

**Muttusami and ors. Vs. Muttukumarasami**

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**Court :** Chennai

**Decided On :** May-05-1892

**Reported in :** (1893)ILR15Mad23

**Judge :** Muttusami Ayyar and ;Parker, JJ.

**Appellant :** Muttusami and ors.

**Respondent :** Muttukumarasami

**Judgement :**

1. The contest in this appeal is as to the right of succession to the property of one Muttusami Mudali deceased. He died without issue in 1879, leaving him surviving a widow Swarnathammal, who died in the year 1888. Appellants Nos. 1 and 2 are the sons and appellant No. 3 is the son's son of Parvathammal, sister of Arumugatta Mudali, who was Muttusami Mudali's paternal grandfather. The respondent claims under one Nagappa Mudali and his sons, the former being the step-brother of Muniyammal, Muttusami's mother. The main question for decision in this appeal is whether, as held by the Judge, a maternal uncle of the half blood is entitled to succeed in preference to the son of the father's paternal aunt. It was alleged for the respondent that Parvathammal was only the stepsister of Arumugatta Mudali, but the Judge did not consider it necessary to determine this question, as he was of opinion that the distinction between the whole blood and the half blood was not material for the purposes of the present suit. Another question, therefore, arising for determination in this appeal is whether a maternal

uncle of the half blood is one's own cognate kindred as much as a maternal uncle of the whole blood.

2. As regards the difference in blood, the appellant contends that mother's step-brother is not at all one's bandhu or cognate kindred. It is argued for him that the term used in the text cited in Mitakshara, chapter II, Section 6, verse 1 is 'matula,' and that as it is derived from the word mother, it cannot refer to any other than her uterine brother. We observe, however, that in ordinary parlance the term 'matula' includes also mother's step-brother. In Amarakosa Manushiya Varga, verse 31, mother's brother is said to be known by the name of 'matula,' and in the Sanskrit Dictionary of Taranatha Tarka Vachaspati the term 'brother' is said to denote one born of the same father. (See Appendix, Extracts Nos. 1 and 2.)

3. Turning to the etymology, it is true that the word 'matula' (maternal uncle) is derived from the term 'matri' (mother) and formed by adding to it the terminational particle 'dulach,' but there is no authority for the contention that the word so formed means only mother's uterine brother, in the Vartika, under Panini Sutra, adhiyaya IV, pada 2, rule No. 36, the following passage is found, which appears to be conclusive:--' When the brother is to be indicated after the words pitru and matru (father and mother) the terminations 'vya and dulach' are prescribed. The word 'pitrivya' is the father's brother and the word 'matula' is the mother's brother.' (Appendix, Extract No. 3.)

4. Passing on to the sense in which the term brothers (bhratarau) is used by commentators, the conclusion that it is a generic term and includes brothers of the half as well as of the whole blood is irresistible. In Mitakshara, chapter II, Section 4, verses 5 and 6, the commentator treats the word 'brothers' used in the text of Yajnavalkya cited in Mitakshara, chapter II, Section 1, paragraph 2, verse CXXXV, as indicating brothers both of the whole and half blood. The only rule of preference indicated by him as resting on the difference in propinquity, consequent on the difference of the mothers, is that the uterine brother excludes the half brother in cases in which there is a competition between them. Even to this rule, the author of the Mitakshara mentions an exception in chapter II, Section 9, verse 7, viz., that when the half brother is reunited and the uterine brother is not, reunited, both take

together and divide the estate. Again, he explains that the rule of preference is applicable only as between brothers, and that the nephews are not entitled to inherit when there are brothers even of the half blood since their right of succession arises only on failure of brothers. Moreover, the author of the Smriti Chandrika follows the Mitakshara and says in chanter XI, Section 4, verse 5 (Kristnasamy Aiyar's Translation, page 198) that the use of the general term 'brothers' in the text of Yajnavalkya is intended to denote both the uterine brother and a brother by a different mother. It is clear then that the leading commentaries use the term brother as generic, and that the difference of the mothers is only material when there is competition between heirs of parallel grades. The fallacy in the contention of the appellant lies in the assumption that a brother is one born of the same mother instead of the same father. As regards the several passages relating to pollution or impurity cited from the Mitakshara by the appellant's pleader (Appendix No. 4), they do not show that the term 'matula' does not include the mother's half-brother. On the contrary they prescribe pollution alike on the death of maternal uncles both of the whole and the half blood, though its duration varies according as the deceased is of the whole or half blood. There is only one passage on which much stress is laid for the appellants as deserving special notice. The author of the Mitakshara cites a text of Manu regarding impurity consequent on death, and it runs in these terms:--' Impurity lasts for three days if a Srotريا dies; but pakshini pollution, that is to say, pollution for ninety Indian hours, is to be observed in the case of matula, pupil, guru and bandhava.' The Mitakshara explains, however, that the term 'matula' here indicates also mother's sister and Ors., whilst the term 'bandhava' denotes atma bandhus, pitru bandhus, and matru bandhus (one's own cognate, one's father's cognate, and one's mother's cognate), and the suggestion, therefore, that the term 'matula' is used here in addition to the word bandhava, because a maternal uncle of the half blood is not a bandhu is not entitled to weight. Moreover, it would be unsafe to draw from the use of the word matula, in addition to the word bandhava in an isolated text, the inference suggested for the appellants when the author of the Mitakshara gives a special reason for it. Again, Vydinadha Dikshatar, a recent commentator of authority in Southern India, observes that the word 'matula' in the above text refers to a maternal uncle of the whole blood who is absent from the place where death

occurs, and to maternal uncle of the half blood (Appendix No. 5). As it is conceded that a maternal uncle of the full blood is a bandhu, and as it has been so held by the Privy Council in *Gridhari Lai Roy v. The Bengal Government* 12 M.I.A. 448 the contention for the appellants is not tenable. Further, mother's step-brother is a bhinna-gotra sapinda whether the term 'sapinda' is taken in the sense of consanguinity by virtue of the presence of particles of one body or of capacity to offer funeral oblations. Through the maternal grandfather the maternal uncle is related to his sister's son as sapinda in the sense of consanguinity, and to that grandfather both the maternal uncle and his step-sister's son offer funeral oblations. We think the decision of the Judge that maternal uncle of the half blood is one's own cognate kindred or atma bandhu is correct.

5. The next and the most important question is whether under the Mitakshara law the maternal uncle excludes the father's paternal aunt's son. The Judge, who determines it in the affirmative, rests his decision on the ground that the former is one's own cognate kindred, whilst the latter is only the father's cognate, and that as being the nearer in affinity, the former excludes the latter. It is not denied for the appellants that bandhus are of three classes--one's own cognate kindred, one's father's kindred, and one's mother's kindred, and that each class succeeds in the order in which it is named by reason of affinity. It is also not disputed that the text cited in Mitakshara, chapter II, Section 6, verse 1, mentions the maternal uncle's son as one's own bandhu, whilst it mentions the father's paternal aunt's son only as the father's cognate kindred,' and that if the text is accepted as binding so far as it illustrates the order of affinity, it is conclusive. But it is argued that the illustrations given in the text are not intended to denote the classes of bandhus in which maternal uncle's son and father's paternal aunt's son are to be placed for the purposes of inheritance, that the text itself has reference to relatives for whom pakshini or ninety Indian hours' pollution is intended to be prescribed, that hence it is first cousins, or cousin-brothers, are alone mentioned, and the more important bandhus are not named, and that though the author of the Mitakshara cites the text, he does not mean that the illustrations ought to be accepted as denoting that the several relatives named are to be treated for purposes of inheritance as belonging to the several classes in which they are placed. After thus endeavouring to put out of consideration the text cited by the Mitakshara, it is suggested that

one's own sister, the father's sister, the grandfather's sister, are all daughters born in the family, and that, as such, their sons should be placed in the class of one's own cognate kindred so as to exclude the maternal uncle, who is only a maternal relative. In support of this contention, our attention is also drawn to a recent publication on Hindu Law by one Siromani. The text in question is in these terms:-- ' The sons of his own father's sister, the sons of his own mother's sister, and the sons of his own maternal uncle must be considered as his own kindred or atma bandhus. The sons of his father's paternal aunt, the sons of his father's maternal aunt, and the sons of his father's maternal uncle must be considered as his father's cognate kindred or pitru bandhus. The sons of his mother's paternal aunt, the sons of his mother's maternal aunt, and the sons of his mother's maternal uncle must be reckoned as his matru bandhus or his mother's cognate kindred.'

6. The text is clear that the maternal uncle's son and, therefore, the maternal uncle are atma bandhus, whilst the father's paternal aunt's son is only a pitru bandhu. There is no foundation for the suggestion that the Mitakshara did not intend to adopt the text so far as it illustrates the nearness or remoteness of affinity. The commentator expresses no dissent from the text, nor does he say that the illustrations are not correct; on the other hand, he founds upon it a rule of preference, and adopts it as a test of nearness or remoteness of affinity. It is also remarkable that all the commentaries of the Benares school follow the Mitakshara and cite the same text as illustrating the order of affinity. See Smriti Chandrika, Kristnasamy Aiyar's Translation, chapter XI, Section 5, verses 14 and 15; Vyavahara Mayuka, chapter IV, Section 8, verses 22 and 23; Sarasvati Vilasa, Foulkes' Translation, 595-8; Madhaviya, Dr. Burnell's Translation, Section 41, page 29. It is anything but reasonable to hold that a commentator like the author of the Mitakshara would indicate a rule of preference with reference to a text which, according to appellants' contention, erroneously places father's paternal aunt's sons, who are atma bandhus, among pitru bandhus. It is true that certain relatives only are named in the text as illustrations of each class of bandhus, but it does not follow that those who are named by way of illustration are either named incorrectly, or are not named as examples of the order in which affinity is to be traced. It may be that the author of the Mitakshara having defined bandhus as bhinna-gotra-sapindas, considered it sufficient to cite a text which contained

illustrations as to the mode in which nearness or remoteness of affinity is to be ascertained, and to leave it to be determined in each case whether any particular relative who is not named and who claims to be bandhu is really a bhinna-gotra-sapinda, and comes as such within the definition of bandhu. It was on this view that the Privy Council held in *Gridhari Lai Roy v. The Bengal Government* 12 M.I.A. 448 that a maternal uncle is a bandhu, though not expressly named in the *Mitakshara*. The circumstances of text cited not naming all the bandhus of each class, and even the most important of them, is no valid ground for treating the text as of no authority in regard to those who are expressly named as belonging to a particular class of bandhus.

7. Another argument urged for the appellants is that the term bandhava used in the text means first cousin or cousin-brother. It is not denied that it signifies also cognates in general as appears from several extracts contained in the appendix. This variation in the reading is noticed by Balambhatta, a commentator of the Benares school, who comes to the conclusion that it produces no essential difference in the interpretation.

8. It is next alleged that the text was intended only to denote the relatives who have pakshini or ninety Indian hours' pollution, and that it has no connection with inheritance. This objection is not tenable. It ignores the fact that Vijuaneswara cites the text in the chapter on inheritance in order to indicate a rule of preference in cases of competition between bandhus of different classes. If it were intended only for describing those who observe pakshini pollution, there was no apparent necessity for classifying the bandhus, inasmuch as the duration of pollution consists of one night and two days, or two nights and one day. Again, as to the *Smriti* of Yajnavalkya, in the chapter on pollution or impurity, Vijnaneswara states that by the word matula in the text are indicated one's own cognate kindred, the mother's cognate kindred, and the father's cognate kindred, all connected with a common ancestor. They have been defined in the portion which begins with Yajnavalkya's text on inheritance, 'The wife, daughter,' etc. (*Mitakshara*, chapter II, Section 1, paragraph 2, verse GXXXV.) The question is not whether the relatives named, by way of illustration, are all first cousins or cousin-brothers having pakshini or ninety hours' pollution, but it is whether the text has application

to inheritance. That it is applicable is clear from the above passage, wherein Vijnaneswara explains the word matula as being a generic term which includes the three classes of bandhus and refers to his comments thereon in the chapter on inheritance.

9. As to Siromani's doctrine, it is discussed by him in chapter IX, Section 9 of his book. He admits that the Mitakshara cites the text of Vridha Satatapa not to enumerate all the cognate heirs, but as an authority for determining the order of succession among such heirs. He then observes that the text cannot be taken to classify and give examples of bandhus of each class, and states that in that case it would be difficult to say under which class the sister's son, the brother's daughter's son or the uncle's daughter's son should be placed. He then proceeds to suggest his own order of succession, according to which he places all related through daughters born in the family among atma bandhus. Though sons born in the family are all gotrajas, yet the Mitakshara regulates the succession when there is competition between them with reference to the nearness or remoteness of propinquity, as, for instance, between a brother and a paternal uncle's son. It is not clear why this analogy should be ignored in the case of daughters born in the family, and why the father's sister and the grandfather's sister should be treated as related to the propositus in the same degree of affinity. Nor is it reasonable to regard one's own sister's son and one's grandfather's sister's son as related in the same degree. As for the difficulty pointed out by Siromani, it is not clear why sister's son, brother's daughter's son, and son's daughter's son should not be treated as atma bandhus in the same way in which the maternal uncle is treated as an atma bandhu.

10. We may refer here to a passage in the Viramitrodaya (chapter III, part I, Section 2, page 158):--' Since in the chapter on partition of heritage, the conferring of spiritual benefit is by the term, ' therefore,' set out as the reason: hence it is indicated that he alone is entitled to get the estate on whom the estate being devolved conduces to the greatest amount of spiritual benefit of the deceased owner, and that proximity in this way is to be accepted as a general rule and reasonable.' This passage indicates that as between bandhus of the same class, a rule of preference may be found in the quantity of spiritual benefit which they

confer.

11. The conclusions we come to are (i) that those who are bhinna-gotra-sapindas or related through females born in or belonging to the family of the propositus are bandhus; (ii) that as stated in the text of Vridha Satatapa or Baudhayana they are of three classes, viz., atma bandhus, pitru bandhus, and matru bandhus, and succeed in the order in which they are named; (iii) that the examples given therein are intended to show the mode in which nearness of affinity is to be ascertained; and (iv) that as between bandhus of the same class, the spiritual benefit they confer upon the propositus is as stated in Viramitrodaya, a ground of preference. However this may be, Siromani's theory is in direct conflict with the Mitakshara so far as it places the father's paternal aunt's son among atma bandhus, and transfers the latter from among pitru bandhus in which the text of Vridha Satatapa or Baudhayana places him. In the case before us, there was no allegation nor evidence of any local or special custom in support of the order of succession suggested by Siromani in amendment of the Mitakshara and the commentaries that follow it; and in the absence of such custom, we are not prepared to overrule an express text mentioned in them, and to hold that one who is expressly named therein as a pitru bandhu is an atma bandu. Another contention is that the maternal uncle and his sons must be considered, though alive, as civilly dead, inasmuch as they alienated their interest. This is manifestly untenable. The decision of the Judge is right, and we dismiss this appeal with costs.

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