to consider whether the word 'son' is to be taken in the narrow sense contended for and whether in the case of each ancestor in the ascending line, only two descendants are to be computed.

10. The word *putra* has, it seems to me, been understood in a wide sense. In the text of *Yajnavalkya* beginning with *patni* (wife), etc., cited above, the word at the end is a *putrasya*. That the word *putra* is used by him in an extended sense and is not limited to the son but also includes the son's son and the son's grandson is manifest. This is admitted by Mr. Mandlik on page 222 of his work on *Hindu Law*. In the translation of the text itself, he 'has retained the word *putra* and in the note relating to it he says the word *putra* in this verse stands for son, son's son, son's

son's son.' He refers to the Virmitrodaya and Balambhatta as authorities for this interpretation. This is also in accordance with what Manu ordains (Chap. IV, M. 187, Sacred Books of the East, Vol. XXV, p. 366) in the following text: To three ancestors, water must be offered, to three funeral cakes must be given, the fourth descendant is the giver of oblations, the fifth has no connection,'--that the participation of the body extends to the fourth descendants including the propositus. To the same effect is the following text of Daula: 'Up to the third degree, the member of the family are of the same body' (Ghose's Hindu Law, 2nd Edition, p. 97). Parasara says, that the separation of the body accrues to the fifth person born of one's family.' (Ghose p. 57). Jimutvahana, quoting Manu, Vishnu Harita, Yajnavalkya, Sankha and Likjita, says that the term putra stands for descendants up to the son's son's son'. (Mandlik's Hindu Law, p. 381). Vijnaneswara, the author of the Mitakshara, has also used the word putra in the same sense in Chapter I, Section I. In Section 3, treating of unobstructed and obstructed inheritance, he says with reference to sons and grandsons, &c., that the rule should be 'inferred in respect of their sons'. Both Balambhatta and the author of the Subodhini are of opinion that the word their (tat) in the above passage refers to the grandson, &c., so that the grandson includes the great grandson. Again, Chapter II, Section 1, of the Mitakshara is headed: Right of the widow to inherit the estate of one who leaves no putra (aputrasya).' There can be no doubt that the word putra here also includes the grandson and the great grandson. Similarly, in Section 4 of the same Chapter, the word seems to have an extended meaning so that the author of the Mitakshara has generally used the word putra, wherever it occurs, in the sense of including the two immediate descendants of the son in the direct line. There is apparently no reason for holding that he has used the same word in a restricted sense in Section V, paragraphs 4 and 5. It seems that having used the word putra in other places in an extended sense, he considered it unnecessary to state that he did so in the chapter in question also. The view contended for will, it seems to me, militate against the general scheme of succession laid down in the Mitakshara. In the case of the owner himself, his son, grandson and great-grandson succeed one after another, that is down to the third degree. They take before the parents and, therefore, it is reasonable to conclude that the same rule applies to the descendant of the father

and the grandfather. There is apparently no reason to limit the line of descent to two descendants only in the case of the father and the grandfather and it does not seem that the author of the Mitakshara intended to do so. If such was his intention, one would expect that he would state some reason for putting a restricted meaning on the word putra in the case of the father, the grandfather and other ascendants, although that word had been elsewhere used by him in the sense of including the grandson. Under the Mitakshara, sapinda relationship depends on participation in particles of the same body, and propinquity is the rule of inheritance. It is to the nearest sapinda that the inheritance goes. Therefore, the three descendants of the father being nearer sapindas than the three descendants of the grandfather and the three descendants of the latter being nearer than the three descendants of the great grandfather, the three descendants of the father inherit before the descendants of the grandfather and his three descendants inherit before those of the great grandfather. This is perfectly consistent with the rule of the Mitakshara. If Vijnaneshwar intended to lay down a different rule, he would not have used the word santan in Sections 4 and 5 of Section V. That word has a wide meaning and in the English translation of Amarkosh, its equivalent is 'lineage', 'race'. The use of that word may fairly be regarded as an indication of the idea that the descendants of the father and the grandfather, etc., are not to be limited to two degrees only but should include the great grandson, who is the last man in the series of those who are of the same, body, according to Manu and other ancient Hindu Law givers.

11. The learned Advocate for the appellant chiefly relies on the position which he contends is given in the Mitakshara to the grandmother, that is, immediately after the brother's son and he urges that the persons mentioned by name are indicated as the heirs who would come in after the paternal grandmother. As to this, it seems to be extremely doubtful whether the author of the Mitakshara intended to bring in the paternal grandmother after the brother's son before his grandson. In Section 2 of Section V, he was considering the question whether the grandmother would come in immediately after the mother. He expressed the opinion that she does not do so, that her place in the order of inheritance is after the compact series of heirs from the father to the brother's son and 'that the highest place which can be assigned to her (utkarshe) was after the brother's son. If this placitum be read with the general context and be considered in connection with the whole

scheme of succession according to the Mitakshara and with the meaning of the word 'putra' as understood in other Chapters, it would not, in my opinion, support the appellant's argument to the extent contended for and the grandmother would inherit after the brother's descendants and just before the paternal grandfather. The expression 'compact series of heirs' in Section 2 apparently refers to the series, of heirs mentioned in Yajnavalkya text quoted above and not to the heirs mentioned in Chapter V of the Mitakshara. It is also urged that if son includes that grandson, the daughter's grandson would succeed after the daughter's son. The answer to this is that the daughter's son succeeds because he is assigned a particular place by Yajnavalkya in the text quoted above, otherwise he would have succeed as bondhu. This cannot be said of the daughter's grandson who is not mentioned in the text. The learned Advocate also relied upon the Subodhini and the Madanparijat as supporting his contention that the great grandfather and his son descendants succeed after the grandfather's grandson, i.e., the paternal uncle's son. The latter of the two authorities only recites the words of the Mitakshara literally. The Subodhini, no doubt, at one place says that the brother's grandson does not succeed after the brother's son but in the case of unobstructed and obstructed inheritance, it would include the son of the grandson in the line of heirs. (Mandlik's Hindu Law, page 382). Besides, the author of that work would include females among Gotraja heirs, which is admittedly not the law in the Benares School.

12. On the other hand, Apararka and Vaijayanti clearly support the view that the grandson of the paternal uncle succeeds before the line of the great grandfather comes in. Mr. Mandlik and Mr. Golap Chandra Sarkar adopt the list of heirs specifically mentioned in the Mitakshara and would not extend the line of the father and the grandfather to three degrees of descendants but would limit them to two.

13. On the other hand, Professor Sarbadhikari (Tagore Law Lectures, 1880) would extend the list of heirs to three degrees of descendants in each case. He points out that there are fourteen classes of sapinda heirs, four of whom are propinquous sapindas. The first of these are three immediate descendants of the deceased. The next class consists of the mother, the father and their three immediate descendants. In the third class, are the grandmother, the grandfather and their

three immediate descendants. The fourth class consists of the paternal great-grandmother and the great grandfather with their three immediate descendants (page 654). He gives a complete table of sagotara sapinda heirs on page 656, assigning in the ascending line, the order of succession to each ancestor and his three immediate descendants. In this respect, he differs from Mr. Mandlik, who gives the right of succession to two descendants only (see table on page 378). Dr. Jolly adopts the same view as Mr. Sarbadhikari (Hindu Law, pages 210 and 212). The table of heirs given by him is on the same lines as, that of Mr. Sarbadhikari and he gives to the grandfather's great grand son the 17th place, while he assigns the 21st place to the great grandfather's grandson. Mr. Mayne in his well known work (7th Edition, page 777) mentions the grandfather's successors as being 'issue to the third degree inclusive'. In the Vyavastha Chandrika Vol. I, page 183, the great-grandson of the paternal grandfather, that is, the grandson of the paternal uncle is included. Messrs. West and Bahler also think (page 121) that the descendants of the grandfather must be exhausted before the great grandfather's line can come in. The opinion of Mr. Bhattacharya (2nd Edition, pages 444 to 448) was that the three immediate descendants of the grandfather succeed before the great grandfather referring to his opinion and that of Professor Sarbadhikari. Mr. J.C. Ghose, in his work on Hindu Law (2nd Edition, page 148), says: 'This rule is in accordance with the later theory of sapinda and probably more consistent with the principle of propinquity.' The weight of the authority of commentators and text writers is thus in favour of the respondent. It is said in regard to Apararka's opinion that it is based on the theory of spiritual benefit, which is inconsistent with the Mitakshara theory of sapindaship. The Virmitrodaya, however, which next after the, Mitakshara is of great authority in the Benares School, regards superior spiritual benefit as a determining factor in cases of competition and this seems to have been the opinion of their Lordships of the Privy Council in *Bhyah Ram Singh v. Bhyah Ugar Singh* 13 M.L.A. 373 : 14 W.R. 1 (P.C.) : B.L.R. 293. However, it is not necessary to go into that question because, as observed by Mr. Ghose (page 147),), sapinda relationship is 'based on the identity of the body of the father, son, grandson and great grandson'.

14. The preponderance of the case law on the subject is also in favour of the respondents. In *Kalian Rai v. Ram Chander* 24 A. 128 a Bench of this Court held

that the word 'son' in the Mitakshara includes 'grandson' and, therefore, the brother's grandson is a nearer sapinda than the son of the paternal uncle. The exact question now before us was not decided in that case but the principle laid down applies equally to the present case. The authorities were referred to and discussed and the conclusion arrived at was that the Mitakshara was not to be understood in a restricted sense when using the words putra and santan, and that those words include the grandson also. The opinion of Mr. Harrington in the case of Rutcheputty Dutt Jha v. Rajunder Narain Rae 2 M.L.A. 132 was considered and approved. That opinion has been adversely criticised by Mr. Mandlik (pages 380 383). With much of this criticism, I am unable to agree. The weight of authority, as pointed out above, is in favour of the view that the line of each ancestor down to the three immediate descendants must be exhausted before the next ancestors and his descendants can come in. In so far as Mr. Harrington extends the line to six degrees, he has apparently gone too far, but that is no reason for rejecting the theory he enunciates, the principle of which is, in my opinion, fully borne out by authority.

15. The decision of this Court in the case mentioned above appears to have met with the approval of the Bombay High Court in Kashibai Ganesh v. Sitabai Raghunath Shivram 13 Bom. L.R. 552 : 35 B. 389 : 11 Ind. Cas. 560. In Rachava v. Kalingapa 16 B. 716 Mr. Justice Telang, referring to the Mitakshara Chap. II, Section V, Sections 4 and 5, observed that it was laid down that the propinquity of gotrajas is to be determined by lines of descent; that is to say, the inheritance is to go first in the line (the word in the original is santana, literally, continuation) of the paternal grandfather, then in default of any one in that line, of the paternal great grandfather and so forth.' The learned Judge understood the word santana in an extended sense and in his opinion the line of the grandfather was to be exhausted before the great grandfather and his line came in, so that this decision may be regarded as an authority supporting the case of the respondent.

16. In Kureem Chand Gurain v. Oodung Gurain 6 W.R. 158 which was a Mitakshara case, the Calcutta High Court approved of Mr. Harrington's opinion and recognised the right of the brother's grandson.

17. The Madras High Court has held the contrary view. The most recent case on the point is that of Chinnasami Pillai v. Kunju Pillai 21 M.L.J. 856 : 35 M. 152 : 10 M.L.T. 226 : 11 Ind. Cas. 885 where it was held that the word 'son' in the Mitakshara, Chapter II, does not include the 'grandson'. The learned Judges seem to have based their decision on what they regarded as the consensus of opinion among lawyers dealing with the Mitakshara School of law as prevalent in this (Madras) Presidency. For the reasons already stated, I am unable to agree with the learned Judges and to dissent from the view taken in this Court in Kalian Rai v. Ram Chander 24 A. 128. In my opinion, on principle and on the authorities, the view adopted in that case is correct.

18. Upon a true interpretation of the texts of the Mitakshara and on the authorities referred to above, I hold that the three immediate descendants of the grandfather succeed in preference to the great grandfather and his descendants and that the great grandson of the grandfather is a preferential heir as against the grandson of the great grandfather. The defendant Laltu Singh is, there, fore, the next heir to Sahib Sahai and the plaintiff's claim has been rightly dismissed. I would dismiss the appeal with costs.

PIGGOTT, J.

19. This is a suit for possession in respect of property both moveable and immoveable of very considerable value of which the last full owner was one Sahib Sahai who died in July 1873. Possession has since been with his mother, Rani Kishori Kunwar, and the succession opened on the death of that lady in the month of August 1907. The suit is based upon a pedigree according to which the first plaintiff, Buddha Singh alias Chaturi Singh, is the grandson in the male line of one Nain Sukh Mal who was the paternal grandfather of Raja Gur Sahai (or Gauri Sahai), husband of Rani Kishori Kunwar and father of Sahib Sahai. The plaintiff's own pedigree shows that Laltu Singh (defendant No. 1) is the grandson in the male line of Puran Singh, own brother of Raja Gur Sahai. The defendants did not admit the plaintiff, Buddha Singh, to be in fact the son's son of Nain Sukh Mal, but this issue of fact has not at present been, tried out. The learned Subordinate Judge has held in effect that whatever doubts may exist elsewhere on the question

of Hindu Law involved, the decision of this Court in the case of *Kalian Rai v. Ram Chandar* 24 A. 128 was binding upon him and was sufficient authority for the proposition that Laltu Singh, as the grandfather's great grandson of Sahib Sahai, was a nearer heir to that gentleman under the Hindu Law of the Mitakshara School than Buddha Singh alias. Chaturi Singh, even supposing the latter to be able to prove himself to be the grandson of Sahib Sahai's great grandfather, all the relationships referred to being, of course, in, the direct male line. There was some little discussion before us at the commencement of the hearing as to the convenience of the course thus adopted by the Court below but it is to be noticed that the plaintiffs have not made it a plea in their memorandum of appeal that they desired an issue to be remitted upon the question of fact and it seems clear that the learned Subordinate Judge acted as he did with the acquiescence, if not with the express consent, of both parties. We thought it best, therefore, to accept the position as it stood, and we have had the advantage of hearing the question of law argued out at length with the assistance of an array of Counsel on both sides exceptionally well qualified, if I may take the liberty of saying so, to assist the Court in arriving at a correct conclusion.

20. Much of the argument centred round Mr. V.N. Mandlik's exposition of the Hindu Law of Succession contained in his commentary on the 'Vyavahara Mayukha' and I find it convenient to turn at once to the table given by that learned author at page 378 of his work quoting from the edition of 1830. We have exhausted in this case the line of the propositus himself and that of his father and the question is as to the steps to be followed in order to arrive at the next heir amongst the gotraja sapindas. There is no grandmother or great grandmother to be considered in this case, and I need not complicate the question at this stage by considering the position assigned to these ladies, or to other female heirs of the same class. Broadly speaking, Mr. Mandlik's principle as applied to the facts of the present case is to ascend to the line of the grandfather, to follow this downward for two generations only, that is to say, as far as the grandfather's son's son (that is to say the first cousin of the propositus) and then to ascend to the next generation and take the line of the great grandfather. This is similarly followed for two generations only before ascending to the line of the grandfather's grandfather and the process is continued to the sixth in ascent from the propositus (the great

grandfather's great grandfather) after which Mr. Mandlik returns once more to the lower generations continuing, each line in turn until he reaches the sixth in descent, either from the propositus himself or from the common ancestor in each case. It is this table, together with the authorities upon which it purports to rest, which forms the basis of the appellant's case. It places the plaintiff Buddha Singh as great grandfather's grandson eighteenth in the order of succession while the defendant Laltu Singh as grandfather's great grandson stands only thirty-eighth. He is postponed not merely to Buddha Singh but to such hypothetical-heirs as grandfather's first cousins, as well as to the practically inconceivable heirs arrived at by ascending two generations higher still who appear as numbers 24 to 30 inclusive in Mr. Mandlik's table. As against this scheme of inheritance, which I may refer to for convenience sake as Mr. Mandlik's, there have been laid before us two other schemes or theories, which I propose to speak of as Mr. Harrington's and Mr. Sarvadhikari's. The former was expounded by Mr. Harrington of the Sudder Dewani Adalat Court in the case of Rutcheputty Dutt Jha v. Ragunder Narain Rae 2 M.I.A. 132 so long ago as 1839. It goes on the principle of exhausting the line of each ascendant down to the sixth person in direct male descent before taking another step in the upward line. As applied to the facts of the present case, this principle would exhaust the line of Sahib Sahai's grandfather, not merely down as far as his great grandson, the defendant Laltu Singh, but if necessary, three generations further before seeking for an heir in the line of Sahib Sahai's great grandfather. The principle laid down by Mr. Sarvadhikari and arrived at independently by Dr. Jolly in his 'History of Hindu Law' (at page 212) lies between these two. It would follow Mr. Mandlik's plan in its general outline, but would carry the descent in each case one step farther, namely, to the great grandson of the common ancestor concerned. Thus, in the present case, the line of Sahib Sahai's grandfather would have to be carried down to that gentleman's great grandsons and would thus reach the defendant Laltu Singh before any attempt was made to search for other possible heirs by ascending to the line of the great grandfather in order to reach the plaintiff Buddha Singh.

21. The defendants, of course, stand to win their case if the Court will accept either Mr. Sarvadhikari's or Mr. Harrington's scheme of succession but their learned Advocate was inclined to press the former upon our acceptance rather

than the latter. For purposes of argument, however, I prefer to consider Mr. Harrington's first. I do not propose to transcribe the ancient texts on which the argument turns, the most important of them have been set forth in the judgment of the lower Court. The essential point is the interpretation to be placed on the fifth section of the second Chapter of the Mitakshara. We must go back, however, to the beginning of the chapter in order to remind ourselves that we are dealing with the estate of one who departed for heaven leaving no male issue (Vide Yajnyavalkya C. II, S.V. 137 as quoted in the Mitakshara itself). The word used here is 'apturasya' and it is common ground that as used in this particular place and in this particular context, the word does not mean a man who has left no sons surviving him, but means at least a man who has left no son, grandson or great grandson in the male line. Mr. Harrington would take it broadly as meaning a man who has left no lineal descendants in the direct male line. The first four sections of the Chapter deal with the succession to the estate of such a man as far as the exhaustion of his father's line. We then come to the fifth Section introduced by the words. 'If there be not even brother's son, gentiles share the estate.' Amongst these, the ancient author proceeds to put the paternal grandmother first and he diverges into a curious exposition of his reasons for so doing. He then explains the general distinction which he draws between gentiles (sapindas) and cognates (bandhus), and finally returns to his table of succession at the fourth sub-division of the section. Thus, he says, on failure of the father's line (santan), the succession goes to the paternal grandmother, the paternal grandfather, the uncles and their sons. The next sub-division given the succession 'on failure of the paternal grandfather's line to the paternal great grandmother, The great grandfather, his sons and their issue, and provides, further, that this is the way in which the succession of 'gotraja sapindas' is to be reckoned up to the seventh degree.' After this, we are to make a fresh start in search of kindred connected by libations of water, and the principle laid down appears to be that we are to resume the same process and carry it to the seventh degree beyond that already reached, 'or else as far as the limits of knowledge as that birth and name extend.' The great point in favour of Mr. Harrington's scheme of succession is that it avoids making a fresh start until the necessity for so doing is clearly indicated by the ancient text itself. It carries out one single and consistent process up to the dividing stage

marked by the end of pl. 5, and it then proceeds to follow the directions of pl. 6, by carrying a precisely similar process six degrees farther. It rests upon the contention that the words 'son' or 'issue,' wherever they occur in this section, must be interpreted in accordance with the general context, and must be governed by, the use of the word 'santan' at the beginning of pl. 4 and pl. 5, as well as by the general direction to carry the entire process 'up to the seventh degree.' That there is authority for the use of the word 'sons' in other parts of the Mitakshara so as to include at least the sons and grandsons of such sons is not denied, the contention for the appellants is that this use is only to be accepted where there are express words in the text itself to authorise such an interpretation. The argument in favour of Mr. Harrington's scheme I would state as being that the interpretation of such words as 'sons', and 'issue' should be governed in each case by the context as a whole, and that the context in the present case is such as to justify, if not to necessitate, an interpretation which will carry the direct line of descent downwards to the limit of the 'seventh degree' prescribed by pl. 5. I understand that Mr. Harrington, in order to give symmetry and completeness to his scheme of inheritance, would propose formally to place the lineal descendants of the propositus in the male line down to the seventh degree (i.e., down to the great grandson of the great grandson) first in order, before ascending to the line of the father at all and would similarly exhaust the line of the father down to the grandson of a great grandson of a brother of the propositus before ascending to the grandfather's line. This has been made a matter of serious objection against the entire scheme by Mr. Mandlik and other Hindu critics. They contend that on the ancient texts themselves, there can be no doubt that the ascent to the father's line (I am passing over for purposes of argument the rights of the wife, the daughter, the daughter's son and the mother) commences as soon as the line of the propositus has been carried down to his great grandson. Moreover, they lay particular stress on the position of the grandmother, contending (and this is an argument used both against Mr. Harrington's scheme and against that of Mr. Sarvadhikari) that it is quite clear from Section V, pl. 2 of the second Chapter of the Mitakshara that the paternal grandmother succeeds immediately after the brother's son. These arguments are not without real weight, but I conceive that there is much to be said by way of rejoinder. One cannot deal with an ancient text

like that of the Mitakshara precisely as one would with a modern Act of Parliament. I cannot feel that it is a conclusive argument against a scheme of inheritance, which is really intended to apply when one reaches the 'gotraja sapindas' after the exhaustion of the father's line, that it involves by analogy the assigning of a place in the line of succession to such improbable heirs as the great great-grandson or the brother's great grandson of the propositus such as does not seem to be strictly warranted by the ancient text. The text relating to the paternal grandmother represents what the author of the Mitakshara felt to be a difficulty, not to say an anomaly, about the older scriptures on which he was commenting. It is at least open to argument whether, on a correct rendering of the original, the author's meaning should not be taken to be that the paternal grandmother can only come in 'at least' or 'at the highest' after the brother's son. In any case, the argument to some extent at least begs one of the most critical questions in issue, that is to say, whether the expression 'brother's son' in this very passage may not include the descendants of the brother in the direct male line either to the third or to the sixth degree. I now pass on to consider Mr. Sarvadhikari's scheme. In order to the due appreciation of this, it is necessary to go right back to the original text of Manu, which is the foundation of the Hindu Law on the question. I quote from Manu, III, 216, as translated by Mr. Ghose, at page 66 of his book on Hindu Law: 'To the three (ancestors) water must be offered, to three the funeral cake (pinda) is given, the fourth (descendant) is the giver of these (oblations), the fifth has no concern (with them)'. The way in which this text has been understood and applied by subsequent commentators can best be understood if we start with a series of seven descendants in the direct male line in which our propositus occupies the middle place. He offers the mystic 'funeral cake' to three ancestors, i.e., to his own father, paternal great grandfather; similarly he has three descendants, who make the same offering to him, namely, his son, his son's son and his great grandson, the son of his son's son. By the 'fifth', who has 'no concern', is to be understood the fifth person in descending series reckoning the propositus himself as the first, that is to say, the fifth' person would be the great grandson's son. In the table at page 378 of Mr. Mandlik's book, to which I have already referred, we find, as the basis of the scheme of inheritance, a series, not of seven, but of thirteen descendants and ascendants in the direct male line, with the propositus or

deceased owner' in the centre. This is presumably because of the interpretation which all Hindu lawyers appear to have placed on the expression 'up to the seventh degree' in the Mitakshara, Chapter II, Section V, pl. 5. The series itself stands connected with the propositus not only by the offering of water spoken of in the text of Manu, but by the fact that the great grandfather offers the funeral cake to his own great grandfather and the great grandson receives the same offering from his own great grandson. The general principle has been laid down (vide Mayne's Hindu Law at page 777 of the VII Edition) that so far as the issue of each ancestor are his sapindas, they are also the sapindas of the person with whom they, are connected through that ancestor.' From these considerations, Mr. Sarvadhikari deduces a theory of nearer and more remote sapindas according to which the 'nearer' line comes to an end in each case with the great grandson of the propositus himself and of each male ancestor in the ascending line in turn, the search for more 'remote' sapindas is then recommenced with the great grandson's son of the propositus himself and continued as already explained. The theory finds support from a passage from Visvaneswara referred to at page 382 of Mr. Mandlik's book, which has evidently puzzled that learned author so much that he can only get away from it by suggesting some misreading in the manuscripts now available, a suggestion which later research has apparently quite failed to bear out. The advantage of this scheme over Mr. Harrington's is that it begins the ascent in strict conformity with the letter of the ancient texts after the great grandson of the propositus and that it can quote more direct authority for understanding the word 'sons' as including the sons and grandsons of each sons than is available in support of Mr. Harrington's theory that the descendants of such sons to the sixth degree should be deemed to be indicated. I do not say that this argument altogether meets, to my mind, the contention that Mr. Harrington's scheme is based upon the general context of the section of the Mitakshara in question (Chapter II, Section V) read and considered as a whole, but it is certainly not without weight. As the matter presents itself to my mind, a very important question is whether this scheme of Mr. Sarvadhikari's is or is not open equally with Mr. Mandlik's to an objection which I have already suggested. Does it or does it not involve making a fresh start at a point where no fresh start is indicated by the text of the Mitakshara itself? As formulated, or at any rate as presented to us in

argument, it seems to me that it does. I venture to throw out the suggestion, however, that this objection as applied to Mr. Sarvadhikari's scheme turns rather upon a question of terminology. Would the learned Hindu lawyers, who support this scheme of inheritance, be content to admit that the heirs arrived at by making a fresh start after the great grandson of the great grandfather's great grandfather come in under pl. 6 as 'kindred connected by libations of water'? If this be done and if we interpret the words 'to the seventh, degree' in pl. 5 as meaning 'up to the seventh degree in the ascending line of ancestors', it seems to me that we arrive precisely at Mr. Sarvadhikari's scheme or table of succession upon a strict and consistent interpretation of the text of the Mitakshara and subject) only to the condition that we bring in the entire line of what Mr. Sarvadhikari calls the 'remote sepindas' by virtue of pl. 6 and not under pl. 5 of the text before us. I leave it to Hindu lawyers to say whether this suggestion is hopelessly unacceptable because doing too great violence to the accepted meaning of the term 'sapindas', though I cannot refrain from remarking that the arguments before us seemed to disclose abundant instances of varying usage, now stricter and now looser, in respect of this particular term.

22. I have now said enough to have indicated incidentally the essential basis of Mr. Mandlik's theory and the line of argument upon which it is based. It involves a strict and literal interpretation of the word 'sons' or 'issue' wherever they occur in Section V of Chapter II of the Mitakshara. It is as if we were to pre-suppose a record series of 'enumerated heirs' given a preferential right amongst the sapindas themselves by virtue of the fact that they are specifically mentioned in the text itself while the position of others is left to be deduced by inference and analogy. These would be, the paternal grandmother, the paternal grand-father, his sons ('the uncles') and his grandsons ('their' i.e. the uncle's 'sons'), then the paternal great grandmother, 'the great grandfather's sons and their issue,' the latter expression being understood strictly as being the sons of such sons. The Madras High Court, which is the one modern authority clearly on the side of Mr. Mandlik's theory, has gone the full length of accepting these persons as 'enumerated heirs' in the same sense apparently in which that expression is used elsewhere of the 'compact series of heirs' from the father to the nephew spoken of in the Mitakshara Chapter II, Section V, pl. 2. Vide Chinnasami Pillai alias Subramania Pillai v. Kunju

Pillai 21 M.L.J. 856 : 35 M. 152 : 10 M.L.T. 226 : 11 Ind. Cas. 885. It matters not for the purpose of this particular case that the 'enumeration' strictly so called ceases with the line of the great grandfather, and that Mr. Mandlik himself has to continue his table of inheritance from this point by way of inference and deduction. The fact remains that a son of great grandfather's son is specifically mentioned in pl. 5, while the place in the line of succession of a grandfather's great grandson must be determined by analogy upon one or other of the theories before us. If this specific mention is to be accepted as decisive in spite of any other arguments in favour of Mr. Sarvadhikari's scheme or of Mr. Harrington's, there is undoubtedly an end of the matter and the decision of the Court below on the issue of law involved must be reversed.

23. I pass on now to consider the competing theories before us in the light of authority. It was very strongly urged upon us, in the final argument addressed to the Court on behalf of the appellants, that we should by no means base our decision upon any interpretation which we might ourselves feel disposed to put upon the text of the Mitakshara, even after considering that text in the light of opinions expressed by the most eminent modern commentators, or in view of analogies drawn from published decisions of English Courts. We are asked to decide simply what is the interpretation put upon the text of the Mitakshara by those ancient commentators who are the accepted authorities upon that school of law, as prevailing in these Provinces. I wish to make it clear that I fully appreciate the force of this argument. Had the very learned and able Advocate for the appellants succeeded in satisfying me that there was a clear and unmistakeable consensus of opinion amongst such commentators upon the particular joint in issue, I should undoubtedly have felt it my duty to accept this consideration as decisive. My learned colleague is better qualified than I am to appreciate the precise force of this argument as it was developed in detail and if it failed to convince him, I can feel no scruples on the point myself. It seemed to me that neither clear unanimity nor unmistakeable certainty of decision in respect of the particular point before us on the part of the authorities cited was made out. In some cases, the commentaries quoted simply reproduced the text of the Mitakshara with little or no variation and nothing in the way of comment that had any bearing upon the issue we are considering. It did not appear to me that more

than one authority, the Madanparijata (S. Sitarama Sastri's translation), expressed itself with anything approaching certainty in favour of Mr. Mandlik's view. Nowhere did I find anything like a complete examination of the entire section of the Mitakshara with a view to deducing therefrom a definite and unambiguous scheme of succession amongst the gentiles.' I cannot accede to the view that the question before us is concluded by a clear consensus of opinion amongst the most ancient authorities of the Mitakshara school.

24. There is no reported decision of their Lordships of the Privy Council which can be regarded as turning upon or finally determining this particular point. It is to be noticed, however, that what I have spoken of as Mr. Harrington's scheme was formulated in a case which went up to their Lordships and it is scarcely putting the matter too strongly to say that it received their tacit endorsement. Indeed, in a subsequent case, *Bhyah Ram Singh v. Bhyah Ugar Singh* 13 M.I.A. 373 : 14 W.R. 1 (P.C.) : 5 B.L.R. 293 though here again the actual point for decision was different, their Lordships seem to have expressed approval of the position that Mr. Harrington's views had received a general endorsement from their authority. The Madras High Court has been on the side of the appellants. The recent case, which I have already quoted, refers back to an older decision of the same Court in *Suraya Bhukta v. Lakshminarasamma* 5 M. 291 where Mr. Harrington's opinions in *Rutcheputty Dutt Jha v. Rajunder Narain Rai* 2 M.I.A. 132 are treated as obiter dicta, which, in a strict sense, they undoubtedly were and a clear finding is given in favour of the succession of a paternal uncle's son before a brother's grandson. This, however, is precisely and definitely contrary to the decision of two Judges of this Court in the case relied upon by the Court below, *Kalian Rai v. Ram Chunder* 24 A. 128, and we are bound at least to give the decision of our own Court the greater weight. It was contended before us that this decision does not purport to proceed upon the definite adoption of any one principle or scheme of succession and that the learned Judges responsible for the same were careful to limit themselves to the particular issue before them. I think it is true that they refrained from saying that in their view the brother's grandson must necessarily come in under Section IV of Chapter II of the Mitakshara but contented themselves with holding that even under Section V, he would be a nearer heir than the uncle's son, assuming both to take only as 'gentiles' under that section. I think it would perhaps

be open to us to say that we are not necessarily bound to carry the principle, affirmed in *Kalian Rai v. Ram Chunder* 24 A. 128 a step further into the next generation in the ascending lines, but I do not see any possible line of reasoning upon which we could find for the appellants in the present case which would not involve a finding that *Kalian Rai v. Ram Chunder* 24 A. 128 was wrongly decided. Finally I may note that the Bombay High Court is almost as clearly against the appellants as the Madras High Court is in their favour.

25. In the recent case of *Kashibai Ganesh v. Sita Bai Raghunath Shivaram* 13 Bom. L.R. 552 : 35 B. 389 : 11 Ind. Cas. 560 much of the older case law on the subject is reviewed and the great authority of Mr. Justice Telang is quoted for the proposition, that--

The inheritance is to go first in the line (the word in the original is *santana* 'literally' continuation) of the paternal grandfather, then, in default of any one in that line, of the paternal great grandfather, then of the paternal great great grandfather, and so forth.' Vide *Rachava v. Kalingapa* 16 B. 716.

26. I come, therefore, to the conclusion of the whole matter upon a general review of arguments and authorities. It is perhaps difficult for an English Judge to clear his mind altogether of some antecedent prejudice in favour of Mr. Harrington's scheme. The English law is clear that in any question of inheritance through males, the remoter ancestor and his descendants are excluded by the nearer ancestor or by his descendants how low so ever. One learned author, Mr. Gulab Chandar Sirkar Shastri, (vide page 290 of his work in the IV Edition), in adversely criticising the decision of this Court in *Kalian Rai v. Ram Chandar* 24 A. 128 has been somewhat severe upon our Judges for having (as he seems to suggest) allowed themselves to be influenced by English rather than Hindu ideas of propinquity in relationship. His remarks suggested to my mind the putting of the question actually before us to the test of personal experience. My grandfather's great grandson sounds a somewhat formidable person when you put him to me in that way but coming to disentangle him, I find that I know him well. He is the son of my first cousin, a member of a family, with which I am on intimate terms, a lad for whom I feel much natural affection. As for my great grandfather's grandsons, the

sons of my grandfather's brothers, I frankly do not know whether or not any such persons now walk this earth. Is the idea of propinquity involved in the Hindu text that 'to the nearest sapinda the inheritance next belongs' really different when you come to relations so far removed in degree from that upon which the English rule of inheritance is based, which I find to be strikingly illustrated by the case of my own family? I take leave to doubt it.

27. Of the schemes of inheritance which we have discussed, Mr. Harrington's seem to me the simplest and most consistent. I do not believe that it does any real violence to the ancient text upon which it is based, and it seems to me to have behind it a weight of modern authority beyond that which can be claimed for the other two. On the other hand, Mr. Sarvadhikari's scheme attracts me by the suggestion that it is in closer conformity with essential Hindu ideas, as going back for its basis to the most ancient authority upon which the Hindu Law on the subject is based. Subject to the considerations which I have suggested when discussing it, I think it may claim equally with Mr. Harrington's to satisfy the requirements of Section 5, Chapter II, of the Mitakshara read as a whole. If the suggestion, which I have ventured to make regarding it, is considered admissible by Hindu lawyers of the modern school, I would prefer Mr. Sarvadhikari's scheme regarded merely as a system deduced from the text of the Mitakshara to Mr. Harrington's. Otherwise I think it open to an objection which would throw back my preference to the older system propounded by the English Judge. I would unhesitatingly prefer either of these schemes to Mr. Mandlik's. With all respect to the learned authors and Judges who accept this last, I would say that the scheme rests upon a pedantically literal interpretation of the word 'sons' and 'issues' which is at variance with the context of the section read as a whole and that its logical development does violence to the great principle that to the nearest sapinda, the inheritance next belongs.'

28. I would, therefore, dismiss this appeal with costs including fees on the higher scale.

29. The appeal is dismissed with costs including fees on the higher scale.

