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stones mentioned in the finding on the 15th issue, as being now in the defendants' possession, or that, if delivery be not made, they pay to the plaintiff the sum of Rs. 858.

The objection raised in the 18th paragraph of the memorandum of appeal has been relied upon, but it has not been shown to us that there is any error in the Subordinate Judge's decree in this particular.

The defendants object to the partition of the land, which was the subject of the mortgage effected by the deed, Ex. No. 127, unless the plaintiff pay to them one-half of the sum of Rs. 2,325, which they allege that they have paid for the redemption of the [597] mortgage. This is the point raised in the 19th paragraph of the memorandum of appeal. It must be presumed that the money with which the redemption was effected came out of the profit, realised from the joint property in the possession of the defendants. As we do not require the defendants to account to the plaintiff for the profits which they have realised, they cannot call upon the plaintiff to reimburse them in respect of a single item of expenditure made out of those profits.

We have now dealt with all the objections taken to the Subordinate Judge's decree at the hearing of the appeal: and we are of opinion that that decree should be amended, in respect of the findings on the 15th and 20th issues, in the manner and to the extent indicated in the preceding observations, but that in other respects the decree should be confirmed.

We think the parties should bear their own costs in appeal.

Note.—See also the case of *Shivram* v. *Narayan* (*supra* 5 B, 27). In that case both the plaintiff and the defendant had in the previous suit alleged a partition, but the Court held that no partition had taken place. It does not appear that leave to bring a fresh action was given in the case.

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APPELLATE CIVIL.

Before Mr. Justice M. Melvill and Mr. Justice Pinhey.

MOHANDAS (*Original Plaintiff*), *Appellant* v. KRISHNABAI (*Original Defendant*), *Respondent.** [29th June, 1881.]

Hindu law—Inheritance—Bandhus—*Maternal uncles—Mother's sister's sons.*

Maternal uncles are included in the class of *bandhus*, and succeed in priority to mother's sister's sons.

[F., 17 B. 114 (125); R., 30 B. 431 (P.C.)=3 A.L.J. 484=8 Bom. L.R. 446=4 C.L.J. 9=10 C.W.N. 802=16 M.L.J. 446=1 M.L.T. 211=33 I.A. 176; 36 B. 339 (341) =14 Bom. L.R. 89=14 Ind. Cas. 438; 33 M. 439 (445)=5 Ind. Cas. 280=20 M.L.J. 275=7 M.L.T. 203.]

THIS was an appeal against the decision of W. H. Newnham, Judge of the District of Poona.

The facts, in so far as they are material for the purpose of this report, are as follows:—

In the city of Poona there was a firm styled "Sakharam Manchharam," the last sole owner of which was one Liladhar. In 1864, Liladhar made a will by which he appointed two persons to be administrators to carry on the business of the firm and otherwise [598] to give effect to the provisions of his will. Liladhar died, leaving him surviving his second

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son, a minor, named Sundarlal. Sundarlal died in 1873 at the age of 13. Previously to his death the administrators of his father's will and some members of the family, with the view of maintaining the old firm, caused Sundarlal to adopt Gopaldas, his mother's sister's son. Sundarlal died, leaving him surviving, his mother, his mother's four sisters, several children of his mother's sisters, (of whom the plaintiff was one), his mother's three brothers, and others whom it is not necessary to mention. To prevent the legality of this adoption from being subsequently questioned, the administrators drew up a document which they induced most of the surviving members of the family to sign for a consideration. The plaintiff's father and elder brother and the plaintiff himself were among the signatories to this document,—the signature of the plaintiff, who was then and at the date of this suit a minor, being made by his father on receiving Rs. 2,000. Sundarlal and his adopted son Gopaldas having both died, the property of the firm came into the possession of the defendant Krishnabai, the minor widow of Gopaldas.

To recover a third share of this property the minor plaintiff Mohandas, represented by his elder brother, now sued in the Court of the Judge of Poona. It was alleged on his behalf that the adoption, by Sundarlal, of the defendant's husband had not really taken place; that if it had, it was illegal; and that the compromise entered into for him by his father was void and of no effect. Against this it was contended, *inter alia*, for the defendant in her written statement that the suit could not be brought during the minority of the plaintiff; that the family arrangement was for a consideration and valid, and could not be disturbed; and that the plaintiff was not entitled to the third share claimed, or any other share. The District Judge found for the defendant on all these contentions, and rejected the plaintiff's claim. The plaintiff thereupon appealed to the High Court.

Inverarity with *Mahadev Chimnaji Apte*, for the appellant.—Taking Sundarlal to be the last owner of the property, we find that he died, leaving, amongst others, his adopted son Gopaldas *alias* Govardhandas, [assuming the adoption to be both genuine and valid] Sundarlal's mother's sister, her sons Narotamdas and [599] Mohandas, the plaintiff, and their three maternal uncles. Gopaldas died shortly after his adoption, leaving his minor widow, the defendant Krishnabai. The principal question is, who is the nearest heir of Sundarlal, and this depends upon whether by Hindu law maternal uncles inherit before mother's sister's sons. We contend that they do not. The mother's sister's son is a *bandhu*, the rule of whose succession is laid down at p. 55 of West and Bühler (2nd ed.). The rule is that "on failure of *samanodakas* the estate of a separate householder descends to the *bandhus*, or *bhinnagotra sapindas*." The nine *bandhus* are then enumerated, the mother's sister's sons being assigned the second place. From p. 200 of the same work it will be seen that the *bandhus* are (1) the man's own cognates,—that is, the father's sister's sons, the mother's sister's sons, and the maternal uncle's sons; (2) the man's father's cognates; and (3) the man's mother's cognates. The man's maternal uncles are not mentioned. Then the question arises. "Are they *bandhus* at all?" Upon the authorities quoted at pp. 201 and 202, West and Bühler incline to the opinion that maternal uncles are *bandhus*. Taking them to be *bandhus*, the next question is whether they take before or after nine *bandhus* enumerated at pp. 55 and 200. Fully recognizing the difficulty of the question, the learned compilers say at p. 203: "It would seem, however, that 'nine *bhandhus*' mentioned in the law books ought to be

placed first, according to the principle of the Mayukha, that 'incidental persons are placed last.' "

It was also contended for the plaintiff that the adoption of Gopaldas by Sundarlal was invalid, and that the compromise entered into by the plaintiff's father was prejudicial to the plaintiff's interest, and not binding.

Hon'ble *J. Marriott*, Advocate-General (with him *Shantaram Narayan*, *Jefferson*, *Bhaishankar* and *Dinshah* and *Shivram V. Bhandarkar*) for the respondent.—The adoption was valid at the time it took place in 1873. The compromise was in the nature of a family arrangement to settle a doubtful claim, and, therefore, valid. The fundamental rule of succession amongst Hindus is laid down by Manu, in chap. ix, verse 187; "To the nearest *sapinda*, male or female, after him in the third degree, the inheritance next **[600]** belongs." This rule is adopted by Vribaspati (see Coleb. Dig., vol. ii, pl. 437, p. 569): "Where many claim the inheritance of childless man, either paternal or maternal, he who is the nearest of them shall take the estate." *Bandhus* are *sapindas* belonging to a different *gotra*. Therefore the above rule applies to *bandhus*; and the question is: who is nearer to a man, his maternal uncle's or his mother's sister's sons? As stated for the appellant, the maternal uncles are not included in the list of *bandhus*; but the list of *bandhus* is by no means exhaustive. There are many more *bandhus* than the nine there enumerated: Mayne's Hindu Law, p. 488 (2nd ed.); *Gridhari Lall Roy* v. *The Bengal Government* (1). The opinion in West and Bühler is incorrect, and is based upon the rule of construction given in the Mayukha that "incidental persons are placed last," which does not apply here. The author of the Mayukha applies the rule with reference only to the order of inheritance known as the Baddha Kram or the compact series: "The wife, and the daughters also, both parents, brothers likewise, and their sons" (Stokes' Hindu Law Books, 427, pl. 2). The enumeration of the nine *bandhus* is not a compact series. A sister's son, although not an enumerated *bandhu*, has been held to take in preference to a mother's sister's son, an enumerated *bdndhu* and a person occupying exactly the same position as the plaintiff in this case: (*Gunesh Chunder Roy* v. *Nil Komul Roy* (2)). A man's maternal uncle is nearer to him than his mother's sister's son. This contention is supported by Viramitrodaya: *Gridhari Lall Roy* v. *The Bengal Government* (1); *Amrita Kumari Debi* v. *Lakhminarayan Chuckerbutty*.(3)

JUDGMENT.

The judgment of the Court was delivered by

MELVILL, J.—As we have come to the conclusion that the minor plaintiff is not one of Sundarlal's heirs, it is unnecessary for us to decide whether, if he had any right to the inheritance, he would have been bound by the compromise entered into by his father on his behalf.

[601] Among other relatives who survived Sundarlal were three brothers of his mother. The plaintiff's mother, who is still alive, was a sister of Sundarlal's mother; and it may well be doubted whether the plaintiff would be entitled to succeed in preference to his own mother, through whom he claims. It is sufficient, however, for our present purpose, that we should confine ourselves to what may perhaps be a somewhat simpler question, *viz.*, whether the plaintiff, as standing in the

(1) 12 M.I.A. 448=10 W.R. 32 (P.C.). (2) 22 W.R. 264.
(3) 2 B.L.R. 28 (F.B.).

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relationship to Sundarlal of mother's sister's son, is entitled to preference over his own and Sundarlal's maternal uncles.

The rule relating to the succession of cognates (*bandhus* or *bhinnagotra sapindas*) is contained in the first placitum of the sixth section of the second chapter of the Mitakshara. Nine heirs are specified, of whom the first three are the father's sister's sons, the mother's sister's sons, and the maternal uncle's sons. The maternal uncle is not specified: but it was held by the Judicial Committee in *Gridhari Lall Roy* v. *The Bengal Government* (1) that the enumeration of *bandhus* in the text of the Mitakshara is illustrative, and not exhaustive; and that the maternal uncle is a *bandhu*, and, failing nearer *bandhus*, is entitled to inherit. Similarly, a sister's son is not among the specified relations; but both in Calcutta and Madras it has been held that he is in the line of heirs: *Amrita Kumari Debi* v. *Lakhinarayan Chuckerbutty* (2); *Chelikani* v. *Rajah Suraneni Vencata* (3). None of the above cases determine the position of the maternal uncle or the sister's son with reference to other *bandhus*; and it was argued for the plaintiff that, even though they be admitted to be *bandhus*, they must still take rank after all the heirs enumerated in the text. From West and Bühler, page 203, it would seem that the learned authors of that Digest rather incline to this view; but they speak with some hesitation on the subject; and the passage of the Mayukha to which they refer appears to us to be hardly sufficient to support their conclusion. In that passage (Mayukha, ch. iv, sec, viii, pl. 18) Nilkant is discussing the position of the paternal grandmother. He quotes the text of Manu: "The mother also being dead, the father's mother shall take the heritage," and then adds: "Even [602] though she is here mentioned immediately next to the mother, she is to be entered at the end, after the brother's sons, after the manner of incidental persons at the end, because the placing her in the middle is in violation of the rank fixed for each, as far as brother's sons." The principle here stated of placing incidental persons after those expressly specified is here applied by Nilkant only to the "compact series of heirs," *i.e.*, to the list of heirs ending with the brother's sons (Mitakshara, ch. ii, s. 5, pl. 2; Stokes' Hindu Law Book, 446); and it does not follow that he intended to apply it to the list of *bandhus*. Placitum 22 treats of the *bandhus*, and, after quoting the text in which they are enumerated, Nilkant adds: "Here also the order of succession is even the order of the text;" but this he seems, to intend no more than is stated in the Mitakshara, (ch. ii, s. vi, pl. 2), *viz.*, that, "by reason of near affinity, the cognate kindred of the deceased himself are his successors in the first instance; on failure of them, his father's cognate kindred; or, if there be none, his mother's cognate kindred." There does not appear to us to be anything in the Mitakshara or the Mayukha which can be construed into a direction that the nine specified *bandhus* are to take precedence of all unspecified *bandhus*; and if there be no such direction, then the text of Manu "to the nearest *sapinda* the inheritance next belongs," and that of Brihaspati, "where many claim the inheritance of a childless man, whether they be paternal or maternal relations (*sakulya*), or more distant kinsmen (*bandava*), he who is the nearest of them shall take the estate,"[2] seem to furnish the proper ground for decision. Nor are we without judicial authority on the point. We have already referred

(1) 12 M.I.A. 448=10 W.R. 32 (P.C.).
(2) 2 B.L.R. 28. (F.B.)
(3) 6 M.H.C. 278.

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to a Full Bench judgment of the Calcutta High Court, in which it was held that a sister's son is entitled to a rank as a *bandhu*. This decision was followed in *Ganesh Chunder Roy* v. *Nil Komul Roy* (1) by Markby and Mitter, JJ., who held that, according to the general principles of Hindu law, a sister's son is a preferential heir to a mother's sister's son, as being capable of conferring greater spiritual benefits upon the soul of the deceased. This is a distinct authority for holding that the nearest of kin inherits in preference to a more distant [603] *bandhu*, though the latter may be among those specified in the text. Again the passages from the Mitakshara, quoted at pp. 40 and 41 of the judgment in the Calcutta Full Bench case *Amrita* v. *Lakhinarayan* (2), already referred to, tend to show that the maternal uncle was regarded by Yajnavalkya as the principal, or representative *bandhu*; while the passage from the Viramitrodaya, cited at p. 42, is still more clear upon the point. This passage was one of those relied upon by the Judicial Committee in *Gridhari Lall Roy* v. *The Bengal Government* (3): and the translation of it given by their Lordships at p. 466 of Moore's Reports seems in some respects more correct than that given by Mr. Justice Mitter in the Calcutta case. "The term 'cognates' (*bandhus*) in the text of Yajneswara or Yajnavalkya must comprehend also the maternal uncles and the rest: otherwise the maternal uncles and the rest would be omitted; and their sons would be entitled to inherit, and not they themselves, [or 'then they themselves,'] though nearer in the degree of affinity; a doctrine highly objectionable." The Viramitrodaya is an authority in this Presidency illustrative of, and supplementary to, the Mitakshara; and in the above passage we find a distinct declaration that maternal uncles must take before the sons of maternal uncles, though the latter are among the specified *bandhus*. It being thus established that maternal uncles have priority over the mother's brother's son, there would seem to be no possible ground for holding that they have not priority over the mother's sister's son. When it is once admitted that the list of *bandhus* given in the text is not exhaustive, and that certain other relatives take before some of those specified in the list, there is no other logical conclusion except that the relative who, as nearest of kin, is capable of conferring the greatest spiritual benefit on the soul of the deceased, must in all cases be preferred to a more remote *bandhu*. Applying this principle, we come to the conclusion that the plaintiff had no share in the inheritance of Sundarlal, as there were preferential heirs in existence at Sundarlal's death; and for this reason we confirm the decree of the District Court with costs.

Decree confirmed.

(1) 22 W.R. 264.
(2) 2 B.L.R. 28 (F.B.).
(3) 12 M.I.A. 448=10 W.R. 32 (P.C.).