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We set aside the conditional *exparte* order reviving the appeal, and dismiss the application for readmission of the appeal, but we pass no order as to costs.

Application dismissed.

APPELLATE CIVIL.

Before Mr. Justice Chevis, Acting Chief Justice and Mr. Justice LeRossignol.

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Feb. 23

Mussammat JAINAN (PLAINTIFF)—*Appellant*,

versus

NUR MUHAMMAD AND OTHERS (DEFENDANTS)—*Respondents.*

(Civil Appeal No. 2474 of 1915.)

Custom—Succession—self-acquired property—daughters or collaterals—Arains of Ludhiana—meaning of "acquired property."

Held, that by custom a daughter is generally preferred to collaterals in the succession to "acquired" property of her father, and by "acquired" property is meant property not necessarily acquired by the father himself but property acquired by him or any of his ascendants short of the common ancestor.

Lokha v. *Hari* (1), *Mussammat Ichhri* v. *Jowahira* (2), *Sham Ram* v. *Mussammat Hemi Bai* (3), *Khuda Yar* v. *Sultan* (4), *Nidhu* v. *Ram Singh* (5), and *Partap Singh* v. *Mussammat Panjabu* (6), followed—also Rattigan's Digest of Customary Law, section 23 (2).

In the present case the plaintiff *Mussammat* Jainan was daughter of Jiwa, grandson of Musa, who was said to have been a son of Bakhsha. The defendants were descendants, of Ida, another son of Bakhsha. The property in dispute was left by Jiwa (father of *Mussammat* Jainan) whose widow had recently died. The land had been mutated in the name of defendants as collaterals of Jiwa. The plaintiff claimed the estate of her father after the death of her mother as her father's heir in default of male descendants alleging that her sister *Mussammat* Muqabar had surrendered her rights of inheritance in her favour.

(1) 64 P. R., 1893.
(2) 18 P. R., 1898.
(3) 78 P. R., 1898.
(4) 103 P. R. 190
(5) 2 P. R. 1909.
(6) 25 P. R. 1912.

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The defendants claimed to be the collaterals of Jiwa and denied plaintiff's right of succession. The first Court granted the plaintiff a decree on the grounds that her husband was a *khanadamad* and also that by custom she was entitled to succeed in preference to the defendants and that the land was not ancestral *qua* defendants, *i.e.*, not descended from the common ancestor of Jiwa and the defendants. The District Judge dismissed the suit in appeal holding that as the property in dispute had not been acquired by the father himself, but by an ancestor of the father it was not self-acquired property to which a daughter would succeed in preference to collaterals. The plaintiff appealed to the High Court.

Second appeal from the decree of J. A. Ross Esquire, District Judge, Ludhiana, dated the 13th July 1915, reversing that of Lala Shibbu Mal, Subordinate Judge, 1st class, Ludhiana, dated the 12th April 1915, decreeing the claim.

NANAK CHAND AND MUHAMMAD RAFI, for *Appellant.*

FAZL-I-HUSSAIN, for *Respondents.*

The judgment of the Court was delivered by—

LEROSSIGNOL, J.—This appeal rises out of a suit by a daughter for possession of immoveable property left by her father. The defendants are remote collaterals and the District Judge has dismissed the suit on the ground that though the common ancestor of the parties did not hold the property, it was not acquired by the plaintiff's father but by his father or grand-father and consequently plantiff who would have been entitled to property acquired by her father himself, is not shown to be entitled to property he inherited from his ascendants.

In Rattigan's Digest section 23 (2) we find that daughters are generally preferred to collaterals in regard to the acquired property of their father and on examining the authorities cited under *Remark* 2 to that section we find that no distinction is made between property acquired by the father and property acquired by his ascendants.

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By acquired property is meant property not necessarily acquired by the father himself but property acquired by him or any of his ascendants short of the common ancestor. Thus in *Lokha* v. *Hari* (1), Mussammat *Ichhri* v. *Jouahira* (2), *Sham Ram* v. Mussammat *Hemi Bai* (3), *Khuda Yar* v. *Sultan* (4), *Nidhu* v. *Ram Singh* (5), *Partap Singh* v. Mussammat *Panjabu* (6), the property was styled acquired property of the father though the acquisition had been in fact effected by an ancestor of the father.

The agnatic theory reposes on the principle that collaterals descended from the common ancestor derive their title from that common ancestor, but when the common ancestor had no interest in the property in dispute his descendants derive from him no more right than he had, *i.e.*, they acquire no right.

In this case consequently the collaterals derive no right to this property from the common ancestor and, in accordance with custom, are not to be preferred to a daughter of the last male owner.

The next question is whether the plaintiff is to get her share only, or also those of her sister *Mussammat* Muqabar and her niece *Mussammat* Mariam.

The last mentioned was not made a party to the suit and was not referred to at all by the defendants except in their grounds of appeal to the first Appellate Court, and it is doubtful whether she is an heir at all in the presence of *Mussammat* Jainan and *Mussammat* Muqabar her aunts. In any case that is a matter for her to settle with *Mussammat* Jainan.

As for *Mussammat* Muqabar, *Mussammat* Jainan alleged a surrender to her by *Mussammat* Muqabar and *Mussammat* Muqabar, though arrayed as a defendant, did not defend the suit.

In these circumstances, we hold that *Mussammat* Jainan is entitled to the whole property of her father and decree for her with costs throughout.

Appeal accepted.

(1) 64 P. R. 1893.
(2) 18 P. R. 1896.
(3) 73 P. R. 1896.
(4) 103 P. R. 1900.
(5) 2 P. R. 1909.
(6) 25 P. R. 1912.