

distant villages and nothing at all of any reliability from near home.

We consider that the appeal must fail and it is dismissed with costs.

A. R.

Appeal dismissed.

APPELLATE CIVIL.

Before Mr. Justice Abdul Raof and Mr. Justice Campbell.

Mussammat GHULAM ZOHRA (DEFENDANT)—
Appellant

versus

NUR HASAN, ETC. (PLAINTIFFS)

GHULAM FARUK, ETC. (DEFENDANTS)

} *Respondents.*

Civil Appeal No. 1556 of 1918.

Custom (Succession)—Koteshis of Taragarh, tahsil and district Gurdaspur—suit for possession by collaterals in fourth degree against sister—where neither party proves a custom affirmatively—Muhammadan Law.

Held, that neither party having proved a custom affirmatively the case must be decided by Muhammadan Law, notwithstanding that plaintiffs based their claim on custom only.

Mussammat Bahkt Bano v. Chiragh Shah (1), followed.

Held also, that by Muhammadan Law, there being no child or son's child or brother of the deceased, the appellant as a sister was a sharer and entitled to one-half share and the respondents as the descendants in the male line of the deceased's great grandfather were entitled to the residue.

Wilson's Digest of Anglo-Muhammadan Law, Fifth Edition, paras. 219, 224, 231 and 233, referred to.

Second appeal from the decree of W. de M. Malan, Esquire, District Judge, Gurdaspur, dated the 28th January 1918, varying that of Lala Ganesh Das, Subordinate Judge, 1st Class, Gurdaspur, dated the 31st July 1917, dismissing the claim.

NIJAZ MUHAMMAD, for Appellant.

BADRI NATH, KAPUR, for Respondents.

The judgment of the Court was delivered by—

1922

CAMPBELL J.—The facts of this case are given in our judgment of to-day's date in appeal No. 1344 of 1918 (1). The appellant, sister of Imam Shah, *Koreshi*, deceased, obtained possession of his landed estate on his death. The respondents, collaterals in the fourth degree, sued for possession unsuccessfully on the ground that they were entitled as heirs under custom. The trial Court dismissed the suit *in toto*. The District Judge in appeal held that the plaintiffs, having failed to establish a custom in their favour, were nevertheless entitled to one-half of the estate under Muhammadan Law and decreed accordingly. In second appeal it is claimed (1) that the respondents not having based their claim on Muhammadan Law were not entitled to succeed partially by reason of it, (2) that the land is not proved to be ancestral of the plaintiffs and Imam Shah, and (3) that under Muhammadan Law the appellant is heir to the whole estate.

Mst.

GHULAM ZOHRA

v.

NUR HASAN.

The finding by the learned District Judge that the land is ancestral is final, and moreover does not affect the situation. We have dismissed the respondents' appeal on the issue of custom. The first point is not seriously urged and *Mussammât Bakht Bano v. Chiragh Shah* (2) is an authority that in a suit between members of the *Koreshi* tribe when neither party proves any custom affirmatively recourse should be had to Muhammadan Law.

On the third point the decision of the lower Appellate Court that the appellant is entitled to one half only appears to us to be correct. The respondents are residuaries of the 4th class (Wilson's Anglo-Muhammadan Law, Fifth Edition, paragraph 224). The appellant is a sharer and as such takes one-half. As a sister she would be a residuary only if she had a brother or brothers (Wilson, paragraph 231), or if there were daughters or sons' daughters of the deceased (Wilson, paragraph 233); in other words, if she were not a sharer (Wilson, paragraph 224) which she becomes by reason of there being no child or son's child or brother of the deceased (Wilson, paragraph 219). The residue of one half, therefore, goes to the respondents as descendants in

(1) See page 275 *supra*.

(2) 25 P. R. 1908

the male line of the deceased's great-grandfather (see pedigree table attached to the lower Appellate Court's judgment and Wilson, paragraph 237). Thus the appeal fails and is dismissed with costs.

M. R.

Appeal dismissed.

APPELLATE CIVIL.

Before Mr. Justice Scott-Smith.

GHULLA SINGH (DEFENDANT) — *Appellant,*

versus

SOHAN SINGH, ETC. (PLAINTIFFS) — *Respondents.*

Civil Appeal No. 1334 of 1920.

Indian Limitation Act, IX of 1908, section 12 (3)—time requisite for obtaining a copy of the judgment—when copy is sent by post.

Held, that when copies are despatched by post, in accordance with the rules, the period intervening between completion and despatch of the copies should also be excluded in computing the period allowed for an appeal.

Krishna v. Balia (1), Raghu v. Mandhgia (2), and Mussamat Iqbal Jehan Begam v. Mathura Prasad (3), followed.

Rustomji's Law of Limitation, 2nd Edition, page 74, referred to.

Second appeal from the decree of A. H. Brasher, Esquire, District Judge, Amritsar, dated the 22nd December 1919, affirming that of Khan Muhammad Sher Nawab Khan, Munsif, 1st Class, Tarn Taran, district Amritsar, dated the 21st June 1919, decreeing the claim.

M. L. PURI, for Appellant.

B. D. KORASHI, for Respondents.

The order of remand, dated 26th October 1921.

SCOTT-SMITH J.—This is a second appeal from the order of the District Judge of Amritsar dismissing Ghulla Singh defendant's appeal to his Court as barred by time. It was urged before the District Judge that there was delay in despatching the copy of the judgment by post,

(1) (1908) 14 Indian Cases 408;
8 Nag. L. R. 11.

(2) (1914) 26 Indian Cases 819;
10 Nag. L. R. 189.

(3) (1919) 54 Indian Cases 881.