

**Yeditha Venkanna Vs. Nakka Narayanamma and ors.**

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**Court :** Chennai

**Decided On :** Dec-19-1952

**Reported in :** AIR1954Mad136; (1953)IIMLJ652

**Judge :** Mack and ;Krishnaswami Nayudu, JJ.

**Acts :** [Succession Act, 1925](#) - Sections 95; Hindu Law

**Appeal No. :** Appeal Nos. 236 and 661 of 1950

**Appellant :** Yeditha Venkanna

**Respondent :** Nakka Narayanamma and ors.

**Advocate for Def. :** E. Venkatesan, ;D.L. Narasimha Raju, Advs. in Appeal No. 236/50, ;D. Narasaraju and ;K.B. Krishnamurthi, Advs. in Appeal No. 661/50

**Advocate for Pet/Ap. :** P. Somasundaram, ;D. Narasaraju, Advs. in Appeal No. 236/50, ;E. Venkatesan, ;P. Ramachandra Reddi and ;D.L. Narasimha Raju, Advs. in Appeal No. 661/50

**Judgement :**

1. I have had the advantage of perusing my learned brother's judgment with which I am in agreement. I wish to make some further observations without repeating the texts through which we have been so ably taken by Mr. Venkatasubra-mania Aiyar. In the course of his learned argument he showed a thorough study of the texts and, if I may say so, a correct appreciation of the real principles in ancient Hindu law underlying the devolution of the stridhana property of a woman who dies intestate. The position that Mr. Somasundaram has put forward, while conceding the right of illegitimate children to inherit their mother's stridhana property, that they can do so only in the absence of other legitimate heirs, i. e., husband and all his reversioners, has no support whatever in the ancient texts. On the contrary other kinsmen can take only if the woman dies intestate leaving no issue. The texts nowhere differentiate between legitimate and illegitimate issue of a woman in this connection, or between children born in lawful or unlawful wedlock. The complete silence in the texts as to the rights of illegitimate daughters of a woman as against their mother is both eloquent and significant in view of the specific provision made for illegitimate sons to succeed to their father's property in case they are sudras and if they are not to rights of maintenance.

In --'Mayna Bai v. Uttaram', 2 Mad H: C. R. 195 at p. 203 (A) so long ago as 1864, a judgment referred to by my learned brother Hollaway 3. made the following observations:

"All the analogies of Hindu law, as we have already shown, are against the view of a bastard taken by the law of England. There is an element in that law, the doctrine of Christianity,-which would render any argument drawn from its provisions merely deluding. There is and can be no analogy."

Hollaway J. turning to Roman law gave a quotation from Gaius which I need not reproduce and made the following observations with which other respect I am in complete agreement.

"This great master considers, that, in not denying the natural relationship between the erring mother and her sons and of the sons with one another, and admitting heritable blood between them, the praetor was moved by natural equity. Whether this doctrine or that of the law of England is more strongly marked by the spirit of the great author of Christianity seems to us not very doubtful."

2. Paternity is a matter governed by 'jus civile' and maternity by 'jus naturale' --Mr. Venkatasubramaniam has put the matter in another way when he argued that every child has a legal mother but it may or may not have a legal father. Whatever doubt may attach to paternity at the birth of the child, there can be none as regards its-maternity. The creative forces of nature itself has bound the mother to her issue, whether born in lawful or unlawful wedlock in a manner wholly of utterly different from the bond between the father and his sons. This natural relationship and these inescapable facts are reflected in ancient Hindu law governing succession to the stridhana property of a woman.

3. There have been some decisions referred to by my learned brother with which we are unable with great respect to agree which have shown the greatest reluctance to allow illegitimate children and bastards within the pale of Hindu law of succession at all, even to their own mother. In --'Jagannath Raghunath v. Narayan', 34 Bom 553: (B) it was held that the stridhan of a female devolves on her death upon her husband in preference to her son born of adulterous intercourse. Chandavarkar J. held that Hindu law gave no place to an illegitimate son in the succession to a woman's stridhana property during the lifetime of her husband and, it would appear, and follow of all other "legitimate" heirs. In --'Meenakshi v. Muniandi Panikkan', AIR 1915 Mad 63 at p. 67 (C), at 1152 Oldfield and Seshagiri Aiyar JJ. in 1914 held that a legitimate son of a Sudra woman succeeded to the property acquired by his mother by prostitution and that her illegitimate daughter was not a heir.

In this decision, Seshagiri Aiyar J. made the following observations in variance with the opinion of Hollaway J. in --'2 Mad H. C. R. 196 at p. 203 (A),

"As regards the proposition that on equitable principles, the illegitimate offspring should be preferred to the legitimate, I must with great deference, differ from the conclusion. I do not see that any consideration of equity can arise in favour of the illegitimate offspring as against the legitimate. If one were entitled to resort to other systems of Jurisprudence regarding the rights of bastards, it would be clear that they have no legal claim upon the estate of their parents. The Hindu law contains no exception to this principle; and I fail to see how a right which is discountenanced by every civilized community can be regarded as being in consonance with equity, justice and good conscience."

It is only necessary by way of a commentary on this view to refer to the English Legitimacy Act of 1926 S. 9 of which lays down the right of an illegitimate child and the mother of an illegitimate child to succeed on intestacy of the other.

4. Ancient Hindu law as regards the devolution of stridhana has been far more progressive, than the law of England as regards illegitimate children and until the Legitimacy Act of 1926 they had no legal right to succeed to the property even of their mother. There is really no necessity for our Judge-made law to strain any further in the direction of strict exclusion of illegitimate offspring in the line of succession to the stridhana property of a Hindu woman, to bring it into line with other modern and more recently civilised communities. I agree with my learned brother that the decision of --'Arnold White C. J. and Moore J. in--'Angammal v. Venkatarreddi', 26 Mad. 509 (D), has been decided in complete accordance with ancient Hindu law texts. It was decided there that a daughter's illegitimate children were entitled to succeed to her mother's stridhana property and that the degradation of the daughter on account of unchastity does not put an end to her right to inherit the stridhanam property of her mother. I am in complete agreement with my learned brother that all the illegitimate children of a woman take in accordance with Hindu law, the daughters first; and failing them the sons, and that if a woman has a legitimate daughter and an illegitimate daughter, they will both, in conformity with the ancient Hindu texts, take equally,

5. A final consideration is the legal and ethical basis of any system of intestacy which is concerned with the

manner in which the person possessed of property would have disposed of it or had he made a will, which he was perfectly free to make. There can be no doubt that seshamma could have willed away all her stridhana property to her illegitimate daughter. She was insane and declared as such for some years before she died and the evidence on record shows that her lapse of virtue which resulted in the plaintiff's birth was condoned by her husband's family and that the plaintiff herself was brought up in her husband's family house with commendable charity if not generosity. The law of intestacy is based fundamentally on the normal manner in which the person dying without making a will would have disposed of his property, the presumption being that he would leave it to his next of kin in preference to strangers, and each law of intestacy has provided a sequence of succession in accordance with the religious beliefs, customs, philosophy and other principles governing each system of inheritance.

Whatever system of law we may consider, there can, I think, be no doubt that a woman possessed of property, who has had the misfortune to give birth to a child or children out of wedlock, would certainly bequeath her property to them in preference to her husband or any other relations. This is the basic humane and just principle embodied as I see it, in ancient Hindu law governing succession to a woman's stridhana property which has received some belated recognition and application in the English Legitimacy Act of 1926.

Krishnaswami Nayudu, J.

6. The main question that arises for determination in these appeals is as to whether Illegitimacy is a bar to succession to a Hindu woman's stridhana. One Yedida Ayyapparaju died possessed of considerable moveable and immoveable properties leaving behind him his widow, Seshamma and two daughters Annapoomamma and Mangamma. He executed his last Will and Testament on 4-11-1914 and died on 14-11-1914. Mangamma died on 11-9-1915 and Annapoornamma died on 20-7-1930 leaving behind her a son, who died on 18-3-1931. Long after her husband's death Seshamma gave birth to Narayanamma, who is the plaintiff and there is no dispute that the plaintiff was not the legitimate daughter of Ayyapparaju and Seshamma. The widow having died on 23-12-1942, the plaintiff claimed to be the heir to her mother and claimed her stridhana properties, defendant 1, who resisted delivery of possession, being the divided brother of Ayyapparaju.

Under the Will, Ayyapparaju gave a life interest to Seshamma in the properties which he obtained in the partition between himself and the other members of his family, the remainder to his daughters Annapoornamma and Mangamma, and the properties described in A schedule to the plaint, which are of the extent of 8 acres 17 cents and then of the extent of 7 acres and 95 cents were bequeathed to Seshamma absolutely, according to the plaintiff's contention. It is stated that Seshamma became a lunatic and defendant 1 took possession of the properties as her manager appointed by Court in O. P. No. 55 of 1929 on the file of the District Court, Rajahmundry. Defendant 1 continued to be in possession of the properties even after the death of Seshamma and the plaintiff had therefore to institute the suit to recover possession of the A and B schedule properties. The A schedule properties are those which were bequeathed to Seshamma absolutely and the B schedule properties consisting of 9 items are those which were admittedly acquired subsequent to the death of her husband, by Seshamma.

7. The suit was resisted by defendant 1 mainly on the ground that being the illegitimate daughter of Seshamma she was not entitled to claim her absolute properties, that in any event, the B schedule properties were an accretion to the estate of her husband and they were not Seshamma's stridhana properties, and that in respect of A schedule properties the will did not confer an absolute interest but only a limited interest on Seshamma. The learned Subordinate Judge held that items 1 to 3 out of the B schedule properties alone were Seshamma's separate properties, but items 4 to 9 were accretions to her husband's estate to which the plaintiff was not entitled to as she was the illegitimate daughter of Seshamma, that in any event she was entitled to inherit her mother's stridhana properties, which are items 1 to 3 of B schedule and that illegitimacy was no bar for her to inherit her mother's stridhana properties. There are two appeals, A. S. No. 236 of 1950 by defendant 1 and A. S. No. 661 of 1950 by the plaintiff.

8. It will be convenient first to dispose of the question as to the nature of the A schedule and B schedule properties whether they are stridhana properties of Seshamma or properties belonging to her husband either as accretions or in respect of which Seshamma had not been given any absolute interest under the Will. In so far as the A schedule properties are concerned, the recital in the Will is as follows:

"Out of the lands owned by me at Donthikurra Village, the inam wet land bearing Re-survey No. 238 and measuring 2 acres 26 cents, and the zeroyithi wet land No. 219/ 1, measuring 1 acre 3 cents and No. 204 measuring 4 acres 66 cents, in all the 7 acres 95 cents of land, with all things therein, my wife has been authorised to enjoy at her pleasure with absolute rights and powers of disposition by way of gift, sale etc., etc."

A reading of this clause could only lead to one conclusion that the estate that is sought to be conferred by such a recital is an absolute estate. The learned Subordinate Judge, however, held to the contrary, and construed the language as not amounting to an absolute bequest, but an authority or power given to her, to alienate the properties even in the absence of legal necessity. We are unable to accede to this construction. In our view, the clear and unambiguous language employed by the testator in disposing of the 7 acres and 95 cents of land does not admit of any doubt that it is an absolute bequest. This recital in the will is in marked contrast to the language employed as regards the disposition of the large extent of 70 acres of land which the deceased had for his share in the family properties. With reference to these 70 acres of land, the testator says:

"My wife shall after my death enjoy in my stead throughout her lifetime with absolute rights all the property, moveable and immovable, which I got in the partition of my family properties with my brothers, as also all the property forming my self-acquisition, and after the demise of myself and my wife, all the remaining property shall pass to my daughters as of right."

While there is a gift over as regards these properties, there is no such reservation with reference to the A schedule properties, and the use of the words "enjoy at her pleasure with absolute rights and powers of disposition by way of gift, sale etc., etc." clearly points out that the estate conferred on his wife by Ayyapparaju was nothing short of an absolute and unqualified estate. We are therefore of opinion that the learned Subordinate Judge erred in construing the document and we hold that the properties described in schedule A to the plaint are also stridhana properties of Seshamma to which the plaintiff would be entitled to inherit, if under Hindu law an illegitimate daughter could inherit her mother's stridhana properties.

9. As regards the B schedule properties, items 1 to 3 in respect of which the lower Court had granted a decree to the plaintiff were purchased on 1-12-1922 under Ex. P.3 by Seshamma for a sum of Rs. 4675 long after her husband's death. Reliance is placed on a recital in the sale deed that a sum of Rs. 4350 out of the sale consideration was to be paid in discharge of the prior mortgage in favour of Sattiraju, a divided brother of Ayyapparaju, and it is argued that the discharge of the mortgage has not been proved and in any event not shown to have been paid by Seshamma and that the amount due to Sattiraju could not be treated as monies belonging to Seshamma but must be treated as belonging to the family of Ayyapparaju. We are unable to follow this line of reasoning.

Unless it is shown that any portion of her husband's estate contributed to the consideration for the sale, it cannot be suggested that the property was purchased out of the husband's estate. Sattiraju and Seshamma's husband were divided and even assuming that Sattiraju did not claim the mortgage amount from Seshamma, it is impossible to imagine how that could enure to the benefit of Ayyapparaju's estate and it must be remembered that there is no suggestion, much less any evidence, that Sattiraju discharged the mortgage without receiving any amount. The finding of the learned Subordinate Judge that these are stridhana properties of Seshamma is not capable of being challenged and does not therefore require any interference.

10. On behalf of the plaintiff, it was contended that even items 4 to 9 of B schedule were Seshamma's properties having been acquired by her under a sale deed of 10-12-1919, Ex. P.2. But it must be noted that a major portion of the consideration under that document was in respect of the discharge of the mortgage

executed by the vendor in favour of Ayyapparaju from whom he borrowed monies. A major portion of the consideration being part of the estate of Ayyapparaju, it cannot be stated that the properties are the separate properties of Seshamma and in view of her having mingled her own monies with that of a claim of the estate against the vendor in the sale consideration, they must be treated as accretions to the estate of Ayyapparaju, and Seshamma could not be said to be the sole owner of these properties. The learned Subordinate Judge has rightly held that they could not be stridhana properties.

11. The substantial question that remains to be decided is whether the plaintiff, who is the illegitimate daughter of Seshamma, could inherit her properties and whether defendant 1, who is Seshamma's husband's brother, is not a preferential heir to Seshamma's illegitimate daughter. By virtue of a power conferred on the Will, Seshamma purported to make an adoption of a son of the plaintiff and O. S. No. 43 of 1945 was instituted on the file of the Subordinate Judge Court of Amalapuram by the plaintiff's husband on behalf of the minor adopted son for a declaration that the minor was the adopted son of Ayyapparaju and for recovery of his properties. The suit was dismissed on the ground that Seshamma was a lunatic at the time of the alleged adoption, that there was no adequate mental capacity for her to adopt and that the adoption could not therefore be upheld. From the judgment in that suit, Ex. D-12, it is seen that though Seshamma misbehaved after her husband's death, there was no excommunication and Seshamma brought up the plaintiff in the house along with her other relations and even defendant 1 treated the plaintiff as a legitimate child. The plaintiff was afterwards married to a member of the community and she has in turn given birth to the plaintiff in O. S. No. 42 of 1945 and other children. There is therefore no question of any expulsion of Seshamma from caste on the ground of her unchastity.

12. Mr. P. Somasundaram, who appeared for defendant 1, did not contest the position that an illegitimate daughter can succeed to her mother's stridhana and the right to inherit the same is not in any way affected by her not being the legitimate daughter, but contended that the illegitimate daughter cannot succeed in preference to the other heirs, in this case, the husband's brother, his contention being that so long as there is any stridhana heir available, a Hindu woman's stridhana would not pass to her illegitimate children, but the illegitimate children will get in before the properties would escheat to the State, He relied on the judgment of Oldfield and Seshagiri Ayyar JJ. in -- 'AIR 1915 Mad 63 (C)', where a Hindu married woman died leaving an illegitimate daughter and a legitimate son, it was held that the legitimate son was entitled to succeed in preference to the illegitimate daughter and, on that analogy, strenuously contended that so long as there is a legitimate heir no matter whether that heir is a child or other relation he must be given preference to illegitimate children.

13. In view of the importance of the question and doubts having arisen as to the nature, scope and extent of the right of inheritance of illegitimate children to stridhana property, it is necessary to examine both the textual and the case law on the subject, to which we were referred by Mr. K. V. Venkatasubramania Aiyar, in the course of his learned arguments.

14. With reference to woman's property, Yaj-uavalkya's Mitakshara, Chapter II, placitum 145:

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required.)

as translated in Setlur's "Hindu law Books on inheritance" is as follows:

"Her Kinsmen take it, if she die without issue". Placitum 146 is as follows:

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required.)

"The property of a childless woman, married in the form denominated Brahma, or in any of the four

(unblamed modes of marriage), goes to her husband; but, if she leave progeny, it will go to her daughters; and, in other forms of marriage it goes to her father."

The order of succession to stridhana is that it first goes to the issue and, in the absence of issue, it goes to the husband's kinsmen or to her parents and their kinsmen, which would depend upon the marriage being in one of the four approved forms or otherwise. The fundamental principle of stridhana succession therefore is first the offspring and then the others. Emphasis is laid on the existence of the offspring, since, it is only in their absence that the other relations, either her husband or her parents, could become entitled. That by offspring none else excepting the children born to her are intended is made clear by the term used to define the woman without issue. In placitum 145 the woman is described as (Editor: The text of the vernacular matter has not been reproduced. Please write to

(Aprajashtri) i.e. woman without progeny or offspring. That it would not include anyone else excepting one which the woman has given birth to is made clear and unequivocal, if reference is made to the next placitum 146 where the husband becomes the heir to the property of a childless woman if the marriage is in any of the four approved forms.

It is stated that even in that case if she leaves progeny, it would go to her daughters. The Sanskrit word used is (Editor: The text of the vernacular matter has not been reproduced. Please write to

(prasuta) meaning 'if she has given, birth'. In Apte's Sanskrit and English Dictionary, "prasuta" means begotten, brought fourth, born. "Prasuta" means woman recently delivered. The child that she gives birth to is essentially the person who will be entitled to her properties and if such a child exists no others could come in preference. Before the husband's brother in this case could be the heir, Seshamma must be held to be an (Editor: The text of the vernacular matter has not been reproduced. Please write to

(Aprajastrhi) or an issueless woman, a woman who has not given birth to a child. It is only then that the husband or the parents or their respective kinsmen could be the heirs. There is therefore nothing in the Mitakshara law of succession to stridhana to hold that a child, though bom to a Hindu woman, would not be entitled to inherit because the child was not born to the woman by her husband. What is found essentially necessary to govern inheritance is that the child must be her offspring, her progeny, one born to her and without any further qualifications or conditions.

While in the case of succession to a male, the texts refer to different kinds of sons and the illegitimate sou comes within the category of 'Dasiputra', but in so far as stridhana succession is concerned, there is no reference to different classes of daughters. The only requirement in the issue of a woman to succeed is that she must be her child born to her, begotten by her. The text relating to stridhana succession is completely silent as to any disqualification and there is nothing to suggest that though the child is begotten by her, it ceases to be the woman's issue by reason of illegitimacy. It is not necessary to import into the plain and clear language of the texts conditions as to disqualifications not based on any authority of the Hindu law givers.

15. In the Chapter relating to succession of woman's stridhana in Smritichandrika, Manu's smriti 196 in Chapter IX is quoted, which is as follows:

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Max Muller in his Sacred Books of the East, Volume 25, translates it thus; "It is ordained that the property (of a woman married) according to the Brahma, the Daiva, the Arsha, the Gandharva, or the Pragapatya rite (shall belong) to her husband alone, if she dies without issue."

The following is the text of Vishnu from which Mitakshara has taken the word (Editor: The text of the vernacular matter has not been

matter is required.) 'Prasuta'

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required.)

While restating the rules laid down by Gautama the earlier law giver that stridhanam belongs to the daughter he uses the significant word (Editor: The text of the vernacular matter has not been reproduced.

required.) Prasutayam' which is expressive of the filial relationship by natural progeniture to the mother. Balambhatia comments on the word 'Prasuta' in the Mitakshara quoted above. The learned commentator quotes the text of Vishnu and comments as follows:

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required.)

This means that woman in 'Prasuta' who has given birth to a child, i.e., the event of giving, birth to a child having taken place she is called 'prasuta'. And if she is one with progeny, has passed through the process of begetting, her wealth goes or belongs to her daughter and that is the meaning of the text of Vishnu. The idea therefore of a child born of lawful wedlock alone inheriting does not find a place anywhere in the texts which govern the rules of maternal succession.

16. Trevelyan in his book on Hindu Law Edn. 3, at page 500 is of the view that

"Illegitimacy is not a bar to the succession of children to their mother's property, but in a competition between legitimate and illegitimate children, the rights of the former prevail,"

and how far the latter observation of the learned author can still be sustained will be presently examined.

17. Sir Hari Singh Gour in his Hindu Code, 4th Edn. at page 1164 is also of the view that illegitimacy would not disqualify a heir to stri-dhan and that there is no authority against the existence of heritable blood between the woman and her offspring.

18. Ghosh in his Principles of Hindu Law, Vol. I, 3rd Edn. at page 69 quotes a text of Vrihatparasara the translation of which is as follows:

"The son, begotten by one of equal caste (the illegitimate son) is the offerer of pinda of his mother and is in every respect (a son to her) but he is nothing to the begetter, as he is born of lust."

Relying on this text, the learned author says at page 369:

"..... according to the rule of Vrihatparasara illegitimate as well as legitimate children inherit the estate of a woman and if it is stridhan there is no reason to suppose that the ordinary rule of Hindu law will not apply."

The earliest decision of our High Court is that of Phillips and Holloway JJ. in -- '2 Mad H C R 196 (A)'. In that case, Hughes, an Englishman, lived with a married Brahmin woman and had by her two sons Bamaprasad and Taukaram. The question that arose for decision was whether the sons could inherit the property of their mother and of one another. It was held that the sons are Hindus, but have to be regarded as Sudras, or as a class still lower, & that, in the absence of preferable heirs, they inherit the property of their mother and of one another, their rights being determined by the rights of the class of Hindus to which they belong.

The learned Judges observe at page 201:

"The authorities already referred to, as to the son of concealed origin, also bear upon this point, and seem to show clearly that the Hindu Law, although for obvious reasons recognising as the husband's son one got by a

man of unequal class, nevertheless gives no ground whatever for supposing, that the circumstance of birth from illicit connection severs the union between the mother and her son, so as not to admit of heritable blood between them."

They further observe at page 203;

"Our reasoning, therefore, is that there is no authority against the existence of heritable blood between the woman and her illegitimate offspring. Taukuram and his brother are decided to be Hindus. They are the Hindu sons of a woman, who was either a woman of a class lower than the fourth of Manu's classes, and in this case the sons are cognate to her and to one another, as the children of a class not twice-born out of wedlock, and entitled to inherit to their mother, and only not capable of inheriting to their father, because he is not a Hindu at all."

19. In -- '26 Mad 509 (D)', Arnold White C. J. and Moore J. held that the degradation of a daughter on account of incontinence does not put an end to her right to inherit the stridhanam property of her mother. The property belonged to one Chenchammal, who had two daughters, Kamatchi Ammal and Sinnammal. The daughters were married, but left their husband's houses and both lived in adultery. Sinnammal had two illegitimate daughters, who claimed the property of their grandmother Chenchammal as the stridhana heirs. They were held entitled to succeed to their grandmother's property, their mother having died. It is a case where the daughter's daughters though illegitimate were held entitled to succeed to their maternal grandmothers' property, the reason of that decision being based on the principle that the unchastity of their mother did not deprive the heirs of their right to inherit to their mother's property, and the plaintiffs being the daughters of the degraded woman and therefore her illegitimate children, who were presumably lawful heirs were equally not disentitled to inherit the property.

20. The question whether a mother could succeed to the property of her illegitimate son arose for decision in -- 'Jagarnath Gir v. Sher Bahadur Singh', AIR 1935 All 329 (E), and while holding in favour of such succession, the right of the mother to succeed to the illegitimate son's estate was for other reasons held to be permitted on the ground that an illegitimate son could always under Hindu law succeed to his mother's estate. That there existed heritable blood between the mother and her illegitimate offspring and on principles of justice, equity and good conscience, which principles were applied by the learned Judges in --'2 Mad H C R 196 (A)', the Allahabad High Court held in favour of the existence of such a relation.

21. In -- 'Meenakshi y. Murugayya, AIR 1940 Mad 463 (P), the illegitimate daughters of a Hindu woman were held not entitled to succeed to the stridhanam of their mother's mother, though an illegitimate daughter was entitled under the Hindu law to succeed to her mother's property notwithstanding she was illegitimate. That was a Judgment of Leach C. J. and Krishnaswami Ayyangar J. in a Letters Patent Appeal against the judgment of Varadachariar J. and the learned Judges followed another decision of Varadachariar J. in -- 'Meenakshi Ammal v. Ramaswami Josier', AIR 1937 Mad 640 (G), where the learned Judge held similarly. Varadachariar J. observes in that decision that

"the general principle of the Hindu law is undoubtedly to limit heirship to legitimate issue but in the case of illegitimate sons amongst Sudras a special exception has been made by the texts,"

but approves of the decision in -- 'Dundappa v Bhimawa', AIR 1921 Bom 137 (H) and observes that the recognition of a right of inheritance as between the mother and the illegitimate daughter in that decision will not warrant an extension of sapindaship. to other relations and that the opening sentence on page 763 of Ghose's Hindu Law (3rd Edn.) restricts the illegitimate child's inheritance to the mother's property.

Apparently the decision in -- '26 Mad 509 (D)' which recognised the right of the illegitimate daughters to succeed to the property of their mother's mother was not cited before the learned Judge in -- 'AIR 1937 Mad 640 (G)'. But this decision in -- 26 Mad 509 (D)', is referred to in the judgment of the Bench in -- 'AIR 1940 Mad 463 (F)', but was not followed. The Bench, however, proceeded on the assumption that, in so far as the

daughter is concerned she was entitled under the Hindu law to succeed to her mother's property though she was illegitimate as an undisputed proposition, but refused to extend the illegitimate daughter's right to inherit to her grandmother's stridhanam. The Bench approved of the view taken by Varadachariar J. in -- 'AIR 1937 Mad 640 (G)'.

22. In -- 'AIR 1921 Bom 137 (H)', it was held that the illegitimate daughter of a Sudra, succeeds to her mother in the absence of any nearer heir Macleod C. J. observes that

"there can be very little doubt that amongst Shudras at any rate the illegitimate daughters succeed as heirs to their mother in default of any nearer heirs"

and after citing a passage in Mr. Ghose's work on Hindu Law (3rd Edn.) at page 763, further observes:

"The dispute has always been whether illegitimate children can succeed as heirs of their fathers. It has never been disputed that they are heirs to their mother's property."

It is therefore not only not contested but it has been laid down in the decisions referred to that the illegitimate daughter of a Hindu woman is entitled to succeed to the stridhanam of the mother, though her right beyond succeeding to her mother's estate has not been recognised. Once it is held that there exists heritable blood between the mother and the illegitimate daughter, it is rather difficult to conceive how that ceases to exist beyond the mother, that is where she claims entitled to inherit her grandmother's estate. The view taken in -- '26 Mad 509 (D)', appears to us to be correct and that decision has not been fully considered in -- 'AIR 1937 Mad 640 (G)', and -- 'AIR 1940 Mad 483 (F)'. We are unable, however, to see any basis for the observation of Macleod C. J. in -- 'AIR 1921 Bom 137 (H)', that the illegitimate daughter succeeds to her mother in default of nearer heirs. The property which the daughter succeeds to being stridhana, there cannot be any nearer heir than the daughter and the illegitimate daughter being held entitled to succeed any condition as to there being no nearer heirs could not have any force and the daughter's rights to succession to their mother is not based on any other basis except that she is an issue born to the mother and therefore heir to her stridhana.

23. In -- 'AIR 1940 Mad 463 (P)', with reference to an argument adduced on the basis of the text of Mitakshara cited in this judgment relating to the succession to woman's stridhana, the learned Judges adopt the view taken by Oldfield and Seshagiri Aiyar JJ. in -- 'AIR 1915 Mad 63 (C)', where it was held that the word "daughters" in the rule of Mitakshara which allows the daughters to succeed to their parents' property in certain cases means only legitimate daughters. The competition to succeed to the woman's estate in that case was between the illegitimate daughter and the legitimate son. Seshagiri Aiyar J. in his judgment held that in the Mitakshara the son and daughter must be held to mean only the legitimate son and the legitimate daughter and observed that "illegitimate children have no place in Hindu law when there are legitimate heirs at least under the Mitakshara system", excepting the special case where the illegitimate sons are entitled to succeed in the case of Sudras under particular conditions.

In this decision again the judgment in -- '26 Mad 509 (D)' was not considered in its proper perspective, the decision being disposed of as having laid down that a fallen mother was entitled to inherit her son's property. Seshagiri Aiyar J. agreed in entirety with the opinion of Chandavarkar J. in -- '34 Bom 553 (B)'

"that there is no authority whatever in the Hindu law for the proposition that, when the competition is between the husband and a son born of the woman by adulterous intercourse, that son supersedes the husband as heir to the stridhanam."

According to the decision in -- 'AIR 1915 Mad 63 (C)', the illegitimate daughters have no place at all not even to succeed to their mother's estate and they are considered to come in, if the Crown does not Intervene, only as blood relations.

24. In -- 'Subbayya v. Chandrayya', AIR 1941 Mad 811 (D), where the illegitimate daughter was held entitled to

succeed to the estate of a Brahmin married woman in preference to her illegitimate son, Abdur Rahman J. referred to the decision in -- 'AIR 1915 Mad 63 (C)' and observed that the statement of law in that case would have to be closely examined though it was not necessary for the decision in the case before the learned Judge.

25. Reliance was also placed on the decision in -- 'Nammaiya Chetty v. Thiruvegadathan Chetty', 24 Mad L J 223 (J). That was a case where the daughter's daughter was held entitled to succeed to her grandmother's estate in preference to the illegitimate sons of the deceased woman. This decision proceeds on the basis that the legitimate heirs would exclude illegitimate ones, but even otherwise the daughter's daughter is a preferential heir to the son, even if he were legitimate, and as such this decision would not be of any help in support of defendant 1's contention.

26. Chandavarkar J. in -- '34 Boni 553 (B)' preferred the husband to the illegitimate son as being entitled to the woman's stridhana. The learned Judge observed:

"It is contended before us that the son inherited, because the law as to stridhan is that a woman's son is heir to it before her husband. But that law applied to a married woman, that is one whose marriage was celebrated according to one of the recognised forms. When the text writers say that the stridhan of a married woman, who has died 'without issue' goes to her husband if she was married in one of the approved forms, the words "woman", "issue" and "husband" were intended to be used as correlative, or as Vijnaneshwara in another part of the Mitakshara terms it, in the Pratiyogika sense, to show that the issue contemplated was issue of the woman by her husband and none else. Therefore, where a woman was married according to the approved form, the term, dies, 'without any issue' means 'issue of that marriage'. There is no authority whatever in the Hindu law for the proposition, which is contended for by Mr. Pradhan, that, when the competition is between the husband and a son born of the woman by adulterous intercourse, that son supersedes the husband as heir to the stridhan."

27. Relying on this judgment it is argued that the daughter in the Mitakshara text must be held to be the daughter born to the husband, who would inherit if there is no other issue, that is the issue must be a legitimate issue and not an illegitimate issue. We have not been shown the reference in the Mitakshara where these words have been used in the Pratiyogika sense.

28. Pratiyogika means as per Apte's Sanskrit and English Dictionary 'antithetical', 'correlative' and 'relative'. When the language employed in the Mitakshara as to under what circumstances the property of the Hindu woman would go to her husband is, as has been pointed out, clear by mention of the words (Editor: The text of the vernacular

if the vernacular matter is required.) (Aprajastri) meaning "woman without issue" and the word (Editor: The text of the vernacular matter

vernacular matter is required.) (Prasutha) where the idea of 'giving birth to a child that is child born of her womb is clear, what is intended from the language is that the daughter that is born to the woman would be entitled to succeed. Is there any reason, when there is no ambiguity, to rely on a rule of construction and understand the words in the Pratiyogika sense the result of which construction would exclude children born to a woman from benefiting by their mother's property quite against the principles of natural justice and leading to inequitable consequences? We consider that the words used in the Mitakshara may be understood in their ordinary sense, especially when a different result not intended by the text is arrived at by applying a rule of construction, which is not warranted under the circumstances. If the words are understood in the ordinary sense, illegitimate daughters being the issue born of the woman are not excluded.

29. It is also necessary to consider another argument, which was however repelled by Seshagiri Aiyar J. that the daughter in the Mitakshara text would not necessarily exclude the illegitimate daughter. In the Mitakshara, when inheritance to a male propositus is dealt with and the words "sons" and "grandsons" are

mentioned and are used in their natural sense and in another section the definition of an illegitimate son is given, while a separate section deals with the illegitimate sons of Sudra. When it was considered necessary to deal with several classes of sons as to which of them and to what extent they would be entitled to inherit to a male, when it came to be considered as regards succession to women's stridhana, in the absence of any such classification or distinction it may reasonably be assumed that the absence of any reference to the illegitimate daughter was intended to avoid any distinction being made between the legitimate and illegitimate daughters in respect of their rights to inheritance.

When the problem of a Hindu male bringing forth children not by his wedded wife but through a slave or through a woman not lawfully wedded to him was in the minds of the law givers, it is unlikely the question as to the woman's illegitimate children's rights could not have been before the Hindu law givers where a woman who transgressed the limits of chastity and gave birth to illegitimate children, and a separate qualified provision would have been made to them, if it was intended to treat the illegitimate children of a Hindu married woman on the same plane as that of the illegitimate sons of a Hindu male. The fact that there is no reference to illegitimacy in the Mitakshara in the chapter relating to succession to Hindu women's stridhana confirms us to reasonably conclude that it was not sought to make any distinction between legitimate and illegitimate children in so far as succession to stridhana is concerned.

It is no doubt a sound rule of construction to give the same meaning to the same words in a statute and sons and daughters wherever they occur in the Mitakshara should convey the same meaning as legitimate offspring, but when there is sufficient ground to hold by the language employed in the context in the chapter in the Mitakshara governing succession to stridhana, it is quite possible and is even necessary to bring out the intention of the Hindu law givers to construe the words in a different and liberal sense from that which they bear in the chapter relating to inheritance to a male propositus.

30. Neither the language of the Mitakshara text nor the application of any reasonable rule of interpretation would justify the exclusion of the illegitimate children of a Hindu married woman from succeeding to their mother's estate. Though it is not necessary for the decision in this case, as in view of the authorities which recognise the right of the illegitimate daughter to inherit to her mother's estate, the plaintiff in this case would be the heir to the stridhana properties of Seshamma, it appears to us that even if a legitimate daughter survived, she would not exclude the illegitimate daughter but would only be entitled to share equally with her.

31. In our view, therefore, illegitimacy is no bar to succession to woman's stridhana. Whatever may be the rules regarding succession of illegitimate sorts to their putative father's property, in so far as illegitimate stridhana heirs are concerned, either daughter or daughter's daughter or son or son's son, they would be entitled to succeed to their mother's estate in preference to the other heirs.

32. In the result A. s. No. 236 of 1950 is dismissed with costs. A. S. No. 661 of 1950 is allowed in respect of A schedule properties and mesne profits past and future to be determined on an application by the plaintiff by the lower Court. Plaintiff would be entitled to costs to the extent to which she has succeeded throughout. Defendants will bear their own costs throughout.

33. Defendant 1 will pay the court-fee payable to Government both in the lower Court and here to the extent to which the appellant has succeeded, appellant to pay the balance in both the Courts.