
Sundaram Pillai Vs Ramasamia Pillai and Others

None

Court: Madras High Court

Date of Decision: April 22, 1919

Citation: (1920) ILR (Mad) 32 : 52 Ind. Cas. 821 : (1919) 10 LW 664 : (1919) 37 MLJ 209

Hon'ble Judges: Phillips, J; Napier, J

Bench: Division Bench

Judgement

Phillips, J.

The sole question for determination in this appeal is whether plaintiff or 3rd defendant is the heir to the property of one Gomati

Ammal, a maiden. Plaintiff is the father's brother's son of Gomati's father, whereas 3rd defendant is the sister of Gomati's father. In Kamala Bai

v. Bhagirathi Bai 16 Ind. Cas. 939 : (1912) M.W.N. 1166 : 12 M.L.T. 499 it was held that when a maiden's mother and father are dead her heirs

are her father's Sapindas, and this case followed Janglubai v. Jetha Appaji, Tukaram v. Narayan Ramchandra 14 Ind. Cas 438 : 14 Bom.L.R. 89

and Dwarha Nath Ray v. Sarat Chandra Singh Bay 11 Ind. Cas. 872 : 39 C.P 319 : 15 C.W.N. 1. In Mitakshara, Chapter II, Section 11, Pl. 20,

there is a text of Baudha-yana which says: ""The wealth of a deceased damsel let the uterine brethren themselves take. On failure of them it shall

belong to the mother, or, if she be dead, to the father,"" but the Mitakshara is silent as to the succession in default of mother or father. In the above

mentioned oases the rule of succession to the property of a woman married in an un-approved form contained in PL 11 of the same section was

applied by analogy, and it would appear that this decision of three High Courts would be final, but it is contended for respondents that a text of

Brihaspati contained in the Smriti Chandrika (Chapter IX, Section 3, placitum 36) and the Saraswati Vilasa (placitam 327) provides for the

succession after the mother and father. This text no doubt immediately follows the text of Baudhayana in the Smriti Chandrika, but there does not

appear to be any connection between the two, for Brihaspati's text relates to what are called secondary mothers, and deals with the succession to

their property. In the Saraswati Vilasa the text follows a placitum relating to the property of a betrothed damsel. It is difficult to believe that the

succession to a maiden is analogous to the succession to secondary mothers, for a maiden cannot by any stretch of language be treated as a

secondary mother, whereas there is no such difficulty in the case of the persons cited, i. e., mother's sister, uncle's wife, father's sister, etc. There

is also another difficulty in the way of applying the text in the way contended for by respondents' Vakil, which is that the persons enumerated are

the heirs to a maiden's estate, for in the Smriti Chandrika the persons enumerated are said to be equal to a mother. If that be so, they would take

the succession after the mother to the exclusion of the father. This is directly opposed to Baudhayana's text in the Mitakshara, which, in this

Presidency, must always be preferred to the Smriti Chandrika, when they are not in agreement. Respondents' contention must, therefore, be

negatived for two reasons, firstly, because Brihaspati's text does not at all refer to the succession to a maiden's property, and secondly, because if

it does refer to it, it is opposed to the Mitakshara. I, therefore, follow Kamala Bai v. Bhagiruthi Bai 16 Ind. Cas. 939 : (1912) M.W.N. 1166 : 12

M.L.T. 499 and hold that the heirs to Gomati's property are her father's Sapindas. So far I agree with the District Judge, but he has followed the

Bombay High Court in holding that a sister is a nearer heir than the father's brother's son. In Madras, however, the law is that the father's

brother's son is to be preferred, the sister only coming in after the male Sapindas. I am unable to accept the contention, based on the single

sentence of the judgment in Kamala Bai v. Bhagirathi Bai 16 Ind. Cas. 939 : (1912) M.W.N. 1166 12 M.L.T. 499 that the father's Sapindas, in a

case when the property of a female is concerned, are different to the Sapindas in the case of a male's property. In the absence of any rule to the

contrary the Sapindas must always be the same. The appeal is accordingly allowed, and the Subordinate Judge's decree restored with costs both

here and in the lower Appellate Court.

Napier, J.

2. The question raised in this second appeal is as to the succession to the stridhanam property of one Gomati Ammal. The deceased Gomati

Ammal inherited the property under a Will from her father, one Muthia Pillai, and it is conceded that the mother is also dead. The contesting parties

are the son of the paternal uncle of the deceased's father and the father's sister of the deceased, the uterine brothers who admittedly would have a

preference to anyone else having failed. The point has been expressly decided in two cases in Janglubai v. Jetha Appan 32 B.K. 409 : 10 Bom.

L.R. 522 and Tukaram v. Narayan Ramchandrai), and the view taken by that Court was followed by two learned Hindu Judges of this Court in

Kamala Bai v. Bhagirathi Bai 16 Ind. Cas. 939 : (1912) M.W.N. 1166 : 12 M.L.T. 499 It is suggested before us that this question requires

reconsideration, in view of the fact that the Mitakshara does not definitely decide the point and that the Bombay High Court relied on the

Yeeromitrodaya, a work which is not followed in Madras. It is further contended before us that the question is disposed of by a text in the Smriti

Chandrika, the language of the Mitakshara is based on the authority of Baudhayana's text, for Baudha-yara says: ""The wealth of a deceased

damsel let uterine brothers themselves take, on failure of them, it shall belong to the mother, or if she be dead to the father."" (Chapter II, Section

11, placitum 30). As the text stops there, this Court applied the analogy of the succession to the property of a childless married woman which is

provided for in placitum 11 of the same section. There the succession is stated as being ""to the mother and to the father; on failure of them their

nearest of kin takes the succession."" The translation is that of Borrodaile. The High Court, however, preferred ""to their Sapindas"" as being a more

correct translation. The judgment then proceeds as follows: ""We see no reason for not accepting the view of the Bombay High Court that the

Sapindas both of the father and the mother must be understood to mean the same persons, as the mother becomes a member of the father's family

on her marriage."" It is to be noted that the learned Judges do not expressly follow the language of Veeromitrodaya which is definite on the subject

as did the High Court of Bombay, but proceeded by way of analogy arriving at the same result. It is not, therefore, correct to say that the decision

of this Court is based on a text which is not an authority in the Presidency.

3. It remains to consider the text relied on by Mr. Ganapathy Aiyar in his contention that this ruling is incorrect. I feel naturally considerable

diffidency in construing a text which is translated, not being myself acquainted with the original Sanskrit. But in spite of that I am satisfied that the

text has nothing whatever to do with the subject. In Smriti Chandrika, Chapter IX, Section 3, placitum 36, Brihaspati enumerates secondary

mothers and points out who takes their property. The sister of a mother, the wife of a maternal or of a paternal uncle, the sister of a father, the

mother of a wife and the wife of an elder brother are declared equal to a mother. If they leave no male issue of their body nor a son of a daughter

nor a daughter, a sister's son and the like shall inherit their property. Taken; by itself, this text has, on its face, no application because we are not

construing here the succession to secondary or quasi-mothers, The only mother with whom we are concerned is the real mother; and the question

is who on the death of such real mother and father, is to. succeed. The next objection is that if" this text is to apply, it contradicts the language of

placitum 30 itself, for that is specific, the words being: ""It shall belong to the mother or if she be dead to the father,"" not to the heirs of the

secondary mother. The text is interesting as laying down that these quasi mothers are to be treated as real mother's, but admittedly no such broad"

proposition is accepted in Hindu Law as applied in this Presidency. The only reason which Mr. Ganapathy Aiyar could urge for applying this text is

that it follows the placitum in the Smriti Chandrika which is identical with placitum 30 in the Mitakshara. Both of, these texts are to be found in the

Smriti Chandrika in Section 3, succession to a woman's property." We were informed at the Bar that the numbers given in the English translations

are not in the original, which is borne out by the fact that Placitum 36 in Mr. Krishnaswami Aiyar's translation is No. 21 in Ghose's translation.

The chapter contains a series of texts on succession to the property of women generally and explanations of the terms used by the sacred writers

and the whole chapter is in the nature of dissertation on conflicting views of the authorities, The only passage which deals with inheritance to the

wealth of a damsel appears so be the one placitum of Baudhayana above referred to. The placitum relied on seems to be a note by the learned

commentator to the effect that where in the preceding paragraphs inheritance to a mother is dealt with, a specific line of succession is to be applied

to these secondary mothers and has no connection whatsoever with the quotation from Baudhayana in the preceding passage. I am confirmed in

this view that the passage relied on has nothing whatever to do with the subject by the fact that although Smriti Chandrika is a recognized authority

of secondary weight in Madras, the learned Vakils who appeared before our learned brothers in Kamala Bai v. Bhagirathi Bai 16 Ind. Cas. 939 :

(1912) M.W.N. 1166 12 M.L.T. 499 did not think that the passage was worth putting before their Lordships for consideration. In this respect I

agree with the judgment of my learned brother.