(1868) 09 CAL CK 0007

Calcutta High Court

Case No: Special Appeal No. 3095 of 1866

Amrita Kumari Debi		APPELLANT
	Vs	
Lakhinarayan Chuckerbutty		RESPONDENT

Date of Decision: Sept. 12, 1868

Judgement

Mitter, J.

The question we have to determine in this case is, whether, according to the Hindu law current in the Benares School, a sister''s son is entitled to inherit as a Bandhu or cognate. Before proceeding, however, to determine the question, we must answer a preliminary objection that has been raised before us by the pleader for the respondent. It has been contended, that the point under our consideration has been already set at rest by a decision of the Privy Council Thakoorain Sahiba v. Mohan Lal (7 W.R.P.C., 25). We are of opinion that this contention cannot be maintained. True it is, that the decision of the late Sudder Court, at Agra, which was reversed by the Lords of the Judicial Committee, was based upon the ground, that the sister''s son is entitled to inherit as a Bandhu, but this position appears to have been abandoned before their Lordships by the learned counsel who conducted the case on his behalf. What were the reasons which induced the learned counsel to adopt this course, whether it was because he thought that, under the circumstances of the case, his client could not succeed in the suit, unless he was placed in a higher rank than that of a Bandhu, or otherwise, it is difficult for us to make out from the facts as reported. It is sufficient, however, for the purposes of the present argument, to state that the result of this concession was, as their Lordships have themselves observed, to reduce the whole matter in controversy to the simple question as to "whether, upon the proper construction of the Mitakshara, the sister''s son is not entitled to come in among the earner class of heirs or Sapindas." This was, in fact, the only question that was discussed before their Lordships, and the only one upon which they have pronounced a judicial opinion. To remove all doubts on this point, the following passage, in their Lordships'' judgment, might be conveniently referred to: He there put the sister''s sons out of the category in which Mr. Piffard would

place them, though erroneously, perhaps, he has put them among the "Bandhus." The word "perhaps," in the above sentence, is sufficient to show that their Lordships did not intend to decide the point that we have now got before us, and the preliminary objection is, accordingly, overruled. With reference to the main question itself, we are of opinion that the sister''s son is entitled to rank as a Bandhu according to the definition of that term as given in the Mitakshara itself. The definition is contained in the following passage:--

On failure of the paternal grandmother, the (gotraja) kinsmen sprung from the same family with the deceased, and (Sapinda) connected by funeral oblations, namely, the paternal grandfather and the rest, inherit the estate. For kinsmen sprung from a different family, but allied by funeral oblations, are indicated by the term cognate (bandhu)" (Col. Mit., verse 3, sec. V., chap. II, 350).

2. It will be observed, that two conditions are necessary to meet the requirements of this definition, namely: first, that the claimant should be a kinsman sprung from a different family; and, second, that he should be connected by funeral oblations. Both these conditions are strictly fulfilled in the case of the sister''s son, and, as we will show further on, in a much higher degree in his case than in that of any of the nine individuals whose claims to succeed as Bandhu are admitted on all sides. That he is a kinsman sprung from a different family is unquestionable, and it is equally clear that he is a Sapinda, or one allied by funeral oblations, though some objections have been raised before us on this last point. It has been argued, that according to Manu, a Hindu is required to perform the funeral obsequies of his paternal ancestors only; that in consequence of this rule, the Sagotras, or those who belong to the same gotra or family, are the only persons entitled to be recognized as Sapindas; and that the sister''s son must be, accordingly, excluded from that category. We are of opinion that there is no authority whatever to support this contention; and we might even say that, whatever other objections might have been hitherto urged against the heritable right of the sister''s son, this is the first time that his position, as a Sapinda, has been questioned or disputed. Indeed, the very definition before us is a sufficient answer to this sophism; for if the Sagotras alone are entitled to rank as Sapindas, Bandhu or kinsmen sprung from a different family, but allied by funeral oblations, must be non-existent. We have, however, the express authority of Manu himself to decide this point, and what is of still greater importance, for the purposes of the present discussion, it is an authority quoted and acted upon by the author of the Mitakshara.

3. For with regard to the funeral obsequies of ancestors, daughter''s sons are regarded as son''s sons. Manu likewise declares:--By that male child whom a daughter, whether appointed or not, shall produce by a husband of equal class, the maternal grandfather becomes the grandsire of son''s sons. Let that child give the oblation and take the inheritance.

4. It is manifest from the above that the maternal ancestors also are entitled to receive funeral oblations, and this proposition strikes at the very root of the contention that has been raised before us. Now, the sister''s son is no other relative than the daughter''s son of the father; and if it be once conceded, as it must be, that the daughter''s son is a Sapinda, it would follow, as a matter of course, that the sister''s son is, at least, a Sapinda of the father; and as such he would be clearly entitled, at all events, to rank as a pitribandhu, or father''s cognate. In point of fact, however, he is also a Sapinda of the deceased proprietor himself, not so near as the daughter''s son, but nearer than everyone of those individuals who are admittedly recognized as bandhus.

5. It is a well known principle of Hindu law, recognized in all the schools current in the country, that the relation of Sapinda exists not only between the immediate giver and the immediate recipient of funeral oblations, but also between those who are bound to offer them to a common ancestor or ancestors. This principle is based upon the theory according to which a Hindu is supposed to participate after his death in the funeral oblations that are offered by any one of his surviving relatives to some common ancestor, to whom he himself was bound to offer them when living; and hence it is that the man who gives the oblations, the man who receives them, and the man who participates in them, are all recognized as Sapindas of each other. Thus, for example, brothers are not required to perform the obsequies of each other, but they are, nevertheless, Sapindas, being connected with each other through the medium of the oblations that they are respectively bound to offer to their common ancestors. The same rule holds good in the case of the brother''s son, and in fact of every Sapinda who does not stand in a direct line of ascent or descent with the deceased proprietor himself. To place this point, however, beyond all dispute, we wish to refer particularly to the nine admitted Bandhus themselves. It will be seen that six out of these nine individuals are no other relatives than the daughter''s son of the paternal grandfather, the daughter''s son of the maternal grandfather, the daughter''s son of the father''s paternal grandfather, the daughter''s son of the father''s maternal grandfather, the daughter''s son of the mother''s paternal grandfather, and the daughter''s son of the mother''s maternal grandmother. The remaining three are the son''s son of the maternal grandfather, the son''s son of the father''s maternal grandmother, and the son''s son of the mother''s maternal grandfather. Not one of these individuals, not even the highest among them, or in other words, the daughter''s son of the paternal grandfather, is required to offer funeral cakes either to the deceased proprietor himself, or to his father, or to his mother, but at the same time they are admittedly entitled to rank as the Sapindas of the man himself, or of his father, or of his mother, as the case might be.

6. We can scarcely imagine upon what principle of Hindu law it can be seriously contended that the daughter''s son of the father is not a Sapinda, when the daughter''s son of the paternal and maternal grandfathers are acknowledged as

such.

7. As regards the performance of funeral obsequies, the daughter''s son of the father occupies the same position as a son''s son of the father, or in other words, as a brother''s son; whereas the daughter''s son of the paternal grandfather, who is the highest in rank among the admitted Bandhus, does not stand an inch higher than the son of a paternal uncle. It is perfectly true that the lawyers of the Benares School sometimes used the word Sapinda in the sense of consanguinity, or mere connection through the body; but in either case the position of the sister''s son would remain unaffected. We have already pointed out that as regards funeral oblations, the sister''s son occupies the same position as a brother''s son; and as to consanguinity, the very nature of his relationship with the deceased proprietor obviously shows that he is nearer than the nearest of the admitted Bandhus. If authority is needed on this last point, the following passage of the Mitakshara might be referred to as conclusive:--

A Sapinda, she who has the same Pinda or body, is a Sapinda: a Sapinda, not a Sapinda (take) her. The relation of Sapinda arises from connection as parts of one body. So the relation of Ekpinda in the son with regard to the father arises from the connection as parts of the body of the lather. And with the grandfather, &c., in consequence of the connection with their body through the father. In the same manner in regard to the mother, from connection as part of the body of the mother. In the same manner in regard to the maternal grandfather, &c., through the mother. In the same manner with the mother''s sister and maternal uncle, and the rest, by reason of the connection or parts of one body. Mitakshara, Achar Adhyaya, leaf 6.

8. It is scarcely necessary to point out, that in the passage before us, the maternal uncle and the sister''s son are distinctly recognized as Sapindas of each other. The whole doctrine of Sapinda, according to the authorities of the Benares School, has been correctly expounded in the Vyavastha cited in the case. The Pandits were unanimously agreed in declaring that there are two significations only in which the word Sapinda is used by the lawyers of that school, namely, consanguinity and connection through funeral oblations; and the following passages from the Parasara Madhab and the Nirnaya Sindhu, both of which works are recognized as authorities concurrently with the Mitakshara, were cited by them in support of this opinion.

9. Those are Sapindas who are connected by the tie of consanguinity; for instance, the father and the son are Sapindas to each other, and the body of the father is perpetuated in the son without any intervention. So also is the son by the medium of the father a Sapinda of his paternal grandfather, and of his paternal great grandfather. So also the son by the medium of his maternal grandfather is Sapinda of his maternal aunt and uncle, and by the medium of his paternal grandfather, he becomes a Sapinda of his paternal aunt and uncle, &c. (Parasara Madhab).

10. Those are Sapindas between whom exists a reciprocity of giving or receiving funeral oblations. The fourth person and the rest share the remains of the oblation wiped off with the Kusa grass; the father and the rest share the funeral cakes. The seventh person is the giver of oblations, the relation of Sapinda or men connected by the extension of the funeral cake, therefore, to the seventh person, or sixth degree of ascent or descent. It should not be supposed that an uncle or nephew are not reciprocally Sapindas, as he who shares in the oblations offered by the uncle, shares also in those offered by the nephew. In short, if any one of those who participate in the funeral oblation offered by one individual, be also the presenter of funeral oblations to one of his co-participators, then the whole number become Sapindas of each other. (Nirnaya Sindhu).

11. It is perfectly clear that, according to either of these authorities, the sister''s son is entitled to rank as a Sapinda. Before concluding this part of our judgment, we cannot pass over an important point connected with the Vyavastha we have already alluded to. The case in which it was given related to the daughter''s son of the brother; and the Pandits, whilst admitting that he was entitled in every respect to rank as a Sapinda, nevertheless stated, that he was not entitled to succeed as an heir. No text or authority of any kind was cited by them in support of this opinion, and the only reason put forward was, that he is not a Sagotra. This reason, we need hardly observe, is obviously unsound; for if the Sagotra Sapindas are the only persons entitled to inherit, the word Bandhu, which signifies Sapindas of a different family, must be struck out from the law of inheritance. It has been said in a note attached to this case, that it is universally admitted that such description of persons (evidently meaning those who are Sapindas, but not Sagotras) "are not Sapindas for the purpose of inheritance." We are not aware of the authorities by whom this admission was made; and with all deference to the learned author of that note, we are bound to say that it is obviously incorrect. It may, however, be fairly asked, that if the word Sapinda, when used for "the purpose of inheritance," does not mean either consanguinity or connection through funeral oblations, in what other sense is it to be understood when it is used for that purpose, particularly with reference to such heirs as the daughter''s son of the paternal grandfather, and the rest. We have stated above that there are two significations only in which the word Sapindas is used in the Benares School, and the pleader for the respondent has not even been able to suggest a third. We might also add, that so far at least as the Nirnaya Sindhu is concerned, the sister''s son is expressly recognized as heir, as the following passage will show:

In default of the brother''s son, the father, mother, the daughter-in-law, the sister, and her sons are entitled to perform the Sraddha, because they are heirs. (Page 219.)

12. We have shown by the foregoing remarks that the sister''s son is entitled to rank as a Bandhu according to the definition of that term as given in the Mitakshara.

13. We will now proceed to examine the various objections that have been urged, both before us and elsewhere, against his right to succeed as an heir, These objections may be all classified under the following heads:

1st.--That the definition referred to has no connection with the law of inheritance.

2nd.--That the enumeration of Bandhu made in verse 1, section 6, chapter 2, is exhaustive, and that the sister''s son is neither included in that enumeration, nor mentioned as an heir in any other part of the work.

3rd.--That it has been settled by a uniform course of decisions, that the sister''s son is not entitled to inherit, under the Hindu law administered in the Benares School.

14. With reference to the first objection, we are of opinion that it is altogether untenable. The definition in question occurs in a part of the work which is exclusively devoted to the exposition of the law of inheritance; and it may be fairly asked, if it has no connection with that law, for what other purpose has it been introduced in such a place? A little reflection, however, will remove all doubts on this point. The Mitakshara, it is well known, is a professed commentary on the Institutes of Yajnavalkya. The following text of that ancient sage contains the law of inheritance applicable to the estate of a deceased proprietor who has left no male issue:

The wife, and the daughters also, both parents, brothers likewise, and their sons'' gentiles (Gotraja), cognates (Bandhu), 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 Mit., verse 2, section 1, chap. II.

15. The whole of the second chapter from this point downwards as far as section 7, is nothing but a commentary upon the text cited above, and which, for the sake of convenience, we shall hereafter designate by the name of the general text. The definition in question occurs inverse 3, section 5, which has been already set out at length at the very commencement of this judgment, and the words are: "For kinsmen sprung from a different family, but connected by funeral oblations, are indicated by the term (Bandhu) cognate." It is obvious that the word "indicated," here means indicated in the general text which contains the law of inheritance. It would, therefore, be manifestly unreasonable to argue that the definition in question has nothing to do with that law. It might be as well said that the definition of Gotraja given in the earlier part of the verse is also unconnected with it.

16. The second objection is also untenable. Verse 1, section 6, chapter II, runs as follows: "On failure of gentiles, the cognates are heirs. Cognates are of three kinds,--related to the man himself, to his father, or to his mother, as is declared by the following text. 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 cognate kindred. 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 deemed as his father''s cognate kindred. The sons of his mother''s paternal aunt, the sons of his mother''s maternal aunt, and the sons of his mother''s maternal uncles must be recognized as his mother''s cognate kindred.

17. There is nothing, whatever, in this verse to justify the contention that the author of the Mitakshara intended thereby to lay down an exhaustive list of Bandhus or cognates. He says first of all that Bandhus are entitled to inherit in default of Gotrajas; and, secondly, that Bandhus are of three kinds, namely, those who are related to the man himself, and those related to his father and mother respectively. There can be no doubt whatever, that if he had finished the sentence at this point, no one could have seriously contended in the face of these two propositions, so manifestly general in their character, that he intended to exclude one single individual who is really entitled to claim the benefit of his own definition. The only argument, therefore, which can be advanced in support of this contention is the simple fact of his having concluded this sentence by quoting a text from one of the Hindu sages which contains the names of a limited number of Bandhus. We are of opinion that this argument, per se, is entitled to no weight whatsoever. Isolated texts from various Hindu sages, and of a similar description, are to be frequently found in the Mitakshara, and it would be manifestly erroneous to contend upon the authority of any one of them that an exhaustive enumeration of heirs was intended to be made thereby. The following text of Vrihad-Vishnu, quoted in page 326 of Cole-brook''s edition of the Mitakshara, might be referred to as an illustration:
The wealth of him who leaves no male issue goes to his wife. On failure of her, devolves upon daughter; if there he none, it belongs to the father; if he be dead, it appertains to the mother. It would be obviously improper to say from the mere fact of the author of the Mitakshara having referred to this text, that he intended to declare that the particular persons mentioned therein are the only heirs to the estate of a deceased Hindu who has left no male issue; or that such even was the intention of Verihat Manu himself. As to the particular text before us, there is absolutely nothing in it from which it can be reasonably inferred that the author of it at least, if not the author of the Mitakshara, had such an intention in view. All that it says that certain relatives must be considered as Bandhus of one class, and certain others as Bandhus of two other classes respectively; it nowhere says that these persons are the only Bandhus recognized by the Hindu law. The object which the author of the Mitakshara had in view in referring to this text is evident. His own words are "as is declared by the following text;" and these words are sufficient to show that this text was referred to merely for the purpose of establishing the three-fold classification of Bandhus involved in the second of the two general propositions before adverted to. The necessity of this reference is also obvious. The first proposition required no special authority for its support, inasmuch, as it was an obvious deduction from the order of succession laid down in the general text upon which he was commenting.

18. The second proposition, however, stood on a different footing, there being nothing in the Institutes of Yajnavalkya to sanction it directly; and hence it was that the author of the Mitakshara was obliged to rely upon the authority of another Hindu sage in order to support it. Why, then, are we to put a construction upon his words which is not only inconsistent with his own definition, but also with every general principle of law that has been inculcated by him throughout the treaties? It has been justly remarked by Sir William Jones, that the doctrine of funeral cakes is the key to the whole Hindu law of inheritance. All the schools of Hindu law that are current in the country are agreed in accepting this principle as their guide, however much they might differ from one another with reference to particular points connected with its application. Those commentators who adopt the other doctrine of consanguinity, merely extend the limits of the Sapinda relation by including a large number of persons besides those who are connected by funeral oblations. The author of the Mitakshara, at all events, is no exception to the general rule. The text of Manu which says, "to the nearest Sapinda the inheritance belongs," is frequently cited by him as a leading authority on all questions of Hindu law. Indeed, the very definition of Bandhus, under our consideration, is based upon this fundamental doctrine; and in the very next verse he distinctly lays down that the order of succession to be observed among the different classes of Bandhus is to be regulated by "nearness of affinity." We have already stated that our argument would not be affected in the slightest degree, whatever interpretation might be put upon the word "affinity." Are we then to suppose that the author of the Mitakshara has been so far forgetful of this fundamental principle, as to render himself guilty, unconsciously as it were, of the gross inconsistency of laying down a definition and of excluding those very persons who are best entitled to claim the benefit of it. In what way, we might repeat in this place, are the sister''s sons of the father and of the mother better qualified to inherit than the sister''s son of the deceased proprietor himself? What doctrine of Hindu law, directly or indirectly sanctioned by the author of the Mitakshara, can be cited in support of the contention that the maternal grandfather himself is not an heir, when his sons'' sons and his daughters'' sons, nay even when the sons'' sons and their daughters'' sons of the father''s and mother''s maternal grandfather are acknowledged as such? How, again, are we to reconcile the proposition that the maternal uncle, or in other words the uterine brother of the mother, is to be excluded from the line of inheritance, when her cousins, namely the sons of her father''s sisters and the sons of her mother''s sisters, are to be included in it? Startling anomalies, like these, to use an expression of the Lords of the Judicial Committee, cannot be imputed to an author without there being some tangible ground upon which such an imputation can rest. It is perfectly true that in the particular case before us, we are bound to administer the Hindu law as it has been expounded by the author of the Mitakshara, but we can hardly be justified in ascribing such gross absurdities to him at the very time when he was really trying to extend the category of Bandhus by introducing the three-fold classification before alluded to.

19. The word Bandhu has been sometimes interpreted as "distant kindred" but we can hardly suppose that the author of the Mitakshara seriously intended to authorize the succession of the most distant Bandhus by sacrificing the right of those who are the nearest.

20. The following passages of the Mitakshara will remove all possible doubts on this point:--

(1) When one dies in a foreign country, let the descendants (Bandhus) cognates, gentiles, or his companions take the goods, or, in their default, the king. When he, who goes to a foreign country of those who are associated in trade, dies, then his share would be inherited by his heirs, that is, the son and other descendants; (Bandhus) cognates, i.e., the maternal side relatives, maternal uncle, and others; the gentiles, that is the Sapindas, besides the son and other descendants; and those who are come, that is those among the associates who are come from a foreign country; or in their default, that is of the heirs, &c., the king shall take. The word va shows that the heirs, &c., are entitled in alternation. The rule as to this order is contained in the text "The wife, the daughter, &c." So it should be understood here. The necessity for the text is to exclude the pupil, the fellow student, and the Brahman, and to include the trader. (Mitakshara.)

(2) The sage extends the rule to the spiritual guide, thus:

To the spiritual guide, the pupil, the learned Brahman, the maternal uncle, and the learned in the Vedas also." The spiritual guide means he who teaches the Vedas; pupil means he who is taught the Vedas; learned Brahman means he who recites the Vedangas. "By taking the maternal uncle, the cognates of one''s self, the cognates of the father, and the cognates of the mother who are connected by origin are also employed. They are shown in the commentary on the text. The wife, the daughter, &c.

21. The first of these two verses relates to the law of succession applicable to the estate of a foreign trader; and this law is contained in the text of Yajnavalkya which stands between inverted commas at the top of it, the rest being a mere commentary upon the text itself. It will be seen that the word Bandhava is expressly stated to include the maternal uncle, whoever else might be entitled to come in within the word "others" which follows immediately afterwards. In the case of a foreign trader, therefore, it is perfectly clear that the maternal uncle is an heir, but before we can apply this argument to the general ease, it is necessary to meet two objections that have been raised against such an application. The objections are: first, that the word used in this passage is Bandhava, whereas the word used in the general text is Bandhu; and second, that the passage in question refers to an "exceptional state of things" and cannot, therefore, be accepted as a guide for the general ease.

22. Both these objections are conclusively met by the express words of the author himself. It is distinctly stated by him that the order of succession applicable to this

case is exactly the same as that laid down in the general text; and further, that the only necessity for making a separate text for the exceptional case arose from that of excluding the fellow pupil and the Brahman, and of substituting the fellow trader in their place. It is perfectly clear, therefore, that the words Bandhu and Bandhava are of identical import, or in other words that the two texts are identical in every respect, except as to the slight modification which relates to the fellow pupil and the Brahman. The second passage, too, is equally decisive on this point. It is distinctly pointed out therein that the word maternal uncle used in the text of Yajnavalkya stands for all the three classes of Bandhus described by the author in his commentary upon the general text.

23. The Viramitrodaya, which is a work of high repute in the Benares School, concurrently with the Mitakshara, is also clear on this point: Cognates are of three kinds, related to the person himself, to his father, and to his mother, according to the following text: ''The sons of the father''s sister, the sons of the mother''s sister,'' &c. Here by reason of near affinity, the cognate kindred of the deceased himself in the first instance, then the father''s cognate kindred, and next his mother''s cognate kindred succeed. This is the word of succession. In the text of Manu ''then the distant kinsman shall be the heir or the spiritual preceptor or the pupil. The term Sakulya comprehends the persons descended from the same family (Sagotra) and the kinsman allied by common libations of water (Samanodaka), the maternal uncle and the rest, and the three kinds of cognates. The term Bandhu in the text of Yajneswara (Yajnavalkya) must comprehend also the maternal uncle and the rest, otherwise maternal uncles and the rest would be entitled to succeed, and not they themselves, though nearer in affinity, a doctrine highly objectionable, Viramitrodaya, page 209.

24. The Vivada Chintamani, which is a work of paramount authority in the sister school, which goes by the name of the Mithila School, is also of the same opinion, "the maternal uncle, and the rest" being expressly recognized in the category of heirs laid down in page 299 of Prasanna Cumar Tagore''s translation of the work.

25. In the face of all these concurrent authorities, it seems impossible to contend, that an exhaustive enumeration of Bandhus was made in verse 1, section 6, chapter II, of the Mitakshara. It has been said that the sister''s son is not entitled to inherit because he has been nowhere mentioned as an heir specifically by name; but this objection can be scarcely maintained if the doctrine of exhaustive enumeration falls to the ground. Apart from this last consideration, however, we do not see any reason why a specific enumeration by name should be insisted upon in every case. An enumeration by a general name, accompanied by a suitable definition sufficiently illustrated, is as good as any other kind of enumeration, particularly when the general name in question is applicable to a large number of persons whose individual names it would be very inconvenient to specify in detail; and we do not see any reason why in this particular case we should insist upon anything more

than what we have already got before us. The great grandson, for instance, is nowhere mentioned as an heir distinctly by name; and yet it would be simply absurd to contend that the estate of a deceased Hindu is to go to the fellow pupil, or to the king even, if his own great grandson is living. Similarly, when we now come to the Gotrajas, we find that no one below the descendants of the paternal great grandfather is expressly recognised by name in any part of the Mitakshara; and yet, it is a fact admitted on all sides, that the descendants of the remotest ancestors in the agnatic line, at least of those who stand within the fourteenth degree, are entitled to inherit in the Benares School. Why, then, are we to introduce this novel principle of interpretation when we come to deal with the Bandhus? There might have been some foundation for such an argument if the claimant had been a female relative, females, as a class, being generally supposed as having no right to inherit in consequence of their inability to perform religious rites; but in the case of male relatives, no restriction of any kind whatsoever can be cited to defeat their rights, if they are in a position to establish their status as Sapindas. We have shown that "the maternal uncle and others" are entitled to inherit in addition to those who are admitted as Bandhus, and those who would take in the maternal uncle only are bound to show who are the persons included in the words "and others." As far as the purposes of the present case are concerned, it is almost self-evident that if the paternal uncle is entitled to succeed as a Bandhu, the right of the sister''s son would follow as a matter of course. We have seen that there is but one definition of the word Bandhu, and the very nature of that definition conclusively proves that if the maternal uncle is a kinsman from a different family, and allied by funeral oblations, the sister''s son must necessarily be a kinsman of the same description.

26. It remains for us to meet the last objection. No doubt, if there were a uniform course of decisions establishing the doctrine that the sister''s son is not entitled to succeed, we would have been scarcely justified in holding otherwise, however much we might have been disposed to do so for the reasons set forth above. The fact, however, is, that there is no such uniform course of rulings as has been erroneously contended for before us. The following are all the cases that might be referred to on the point:--

Raj Chandra Narayan Chowdhry v. Gokul Chand Goh 1 Sel. S.D.R., 43; Ilias Kunwar v. Agund Rai 3 Sel. S.D.R., 37; Sheo Sahai Sing v. Omed Kunwar 6 Sel. S.D.R., 301; Case No. XI., Macnaghten''s Hindu Law Vol. II. 91; A Madras Case Mad. S.D.R., 1860, 247; Kullammal v. Kuppu Pillai 1 Mad. H.C.R., 85; Choti Lall v. Gurudyal S.D.R. (N.W.P.) 1865, 200; Mohun Lal v. Thakurani Sahiba Agra L.J., 1864, 17; Jowahir Rahoot v. Mussamut Kailasu 1 W.R., 74; Sola Debi v. Biswambhar Sahoo 4 L. Rem., 168; Giridhari Lal Roy v. The Secretary of State 4 W.R., 13.

27. The first case has nothing to do with the particular point before us, and we would not have alluded to it at all, if Sir Thomas Strange had not stated upon the authority of that case, that the sister''s son is not entitled to inherit in the Benares

School. The contest in that case, however, was between the sister''s son on the one side, and a Gotraja Sapinda on the other. The Pandits who were consulted in it very properly declared that if the Bengal law were applicable to the case, the sister''s son would be entitled to preference, but that the reverse would be the case according to the Mithila law. The case was ultimately disposed of in favour of the sister''s son, the Bengal law being held to be applicable; but there is not a single word either in the decision itself or in the Vyavastha referred to, from which it can be gathered that the sister''s son would not have succeeded as a Bandhu if the Mithila law had been adopted, if there were no Gotraja relatives in his way.

28. The second case has been already referred to in an earlier part of this judgment. It related to the daughter''s son of the brother, and as we have already seen, the only ground that was put forward for excluding him from the inheritance was the erroneous one of his not being a Sagotra Sapinda.

29. The third case is directly in favour of our interpretation. The question was, whether a daughter or a daughter''s son is entitled to inherit, and this question was determined in the affirmative upon the unanimous Vyavastha of the Pandits consulted on the occasion, including those of the Benares Pathshala.

30. The fourth case clearly shows, that the sister''s son is entitled to succeed as a Bandhu, both according to the Benares law and according to the Mithila. This case is of particular importance, inasmuch as it appears to have met with the approbation of Sir W. Macnaghten himself, who has evidently cited it as a leading authority on the point. We might also add, that Sir W. Macnaghten had expressly stated in his note to case No. 5, reported in page 87 of the same volume, that the Vyavastha given by the Pandit of Zillah Behar, in which the sister''s son is ranked as a Bandhu, is conformable to the law as current in Benares, Mithila, and other provinces.

31. The fifth case is a mere dictum; but it is to be observed that the Pandit who was consulted on the occasion distinctly stated that the sister''s son was entitled to inherit as a Bandhu, and no authority of any kind was cited or referred to contradict this opinion.

32. The sixth case is also a dictum, and the same remarks that have been made with reference to the preceding case apply to this case also.

33. The seventh case has nothing to do with the point before us. The dispute was between a brother''s daughter''s son and a Gotraja, and it was very properly held that the latter is entitled to succeed in preference to the former.

34. The eighth case is a mere dictum, but in this instance the dictum is in favour of the sister''s son.

35. The ninth case arose from a dispute between the sister''s son and an agnatic relation, and it was correctly held in that case that the latter is entitled to succeed. The learned Judges, however, who decided the case, went on to say that the sister''s

son is not entitled to inherit, either according to the Benares law or according to the Mithila law. In the absence, however, of any further explanation on the point, we are rather disposed to think that all that was intended to be said, is that he is not entitled to inherit in preference to the Gotraja; but at any rate it is clear that this opinion cannot be treated as anything more than a mere dictum.

36. The next case, however, is directly to the point, and with all deference to the learned Judges who decided it, we are of opinion that it is based upon erroneous grounds. These grounds have been too fully examined by us in the preceding part of our judgment to require any further notice. We wish, however, to make one remark in this place, and that is, that the learned Judges appear to have been mainly influenced by the idea that the sister''s son has never been recognized as an heir. With all deference to the learned Judges, we are bound to state that this was by no means the actual state of things at the time when their decision was pronounced, whatever it might be in this day. It is perfectly true that there is a paucity of decisions, on the other side, but this fact appears to have mainly arisen from the peculiar doctrine of the Benares School by which the remotest relative in the agnatic line has been placed above the highest of the cognates. It might be added that very few cases, indeed, if any, can be pointed out in which the daughter''s son of the paternal grandfather has been expressly recognized as an heir.

37. The last case relates to the maternal uncle of the father, and the grounds of the decision in this case being nearly the same as those in the one next above, no special remarks with reference to it are necessary.

38. Upon the whole, then, it must be admitted that the majority of the earlier cases at least are in support of our view; and of the more recent, there are two cases at most that are directly opposed to it. The last objection, therefore, must also be overruled.

39. For the reasons set forth above, I am of opinion that the question put to us by the Division Bench must be answered in the affirmative, or in other words, that the sister''s son is entitled to inherit under the Hindu law administered in the Benares School.

Sir Barnes Peacock, Kt., C.J.

40. I am of opinion that in the absence of nearer relatives, a man may be heir to his mother''s brother as regards property subject to the Mitakshara. The question has substantially been decided by the Privy Council (17th July 1868) in the case of Giridhari Lal Roy v. The Government of Bengal (1 B.L.R. (P.C.), 44), in which it was held that the maternal uncle of the father of the deceased was not excluded from the class of Bandhus capable of inheriting, and that the test contained in Article 1, Section 6, Chapter II, of the Mitakshara does not purport to be an exhaustive enumeration of all Bandhus who are capable of inheriting, and that it is not cited as such or for that purpose by the author of the Mitakshara.

41. The Judgment of Mr. Justice Dwarkanath Mitter which he has just read, and in which he has displayed great learning, ability, and research, was written before the decision of the Privy Council in Giridhari Lal Roy v. The Government of Bengal, was published here. My honourable colleague has entered so fully into the reasons, and exhausted the arguments in support of the view which he has taken, that it is unnecessary for me to do more than to say that I concur in the reasons which he has given in support of the conclusion at which he has arrived, and it is extremely satisfactory to find that it is entirely in concurrence with the view taken in the judgment of the Privy Council.

42. The case must be sent back to the Judges who referred it.

L.S. Jackson, J.

43. I am of the same opinion. It is very satisfactory to feel that a conclusion so entirely consistent with reason is also in full conformity with the Hindu law, as is conclusively shown in the exhaustive judgment which has been prepared by Mr. Justice Mitter; and also that the view which we had taken of the subject has been, it may be said, simultaneously adopted by the highest tribunal which deals with questions of Hindu law.

Phear, J.

44. In referring this case to a Full Bench, I expressed the inclination of the opinion which I then held. Mr. Justice Mitter''s very complete argument, in which I concur, has, I think, demonstrated that opinion to be correct. I would, therefore, answer the question in the words which have been used by the Chief Justice.

Macpherson, J.

I am of the same opinion.