V. Subramania Ayyar Vs. Rathnavelu Chetty and Twelve ors.

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Judge : John Wallis, Kt., C.J., ;Oldfield and ;Kumaraswami Sastriyar, JJ.

Appellant : V. Subramania Ayyar

Respondent : Rathnavelu Chetty and Twelve ors.

Judgement :

John Wallis, Kt., C.J.

1. The question has been dealt with so very fully by Sadasiva Ayyar, J., in the Order of Reference and in the judgment to be delivered by Kumaraswami Sastriyar, J., that I shall state my reasons for concurring in the answer proposed by them very shortly. Manu only mentions the right of a Sudra father to give his illegitimate son a share if he chooses, but at the date of Yagnavalkya, the illegitimate son was recognized as one of his father's nearest heirs. In the few slokas (144 to 149) upon which this part of the Mitakshara is a commentary, Yagnavalkya deals first with partition during the father's lifetime, and then with partition by the brothers after the father's death. Next he enumerates the twelve classes of sons who are to inherit to the father, each class excluding the subsequent classes and all other heirs.

2. 'A legitimate (aurasa) son is one born of a lawfully wedded (dharma) wife. Equal with him is the son of an appointed daughter.' (Sloka 128.)

3. This is the son of a daughter without brothers who had been appointed by the father to remain in his own gotra and to bear sons who were to be regarded as his sons, a possibility which occasioned the numerous warnings in the texts against marrying a girl without brothers. These are the first two classes of sons. It is immediately after the enumeration of the twelve classes of sons, and before dealing with the other heirs who are to take 'in default of male issue,' that Yagnavalkya treats of the rights of the Sudra's illegitimate son as regards partition and succession. On partition during the father's life his share was to be at the father's discretion which was still wide in those times. After the father's death, he was entitled to share with the legitimate brothers, but only to half a share.

4. 'If there be no brothers nor daughter's sons, he then takes the whole.' (Sloka 134.)

5. This would be perfectly logical, if by daughter's sons were meant the sons of the appointed daughter who were equal to the aurasa sons, and 1 cannot help thinking this was originally so, an inference which is supported by the fact that Medhatithi, as

interpreted by Dr. Jolly in his History of the Hindu Law, page 187, puts the daughter's sons here on the same footing as legitimate sons as regards their shares of inheritance. But, as has been pointed out, the words for daughter's sons used by Yagnavalkya include as well daughter's sons generally who would have no claims to come in preference to the other sons. When we come to the Mitakshara, some six hundred years later according to some estimates, we find the daughters mentioned as well as the daughter's sons. Much later the Dattaka Chandrika includes the widow; and it is now settled that in the absence of legitimate sons the illegitimate son only takes half if there are widows, daughters or daughter's sons. This looks as if there had been an advancement of these three classes to take along with the illegitimate son. Simultaneously the artificial sons became obsolete with the exception of the dattaka who was admitted to rank with an aurasa son. But, however this may be, it does not affect the fact that from the time of Yagnavalkya onwards the illegitimate son has been an heir to his father and an heir of a very high rank excluding all the subsequent classes of sons which at that time included even the dattaka or son given in adoption. No doubt the general principle was that the inheritance went to the next sapinda, and that though the relation of sapindaship depended on community of particles it existed, at any rate among the higher castes, in later times only between persons who wore born of a regular marriage, but the texts show an exception to the rule in the case of the illegitimate sons of Sudras who were excluded from the sacramental forms of marriage. This being so, and the illegitimate son being heir to the father, I can see no reason why the father also should not on the usual principle be heir to the illegitimate son in the case put in the Order of Reference. This view also seems to me to be in accordance with the decision of the Bombay High Court in Sadu v. Baiza and Genu I.L.R. (1880) Bom. 37, which was accepted and acted on by the Privy Council in Jogendro Bhupati Hurrochundra Mahapatra v. Nityanand Man Sing (1891) I.L.R. 18 Cal 151 (P.C.), that an illegitimate son of a Sudra was a member of the family and a co-parcener of his legitimate brother, to whose share he succeeded by virtue of the co-parcenership in preference to the brother's widow. It was held that the legitimate brother would take the illegitimate brother's share in the same way. If this be so, it seems to me to involve a fortiori that there is no sufficient reason for refusing to allow the father to succeed to the illegitimate son according to the ordinary rule just as the illegitimate son succeeds to the father. My answer is in the affirmative.

Oldfield, J.

6. I concur in the answer proposed, because such concurrence is in my opinion entailed by the decision in Jogendro Bhupati Hurrchundra Mahapatra v. Nityanand Man Sing (1891) I.L.R. 18 Cal 151 (P.C.). For the language used in that decision and in Sadu v. Baiza and Genu I.L.R. (1880) Bom. 37, the judgment in which was apparently endorsed by their Lordships of the Privy Council without reservation, appears to me to entail that a co-parcenary exists between the legitimate and illegitimate sons in virtue of a relationship and not as specially created by the recognition of the latter in the texts for special purposes which they specify, and subject to special limitations, which those purposes imply. Such relationship can be traced only through the affiliation of both sons to their common father; and the result, which must be accepted, is the recognition of the illegitimate son as a son in the most comprehensive sense, subject only to certain disabilities not at present material; and consequently of his father as connected with him by the ordinary paternal relationship. From such a relationship the father's right to inherit from him follows.

7. As this ground of decision is adequate, I refrain from discussion of the texts or discussion of the reasoning employed in the three cases, which have for many years been accepted as stating the law in this Presidency: Krishnayyan v. Muttusami I.L.R. (1884) Mad. 407, Ranoji v. Kandeji I.L.R. (1885) Mad. 557 and Parvathi v. Thirumalai I.L.R. (1887) Mad. 334. I moreover offer no opinion regarding the possibility of reconciling our conclusion in the present case with the well settled course of decisions, by which the illegitimate son's right of succession to collaterals is at present negatived.

Kumaraswami Sastriyar, J.

8. The question referred to us for decision is 'whether, where an illegitimate son was born of a permanently kept concubine and under the Hindu Law he would be the sole heir or one of the heirs of his putative father's properties, his father could, if he survived the illegitimate son, inherit the said son's properties, when that son left no widow or issue and his mother had predeceased him.'

9. The meaning of the term dasi-putra in the texts has been the subject of conflicting decisions, but it is unnecessary to refer to them, as the law, so far as this Presidency is concerned, has been settled by the recent decision of the Pull Bench is Soundararajan v. Arunachalam Chetty I.L.R. (1916) Mad. 136. In order to entitle an illegitimate son of a Sudra to succeed, all that is necessary is that the connection between his parents should be continuous and neither adulterous nor incestuous.

10. There can be little doubt that the Smritis treat the illegitimate son of a Sudra as one capable of inheriting his father's property by virtue of the relationship of father and son subsisting between them. In dealing with the subject of 'the partition of heritage' Yagnavalkya in verses 128 to 132 deals with the twelve classes of sons, namely, (1) the Aurasa or the son of the lawfully wedded wife, (2) Putrika Suta or son of the appointed daughter, (3) Kshetraja, the son begotten on a wife by a sagotra under the rules relating to Niyoga, (4) Gudhaja, one secretly begotten in the house, (5) Kanina, the son of an unmarried daughter, (6) Paunarbhava, the son of a woman who has been previously married, (7) Dattaka, one who is given in adoption by his father or mother, (8) Krita, a son purchased from his parents, (9) Kritrima, the son adopted by the man himself, (10) Swayamdatta, one given himself as a son, (11) Sahodha, a son of a woman pregnant at the time of marriage and (12) Apaviddha, a person who has been forsaken by his parents and is adopted as a son. In verse 132, he states that each of the classes of sons is in the absence of the preceding one the giver of the funeral cake and the inheritor of a share of the property of his father. Then follow verses 133 to 135 which run as follows (I adopt Mandlik's translation):

The law is propounded by me in regard to sons equal by class. A son begotten on a dasi by a Sudra becomes even the partaker of a share by the father's choice, after the death of the father the brother should make him a half-sharer. An illegitimate son of a Sudra if brotherless can take the whole unless there is a son to any of the daughters of the Sudra.

11. Then follow the well-known slokas 135 and 136 which form the basis of the law of inheritance to sonless Hindus and which run as follows:

The wife, daughters, both parents, brothers and likewise their sons, gotrajas, bandhus, a pupil and a fellow student. Of these on failure of the preceding the next

following in order is heir to the estate of one who has departed for heaven leaving no son (putra). This rule extends to all classes.

12. Then follows sloka 137 which prescribes a special rule as regards a hermit, an ascetic and a student. Other writers describe as many as seventeen classes of sons, but it is not necessary to refer to them.

13. Turning to Manu who deals with the subject of inheritance in Chapter IX we find that he describes twelve classes of sons in verses 166 to 177 and in verse 179 states that:

a son who is begotten by a Sudra on a female slave or the slave of his slave may, if permitted by his father, take a share of the inheritance.

14. Verse 180 runs as follows (I adopt the translation given in the Sacred Books of the Bast):

These eleven, the son begotten on the wife and the rest as enumerated above, the wise call substitutes for a son taken, in order to prevent a failure of the funeral ceremonies.

15. Verse 181 states that sons begotten by strangers belong in reality to him from whose seed they sprang, but not to the man who took them. Verses 182 and 183 refer to a son of uterine brothers (who is said to be the son of all) and to a son of one of several wives who is said to be the son of all the wives. Verses 184 and 185 run as follows:

16. On failure of each better son each next inferior is worthy of the inheritance; but if there be many of equal rank they shall all share the estate (184). Not brothers, nor fathers, (but) sons take the paternal estate; but the father shall take the inheritance of a son who leaves no male issue, and his brothers (185).'

17. It is clear that Manu declares the father of each class of sons enumerated by him above to take the inheritance of the son who dies leaving no male issue.

18. It will be observed that both Manu and Yagnavalkya deal with the dasi-putra of a Sudra immediately after the twelve classes of sons and the context shows that the dasi putra was treated as the son of a Sudra and placed on a footing superior to the illegitimate son of the twice born classes by being given a share on a partition between himself and his brothers and also the right to share with the daughter's son, and to take the whole estate in the absence of sons and daughter's sons. But for this special provision the illegitimate son of a Sudra would take only in default of all aurasa and putrika putra or other sons classed by the Smriti writers as superior and the fact that a special text was necessary to give him a favourable position cannot in my opinion be treated as showing an intention to exclude him from the category of sons whom the Smriti writers mention as capable of inheriting to their father. As the verses in Manu and Yagnavalkya dealt with sons common to all the four castes (with the reservation that marriage or concubinage between a woman of higher caste with a man of: the lower caste was strictly forbidden) a special rule has to be introduced in order to give the son of a Sudra by a concubine the right which no other illegitimate son had, namely, that of getting a share with the legitimate son, daughter and daughter's son and in their absence of succeeding to the whole estate in preference

to his father's brother and agnates. There is on reason to suppose that the Smriti writers attached any special stigma to the illegitimate son of a Sudra by a dasi as a reference to the twelve kinds of sons allowed to the twice born classes shows that several of them can by no stretch of imagination be said to be the legitimate sons of their father or even to induce a prima facie belief as to the father being the author of their being. Manu, Gautama, Vasishta, Bodhayana and other Smriti writers of undoubted eminence who placed the gudhaja or son of concealed birth in the first group of six sons who are said to be 'heirs and kinsmen' would hardly have refused heirship or kinsman-ship to the son of a Sudra born of a connection which had a greater element of certainty as to paternity about it. It is also extremely unlikely that so far as Sudras were concerned the Smriti writer would have treated the absence of a marriage between a Sudra and the dasi as any very serious matter. In dealing with the various forms of marriage they state that the lowest forms (Asura, Rakshasa, Gandharva, Paisacha) which can by no pretence be said to be anything but pure concubinage were intended for Sudras: see Gautama, Chapter 19; Baudhayana, Chapter If. The Grihya Sutras prescribe no Vedic ritual to be observed in the case of marriages amongst Sudras; and Yagnavalkya in Chapter II, sloka 10, expressly states that the Vedic rites beginning from conception and ending with the burning ground were for the twice-born classes alone. Far from treating the illegitimate son as a bastard without rights of inheritance, Smriti writers placed him in a very favourable position and almost equal to the aurasa or dattaka son. Jimutavahana gives the reason for the illegitimate son of a Sudra sharing with the legitimate daughter's son as follows:

since the one though born of an unmarried woman is the son of the owner and the other though sprung from a married woman is only his daughter's son,

19. A similar explanation is given by Raghunandhana in his Dayatatwa. Brihat parasara while laying down the general rule that the illegitimate son is only the son of the mother makes an exception in the case of Sudras and observes the son, by a slave of a Sudra is the fulfiller of desire and offers the pinda. Twelve sons are mentioned by the rishis. They are offerers of the pinda one. after the other in the order mentioned. Balambhatta in his commentary states that the use of word haret in the text of Yagnavalkya indicates that the illegitimate son acquires a right by birth like the legitimate son. Raghunandhana in his Dayatatwa explains the word Amsa (share) as meaning 'a share equal to that of other sons.' Both his relationship by propinquity to his putative father and his right to offer funeral oblations are nowhere disputed. A. consideration of the position assigned to the illegitimate son of a Sudra when compared to that of illegitimate sons of other classes fully bears out the view of Seshagiry Ayyar, J., in Meenakshi v. Muniandi Pauikkan I.L.R. (1915) Mad. 1144, that:

in cases of Sudras continuous concubinage was regarded as equivalent to marriage, although the children of such irregular union did not rank equally with those with, whose mother there was a formal marriage

a view in which Sadasiva Ayyar, J., concurred in Soundararajan v. Arunachalam Chetty I.L.R. (1916) Mad 136,

20. The position accorded to the illegitimate son in the scheme of succession and the place where his rights are dealt with by Manu and Yagnavalkya and also the fact that Vignaneswara in the Mitakshara deals with the rights of the illegitimate son at the end of the chapter relating to Apralibandhadaya or inheritance 'by indefeasible right

strongly support the view taken by West and Buhler and concurred in by Bhashyam Ayyangar, J., in Ramalinga Muppam v. Pavadai Goundan I.L.R. (1902) Mad. 519, that the position of an illegitimate son of a Sudra is more analogous to that of a legitimate son than to that of relations who inherit by right liable to obstruction. His position, so far as the Smriti writers are concerned, is by no means inferior to that of a Dattaka. The Smritis clearly assume that there is heritable blood between the illegitimate son of a Sudra and his putative father. There is nothing so far as I can see in the Smritis to support the argument of Mr. Narasimha Ayyangar based largely on the observations in Ranoji v. Kandoji I.L.R. (1885) Mad. 557 and Parvathi v. Thirumalai I.L.R. (1887) Mad. 334, that the share of the illegitimate son was given in lieu of maintenance and that he was treated as a person having no legal connection with the family of his illegitimate father but only as an outsider a quasi nullius filius who was given something because of the moral right which lie had, to be supported by the author of his being. Why a share should have been given to the Sudra illegitimate son while the sons of the twice-born were given only an allowance for maintenance or why the right in lieu of maintenance should have taken the form of the right to share with the natural son, the widow, daughter and daughter's son and to get the whole estate of his divided putative father in their absence (cutting out the father's legitimate brothers and other collaterals) has not been explained and it seems to me is not possible of any satisfactory explanation.

21. The authorities show that the illegitimate son was always considered as inheriting to his putative father. Vignaneswara distinctly states that all classes of sons without exception have the right of inheritance to their father's estate because of the text of Manu.

22. 'Not brothers, nor parents, but sons are the heirs to the estate of the father' (Manu, Chapter-IX, verse 185).

23. In Pandaiya Telaver v. Pali Telaver (1863) 1 M.H.C.R. 478, Scotland, C.J., observed that the Hindu Law does not, like the English Law, consider an illegitimate son quasi nullius filus and that in the case of Sudras illegitimate sons succeed to their father by fight of inheritance. In Venkataraman v. Venkatalakshmi Ammal 2 Strange, 136 a similar view was taken and illegitimate sons of a Sudra were declared entitled to rights of survivorship inter se. All the sastris consulted by the Chief Justice had not the slightest doubt that.

where illegitimate sons succeeded to their father, the brothers will succeed to one another living and dying undivided.

24. All the subsequent cases which deal with the rights of an illegitimate son deal with his rights as based on inheritance to his putative father whatever the view taken as to his rights to succeed to the putative father's collaterals. So far as the mother is concerned no doubt has ever been east on the decision in Mayna Bai v. Uttaram (1861) 2 M.H.C.R. 196, that illegitimate brothers succeed not only to their mother but to each other.

25. The position of an illegitimate son was considered in Sadu v. Baiza and Genu I.L.R. (1880) Bom. 37, and it was held that when a legitimate and an illegitimate sons succeed to the property of their father they take as co-parceners and that the share of the legitimate son who leaves no male issue passes by survivorship to the illegitimate son. In dealing with the position of an illegitimate son Nanabhai Haridas, J., after

setting out the arguments advanced against him and stating the disabilities he was under, observed as follows:

While admitting therefore that the position of a dasi-putra in a Sudra family does differ in important particulars from that of an aurasa putra, I am not prepared to allow that the former is not a member of the family at. all, nor that, he is not, a co-parecener, and not, therefore, entitled to succeed by right of survivorship. His legal status as a son is unquestionably recognised and accordingly he inherits from his father even before the. latter's widow; and if there are aurasa putras of his father, he succeeds to the father's estate jointly with them. He is clearly, therefore, their co-parcener. That he is their brother, not only in the popular, but also in the legal acceptation of the term is evident from the Mitakshara, chapter 1, Section XII, 1, 2, where they are spoken of both by Yagnavalkya and Vignaneshvara as brethren and brothers (bhratarah).

Westropp, C.J.,

26. While agreeing with the view taken by Nanabhai Haridas, J., emphasised the fact that the dasi-putra was dealt with by the author of the Mitakshara before he treats of obstructed heritage, i.e., the rights of succession on failure of sons primary or secondary treating the dasi-putra as amongst these in the case of Sudras. In Ranoji v. Kandoji I.L.R. (1885) Mad. 557, Muttuswami Ayyar, J. (at page 562) while referring to this contention was inclined to the view that no inference can be drawn from this fact as the passage introduced a special rule and the share given to the illegitimate son was given to him in satisfaction of the claim to maintenance which he had at one time in common with the illegitimate sons of the twice-born classes. With all respect an examination of the Smritis shows that there is nothing in them to support the view as to the share being given in lieu of maintenance or to suggest that at some period the illegitimate son's rights were enlarged, he being given a share in lieu of maintenance. An examination of the development of Hindu Law as to the various forms of marriages and the twelve classes of sons shows that greater importance was being gradually attached to marriage and legitimacy and that even in the time of Manu and Yagnavalkya distinction based on these considerations were drawn between the various classes of sons. It is hardly likely that if the Sudra illegitimate son was not in the pale of heirs at any anterior period he would have been given the extensive rights conferred, in lieu of a bare right of a maintenance. On the contrary there is considerable force in the observation of Sadasiva Ayyar. J., in the Order of Reference that:

in ancient Hindu Law he came in as one of the twelve classes of sons,

and that

his being allowed afterwards only to share with the widow, daughter and daughter's sons instead of inheriting his father's estate wholly was a development of the later Smritis and commentators.

27. In Jogendro Bhupati Hurrochundra Mahapatra v. Nityanand Man Sing (1891) I.L.R. 18 Cal 151 (P.C.), their Lordships of the Privy Council following Sadu v. Baiza and Genu I.L.R. (1880) Bom. 37, held that amongst Sudras governed by the Mitakshara the legitimate and the illegitimate sons took by survivorship and that consequently the illegitimate son succeeded to an impartible estate by rights of

survivorship in preference to the widow of the legitimate son. As their Lordships state that the same rules apply to impartible estates as to partible estates for determining who is the heir, the fact that they were dealing with an impartible estate makes no difference. It appears from the report that Mr. Arathoon, Counsel for the appellants referred to the Madras decisions in Krishnayyan v. Muthusami I.L.R. (1884) Mad. 407 and Ranoji v. Kandoji I.L.R. (1885) Mad 557 where a contrary view was taken to that in Sadu v. Baiza and Genu I.L.R. (1880) Bom. 37, but their Lordships of the Privy Council, after referring at some length, to the judgment of Nanabhai Haridas, J., and Westropp, C.J., in Sadu v. Baiza and Genu I.L.R. (1880) Bom. 37 followed the decision.

28. I am of opinion that the effect of the decision of the Privy Council is to settle the law as propounded by Nanabhai Haridas, J. and to make the illegitimate son a member of the family of his putative father capable of inheriting to his father and succeeding to his legitimate brother's share by right of survivorship. It is difficult to see how there can be a co-parcenary under the Mitakshara with its necessary incidence of survivorship between two males who cannot for want of heritable blood be heirs to each other or to the person whose estate they inherit. The effect of the decision has been thus summarized by Bhashyam Ayyangar, J., in Ramalinga Muppan v. Pavadai Goundan I.L.R. (1902) Mad. 519:

If the legitimate son dies without leaving male issue, the illegitimate son becomes entitled to the whole estate. If the illegitimate son predeceases the legitimate son, leaving male issue and the legitimate son afterwards dies without leaving male issue, the whole property will devolve by survivorship on the issue of the illegitimate son. Tin's must be the necessary result if, as affirmed by the Privy Council, the legitimate and the illegitimate sons on the death of the father hold the family property as members of a joint family.

29. The rights of an illegitimate son and his position in the family of his putative father received a further extension in Ramalinga Mupan v. Pavadai (Goundan I.L.R. (1902) Mad. 519, where it was held that in cases where an illegitimate son predeceases his putative father the illegitimate son's son would be entitled to a share as against the deceased brother of his grandfather as representing his father who if he had survived would have been entitled to a share.

V. Bhashyam Ayyangar, J.,

30. Was of opinion that a Sudra illegitimate son's right of inheritance was not contingent but absolute as in the cases of a legitimate son and that he was in a position more analagons to that of a legitimate son than that of other relations whose right of inheritance is liable to obstruction.

31. So far as competition between the illegitimate son and the widow of his putative father is concerned the view taken by Muttuswami Ayyar, J., in Parvathi v. Thirumalai I.L.R. (1887) Mad. 334 that she excludes the illegitimate son is, baying regard to the decisions in Chinnnamal v. Varadarajulu I.L.R. (1892) Mad. 307 and Meenakshi Anni v. Appakutti : (1910)20MLJ359 (which hold that they divide the estate equally), no longer good law.

32. I am of opinion that the illegitimate son of a Sudra is one of the classes of sons recognised by Hindu Law and allowed to a Sudra in addition to the twelve classes of sons enumerated as common to all the four castes. In the case of Brahmans,

Kshatriyas and Vysyas the classes of sons enumerated in verses 128 to 132 of Yagnavalkya and 166 to 177 of Manu except the aurasa and dattaka sons are obsolete, and in the case of Sudras they have in addition to aurasa and dattaka a third class of sons, namely, the 'dasi-putra' It seems difficult to see why under verse 135 of Manu in which succession is provided for in the case of the son dying issueless, the right of the father's illegitimate son should not be established, especially as verso 184 refers to sons of all classes succeeding to the estate in order of rank.

33. Where an illegitimate son of a Sudra dies, succession to him has to be traced according to the rules laid down as regards apratibandha and sapratibandha daya as he is capable of inheriting and of transmitting heritable blood. If he has a legitimate issue or illegitimate sons who will satisfy the conditions of 'dasi-putra,' they succeeded. In their absence the same rule should be applied as to the case of legitimate sons in the rules contained is verses 135 and 136 of Yagnavalkya and his putative father who is his 'pita' in the legal and ordinary acceptance of the term would succeed. In the preceding verses the word 'pita' is used in reference to sons whose mothers were not married to the fathers and different classes of sons are enumerated. There is nothing to indicate that the word 'pita' in those verses was to be confined to the father of an aurasa or dattaka son and there is no reason why such a limitation should be imported into the meaning of the word in verses 135 and 136.

34. It has been argued strenuously by Mr. Narasimha Ayyangar that an illegitimate son has not been specially mentioned in Chapter II dealing with succession to a sonless Hindu and reference has been made to Shome Shankar Rajendra Varere v. Rajesar Swami Jangam I.L.R. (1899) All. 99. I do not think any inference against 'the illegitimate son can be drawn from the omission as in my opinion the illegitimate son of Sudra was already referred to in the chapter dealing with the unobstructed heritage and having been included in the category of sons there was no reason for making any special mention of an illegitimate son of a Sudra in dealing with the heirs of a person who left no sons. If the illegitimate son of a Sudra was treated as a person who is a mere outsider and not a member of the family of his father, his exclusion in Chapter II may be a ground for not applying the rule of succession therein stated to him, but if his position is that stated by Haridas, J., in Sadu v. Baiza and Genu I.L.R. (1880) 4 Bom.. 37 it is difficult to see why separate mention is necessary.

35. I am of opinion that so far at least as the father is concerned the word pita should, for the purposes of tracing succession to the illegitimate son of a Sudra who is a 'dasi-putra,' be taken to include a putative father. It is unnecessary to determine whether such a son is the 'sapinda' of his father so as to enable him to inherit to other collaterals assuming that sapinda relationship can only exist in the case of a valid marriage. Vignaneswara in dealing with the twelve classes of sons observes that:

the divisions of sons into two classes, the first six being heirs and kinsmen and the latter six kinsmen and not heirs must be expounded as signifying that the first six may take the heritage of their father's sapindas and samanodakan if there be no nearer heirs but not the last six.

36. And adds that as regards however consanguinity and the performance of the duty of offering libations of water and so forth, both classes of sons are equal. The Saraswati Vilasa describes all the twelve classes of sons as sapindas of their father. As between the illegitimate son and his putative father filial relationship exists in my opinion for all purposes of inheritance and succession. It would be unreasonable to

place the dasi-putra in a worse position than the gudhaja who is classed amongst heirs and kinsmen. The fact that the gudhaja is now obsolete is no ground for cutting down the rights of the dasi-putra whose sonship is recognised in the Kali age. The fact that the word pita or pitarau is wide enough to include the putative father owing to special considerations does not necessarily imply that a dasi-putra becomes ipso facto the preferential heir of all his father's collaterals in case of competition between him and the agnates of his father.

37. So far as collateral succession is concerned, all the Courts have held that an illegitimate son is not the heir to his putative father's collateral relations. The ground on which the exclusion is based is that the rule which guides collateral succession is based on the text of Manu as to the inheritance going to the nearest sapinda and as consequently excluding an illegitimate son as sapindaship presupposes a lawful marriage. A long catena of cases beginning from Nissar Murtojah v. Kowar Dhunwunt Roy (1863) MR 609, decided so long ago as 1863 have taken this view. There is considerable force in the view taken by Sarvadhikari in his learned treatise on the Law of Inheritance that all the analogies of Hindu Law are in favour of allowing him the right of succession to collaterals. Were the matter res integra and the case were one of first impression to be decided on a consideration of the Smritis and commentaries, I would be inclined to hold with my learned brother Sadasiva Ayyar, J., that the illegitimate son of a Sudra is for the purpose of inheritance to collaterals in the same position as his aurasa son. The current of authorities against the view is very strong. I need only refer to Krishnayyan v. Muttusami I.L.R. (1884) Mad. 407, Ranoji v. Kandoji I.L.R. (1885) Mad. 557, Parvathi v. Thirumalai I.L.R. (1887) Mad. 234, Shome Shankar Rajendra Varere v. Rajesar Swami Jangam I.L.R. (1899) All. 99 and Ramalinga Mupan v. Pavadai Goundan I.L.R. (1902) Mad. 519, and I consider it unnecessary for the purpose of this reference to dissent from them.

38. Even assuming that the order of succession to a soilless Hindu given by Manu, Yagnavalkya and propounded by Vignaneswara in Chapter II, Section 1, placitum 2 of the Mitakshara would not in terms apply owing to the word pita being confined to the legitimate father, and to the want of sapinda relationship between a Sudra and dasi-putra, I see nothing to prevent succession to the illegitimate son being traced by analogy to the rule laid down in verses 135 and 136 of Yagnavalkya as explained in Chapter II, Section 1, placitum 2 of the Mitakshara especially as the Hindu Law recognises heritable blood between a Sudra and his dasi-putra and Manu states that the father of every one of the classes of sons enumerated by him succeeds to the property of the heirless son. The whole law of succession to dancing girls and prostitutes in cases not expressly provided for by the rules relating to sridhana has been built up by Courts on analogies furnished by other parts of the Hindu Law. In Kamakshi v. Nagaratham (1870) 5 M.H.C.R 161, Scotland, C.J., and Collet, J., held that in the absence of any positive rule relating to the particular kind of property in dispute (the hereditary office of dancing girls attached to a temple) the law to be applied is the general law of inheritance regarding daughters or sons. In Subramania Mudali v. Balahrishnaswami Naidu : (1917)33MLJ207 , Abdur Rahim and Srinivasa Ayyangar, JJ., in dealing with the question of heirship to a dancing girl whose grandmother was the issue of a marriage between her parents observed as follows:

The rules of stridhana obviously do not apply to such property and there is no other rule of succession laid down in the Smritis or the commentaries prescribing the devolution of property of a woman of this caste, except it be the general rule that to the nearest sapinda the inheritance next belongs.

39. They acted on analogies and held that the great grandfather's brother's daughter succeeded in preference to her great grandfather's daughter's son. The argument that the analogy afforded by sapinda relationship, cannot be applied as there was no marriage is met by the observations that according to Vignaneswara, sapinda merely connotes relationship and reference is made to the Acharadhyaya of the Mitakshara (the commentary of Vignaneswara on verse 52). In Venku v. Mahalinga I.L.R. (1888) Mad. 393, Muttuswami Ayyar, J., was of opinion that in the case of adoptions by dancing girls questions as to inheritance and collateral succession should be adjudicated upon in the absence of a positive rule of law to the contrary with reference to the custom of the caste and the analogies of Hindu Law as indicated in Kamahshi v. Nagarathnam (1870) 5 M.H.C.R. 161. In Ramalinga Muppan v. Pavadai Goundan I.L.R. (1902) Mad. 519, Bhashyam Ayyangar, J., rested the right of representation of the legitimate son of an illegitimate Sudra on the analogy of legitimate sons and grandsons and observed:

The principles, therefore, applicable to the succession of sons and grandsons of legitimate sons may by analogy be applied to the sons and grandsons of an illegitimate son, viz., that they should be considered capable of representing the illegitimate son and in case he dies before his father, of taking the share which would have fallen to him if he had not so died.

40. Though there are no texts in the Smritis expressly recognising the right of an adopted son to inherit to his adoptive mother's relations, Courts have enforced the right on general principles of equity and good conscience and analogy to the right of the aurasa. The principle of atidesa whereby principles laid down with reference to one case are applied to other analogous cases was recognised by Jaimini in his Mimamsa (Books VII and VIII of Jaimini's Mimamsa).

41. Reference was made during the argument to the doctrine of reciprocity and it was argued that if the illegitimate son of his father was an heir to his putative father (as he undoubtedly is under Hindu Law) there was no reason to hold the converse not to be true. I think there is considerable force in the argument. Except in the case of females who come in only under special texts and the hermit, ascetic and brahmachari referred to in verse 137, I have not been referred to any instance where heritable blood is recognised between persons who could not be the heirs of each other. Where therefore a text expressly declares that a male is the heir of male, there is, in the absence of anything to the contrary in other texts, nothing to prevent the converse rule from being applied as a rule of equity and good conscience even though the case is not specially provided in the texts so long as there is nothing against it in the Smritis.

42. I would for the foregoing reasons answer the question referred in the affirmative.