Chinna Pichu Iyengar alias K. Veeraragava Iyengar Vs Padmanabha Iyengar and Others

Court: Madras High Court

Date of Decision: July 29, 1920

Citation: AIR 1921 Mad 671 : 59 Ind. Cas. 690

Hon'ble Judges: Sadasiva Aiyar, J; Napier, J

Bench: Division Bench

Judgement

Napier, J.
In this suit the plaintiff claims to be entitled as an heir to a moiety of the estate of one Ramsawmy Iyengar, deceased, and to set

aside certain alienations as not binding on him. The sole question before this Court in second appeal is, whether the plaintiff is a heritable bandhu

and is entitled to the estate of the last male owner.

2. The District Munsif has found, and there is no dispute on this point, that the last male owner is the plaintiff''s paternal grandfather''s mother''s

brother''s grandson and has held that as such he is not entitled to inherit. The lower Appellate Court accepted that view.

3. It is argued before us that the statement to this effect in Dr. Sarvadhikari''s Book on Hindu Law is not correct and that, even if it was thought

good law previously, the decision of the Privy Council in Buddha Singh v. Laltu Singh 30 Ind. Cas. 529 renders this view no longer tenable. I do

not propose to consider the principles underlying sapinda relationship on which this plaintiff is excluded. It seems to me sufficient to say that the

view taken by this learned text-writer is supported by a decision of the Calcutta High Court as long ago as Umaid Bahadur v. Udoi Chand 6 C.

119 (F.B.) . In that case the question which is at issue here was not directly at issue, but the Full Bench used this relationship as an illustration of a

case in which sapindaship did not exist, and the principle they laid down was as follows: ""Although F. is within six degrees from the common

ancestor yet B., the propositus, not being a descendant of the line of the maternal grandfather either of F. or of his father or mother they are not

sapindas to each other."" F in the Calcutta case would represent the plaintiff in this case. It is contended before us that this dictum is obiter, which is

true. But it is used by the Bench as axiomatic of the principles governing the relationship between the bandhus. Mr. Sreenivasa Iyengar, for the

respondents, finds authority for it in Chapter II, Section 6, placitum i, of the Mitakshara. His argument, is that cognates to be heirs must be one of

the three classes referred to in the passage, i.e., related to the person himself, or to his father or to his mother. He admits that the persons

enumerated in the placitum can be extended but he contends that the classes cannot be extended. The appellant contends that, on a proper reading

of the passage, the plaintiff does come within the class.

4. I can only deal with this question on authority. If I found that the dictum in Umaid Bahadur v. Udoi Chand 6 C. 119 (F.B.) had ever been

doubted or departed from the matter would be different. But where I find it treated as axiomatic, and where there is no case in which it has ever

been doubted, I cannot treat it as a mere obiter dictum.

5. In a later case in Babu Lal v. Nanku Ram 22 C. 339 the decision in Umaid Bahadur v. Udoi Chand 6 C. 119 (F.B.) and the rule expounded in

Dr. Saravadhikari''s Book to the same effect were referred to with approval, and the principles underlying bandhu relationship laid down in that

case accepted It was suggested before us that the decision in Umaid Bahadur v. Udoi Chand 6 C. 119 (F.B.)was peculiar to Calcutta. But Babu

Lal v. Nanku Ram 22 C. 339 shows that it is based on the Mitakshara. Unless, therefore, a different view has to be taken based on the authority

of the Privy Council in Buddha Singh v. Laltu Singh 30 Ind. Cas. 529 , the law laid down in Umaid Bahadur v. Udoi Chand 6 C. 119 (F.B.) 6

C.L.R. 500 must, I think, be followed. The appellant contends that the decision of their Lordships in that particular case, that the term ''putra''

includes grandson and great-grandson, must be generally applied and relies on a passage at page 616. Pages of 37 A. -[Ed.] The wards are:

having regard to the fact that this great legist, whose logical acumen, judging from his work, seems to have been remarkable, has used the term

putra in previous parts of his book on inheritance in a comprehensive and generis sense, their Lordships find it difficult to conceive why he should

arbitrarily and without any explanation have used the word towards the end in quite a different and restricted sense, or why, if his intention was to

confine the descent in the case of the collaterals to the actual sons of brothers and uncles, he did not employ terms which would have exactly

conveyed his meaning, such as atmaja or aurasa, which their Lordships understand, mean son of one''s loins''."" He contends that their Lordships

intended to rule that in the Mitakshara whether the words of the Commentator or an original text are being construed the word putra must always

include grandson and great-grandson. This is a very extreme contention. Their Lordships in that case were not dealing with sisters'' or aunts'' sons

but with the case of sons ex parte paterna. It seems to me that the language of their Lordships at page 623 is the real summing up of their

Lordships'' decision. It is as follows: ""They have already given reasons for holding that in the Mitakshara, as expounded in the Benares School, the

word putra and its synonym employed by Vijnaneswara in connection with brothers and uncles must be understood in a generic sense as in the

case of the deceased owner, and that the defendants in each ascending line, up to the fixed limit, should be exhausted, at any rate, to the third

degree before making the ascent to the line next in order of succession."" Their Lordships were undoubtedly dealing with a case of succession

among agnates, as laid down in Section 5 of Chapter II, and it is, if I may say so, perfectly understandable that, where the word putra is being used

in connection with sons of males, it should always be given an extended meaning to include grandson and great-grandsons. But very different

considerations arise in a case of succession of bandhus and I do not think we are entitled, from the general language used by the Privy Council on

one page, to apply the principles enunciated with regard to agnate''s succession to a case of cognate kindred where such application would result

in the destruction of the principle to be found in the section dealing with the succession of cognate kindred. There must surely be a profound

distinction between relationship in one gotra and the relationship in persons belonging to a different gotra. I cannot, therefore, hold that the decision

of their Lordships in Buddha Singh v. Laltu Singh 30 Ind. Cas. 529 has created a law of succession among cognates different from that which

seems to have been accepted for a great many years. That is the view of the District Munsif in this care and I see no reason to doubt that it is

correct.

6. I would dismiss the second appeal with costs. One set.

Sadasiva Aiyar, J.

7. The facts have been set out in the judgment of my learned brother, which I have had the advantage of reading before writing this opinion of

mine. I have considered, in Subramania Mudaliar v. Ranganathan Chettyar 18 Ind Cas. 506 , the sloka about atma bandhus, pitru bandhus and

matru bandhus which is attributed to baudhavana by one commentator and Vridha Satatapa by others. I have expressed my considered opinion in

that case that the sloka is a childish and spurious text and that it is an illogical, incomplete and inconsistent classification of bandhus. Mr. Srinivasa

Aiyangar, with great legal acumen and a wealth of legal terms of highly subtle meaning, tried to establish that the classification was not so illogical or

inconsistent as I thought. I can only say that he has merely confirmed me in my view, though it may be that the subtlety and (what be called) the

intricacy of the ideas involved in the classification make it so elusive as to escape the grasp of ordinary minds including my own.

8. As regards the case in Umaid Bahadur v. Udoi Chand 6 C. 119 (F.B.) Shome 3 Ind. Dec. 78 I recognise that it contains the opinion of a Full

Bench of five Judges, off whom Mr. Justice Romesh Chunder Mitter was one. But, as my learned brother points out, the passage in that judgment

of the Full Bench relevant to the question which we have to consider is an obiter dictum. There is no discussion of the subject, and the obiter

dictum is laid down as if it is an axiomatic truth. In the phrase "maternal grandfather either of F. or of his father and mother," found in the relevant

passage, the word "and" seems a clerical error for "or" The enumeration (in this sentence of the judgment) of the persons within whose category

the male claimant"s male ancestor (who is the nearest common male ancestor of the propositus and the claimant) should be found in order that the

male claimant can be recognised as a heritable male bandhu is very incomplete. The persons enumerated are, (1) the maternal grandfather of the

claimant, (2) the maternal grandfather of his father, and (3) the maternal grandfather of his mother (the claimant being lettered F. in the tree found in

the end of the judgment.) The atma bandhus, pitru bandhus and matru bandhus, as given by the text already referred to, include the descendants

not only of the three ancestors mentioned in the above sentence in Umaid Bahadur v. Udoi Chand 6 C. 119 (F.B.) (which is the first sentence in

the last paragraph of the judgment at page 128) but also of several others. The full enumeration of the male ancestors of the claimant F. (whose

descendant is traced through a female or females from the common male ancestor) should, therefore, have been as follows (confining ourselves to

that text for the moment):

Name. Class. Remarks.

1. Father" s Paternal grandfather ... ... Atma bandhus.

2. Father"s Maternal grandfather ... ...}

3. Father"s Father"s Paternal grandfather ... Pitru bandhus.]

4. Father"s Father"s Maternal grandfather ...}

5. Father"s Mother"s Paternal grandfather

... Matru bandhus.

6. Father"s Mother"s Maternal grandfather ...}

9. The male heritable bandhus should be found among the descendants of these six ancestors, if the text is taken to impose a further restriction on

the number of the heritable bandhus than the restriction already imposed by the general rule of restriction, that where the claimant claiming through

a common male ancestor has a female or females intervening in the line of descent, he should be within five degrees of the common male ancestor.

It is clear that several bandhus nearer than some of those enunciated in the text, such as maternal uncle, sister''s son and son''s daughter''s son of

the propositus, do not find a place in the text. I can only again express my regret that in Umaid Bahadur v. Udoi Chand 6 C. 119 (F.B.)the learned

Judges did not even indicate the chain of reasoning by which they arrived at the conclusion that the enumeration of bandhus in the text was not

merely illustrative but restrictive and, if restrictive, how far and on what principles the restriction proceeded. The atma bandhus mentioned in the

text are descended from the paternal or maternal grandfather alone but it has now been settled by decisions that atma bandhus might be the

descendants of the father, such as sister''s son or even of one''s self, such as son''s daughter''s son.

10. However, I am reasonably certain that neither the old spurious text nor the commentators intended to impose any restriction on the number of

heritable bandhus based on the limitation of the classes of the (male) ancestors of the claimant (in whose descent there is female intervention) from

which ancestors the propositus ought also to be descended. But Umaid Bahadur v. Udoi Chand 6 C. 119 (F.B.) by great ingenuity; did derive

three such classes as following from the text. Mr. Sarvadhikari extended them and such farfetched deductions remained unquestioned for long. I

might here remark that the text classifies only the claimant--bhandhus of the propositus, into three classes. If propositus A is a bandhu (blood

relation by cognate affinity) of the claimant B. claimant B. is also clearly a bandhu of propositus A. The relation of bandhuship of the claimant to the

propositus is alone considered in the text relating to the class of heritable bandhus. But a further ingenuity has been elaborated, namely, that not

only should the claimant be a heritable bandhu that is a bandhu restricted by the ingeniously evolved limitations deduced from the text but the

propositus must also be a heritable bandhu of the claimant with the same limitations (that as we must hypothetically assume that the propositus was

living and claiming to succeed as heir to the claimant who must be supposed to be dead for that purpose). In other words, the principle of so called

''mutuality'' was to be further considered in these cases. Ingenuity calculated to make this branch of the law so obscure as to lead to mere gambles

in litigation, cannot go further than this, I, therefore, consider, with the greatest respect, that the conclusion in Umaid Bahadur v. Udoi Chand 6 C.

119 (F.B.) is fallacious. As I said in Subramania Mudaliar v. Ranganathan Chettyar 18 Ind Cas. 506 , ""when two irrational principles become the

foundation of all further reasoning, it is no wonder that a branch of law based upon reasons themselves founded upon unreason becomes most

unsatisfactory."" But I do not wish to differ from the precedents unless I am convinced that any broad principles of equity, justice and good

conscience are contravened thereby.

11. I feel that no such principles are at stake in considering these claims by remote relations to succeed to the property of a deceased man. In

olden days, when the ties of relationship were very strong, and when agnatee, even to the 14th generation sometimes lived together in one family

commensality, the claim of a remote relation to succeed might have a basis on broad principles of justice, equity and good conscience. But in these

modern days, when even first cousins rarely live together, I do not see any justice or equity in claims to inherit made by very remote relations, and I

should be glad if legislation is initiated to prevent claims by bandhus not descended from the propositus himself or his father or his paternal

grandfather or his maternal grandfather, so that even the persons specially mentioned in the spurious text of pitru bandhus and matru bandhus may

be excluded.

12. In the result I agree that the second appeal should be dismissed with costs.