APPELLATE CIVIL.

Before Mr. Justice Broadway and Mr. Justice Abdul Qadir.

1922

March 31.

GURDIT SINGH AND OTHERS (DEFENDANTS)—*Appellants,*

versus

Mst. ISHAR KAUR (PLAINTIFF)—*Respondent.*

Civil Appeal No. 957 of 1918.

Custom—Succession—Self-acquired property—daughter or collaterals in 6th degree—Gil Jats of the Amritsar District—Riwaj-i-am—*ancestral property purchased by one of the collaterals—whether self-acquired.*

The daughter of one S. S., a Gil *Jat* of the Amritsar District, sued her father's collaterals in the 6th degree for possession of his land. It appeared that in 1865, the father of S. S. and G. D. his second cousin were in possession of the land in suit in equal shares. In 1881, G. D. sold his half share to S. S. for Rs. 440. The lower Courts held that S. S, having acquired this half share other than by descent or through his relationship to the common ancestor, it must be regarded as his self-acquisition and that it had lost its ancestral character, and decreed plaintiff's claim to this extent.

Held, that the conclusion arrived at by the lower Courts as to the character of one half of the land in suit was warranted and not in any way erroneous.

Taj Muhammad v. *Islam* (1), referred to.

Held also, that as regards self-acquired property, the general custom of the Province is that a daughter excludes collaterals in succession to self-acquired property and the entry in the *Riwaj-i-am* of 1865 was not sufficient to prove a custom to the contrary, having regard to the remarks as to the value of this *Riwaj-i-am* made in *Dial Singh* v. *Dewa Singh* (2), and to the fact that the later *Riwaj-i-am* of 1914 was not in accord with it.

Rattigan's Digest of Customary Law, paragraph 23, followed.

Beg v. *Allah Ditta* (3), referred to.

Second appeal from the decree of W. deM. Malan, Esquire, Additional District Judge, Amritsar, at Gurdaspur, dated the 20th November 1917, affirming that of Diwan *Gyan Nath, Subordinate Judge, 2nd Class, Amritsar, dated the 16th November 1916, giving plaintiff a decree for possession.*

(1) 343 P. L. R. 1913. (2) 5 P. R. 1885.

(3) 45 P. R. 1917 (P. C.).

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GOKAL CHAND, for Appellants.
TIRATH RAM, for Respondent.

The judgment of the Court was delivered by—

BROADWAY J.—The plaintiff in this case is one *Mussammat* Ishar Kaur, the daughter of Santa Singh. She sued the collaterals of her father in the sixth degree for possession of the estate left by her father who died on the 24th April 1915. The trial Court found that half of the property left by Santa Singh was ancestral and half was self-acquired. It was also found that, according to the custom by which the parties, who are Gill *Jats* of the Amritsar District, are bound, the daughter excluded the collaterals in succession to the self-acquired property but was in her turn excluded by the collaterals *qua* the ancestral property of Santa Singh. The collaterals appealed against the decision and the learned District Judge dismissed their appeal, agreeing with the trial Court both as to the nature of the property left by Santa Singh and as to the custom by which the parties were bound. The learned District Judge, however, granted a certificate under section 41 (3) of the Punjab Courts Act, 1914, on the question of custom. Armed with this certificate, the collaterals have come up to this Court in second appeal, and on their behalf we have heard Dr. Gokal Chand Narang while Mr. Tirath Ram has addressed us on behalf of the respondent, *Mussammat* Ishar Kaur.

The first point for determination is whether the land left by Santa Singh was ancestral or self-acquired. It has been urged that the finding of the Courts below on this question is one of fact which cannot be examined in second appeal. Dr. Narang, however, contended that he was not attacking the finding of fact arrived at but the inferences drawn from that finding by the lower appellate Court. *Ram Gopal* v. *Slams Khaton* (1) is an authority for the proposition that legal inferences drawn from facts may be examined in second appeal. In the present case, however, we are unable to see any reason for thinking that the Courts below have drawn any unwarranted inferences. It appears that in 1865 Nidhan Singh, the

(1) (1892) I. L. R. 20 Cal. 93 (P. C.).

father of Santa Singh, and Ganda Singh, his second cousin, were in possession of all the property, with which we are at present concerned, in equal shares. On the 31st May 1881, Ganda Singh sold his half share to Santa Singh, who was then a minor, for Rs. 440. The Courts below have held that Santa Singh having acquired this land, other than by descent or through his relationship to the common ancestor, it must be regarded as his self-acquisition and that although the property was ancestral originally, on coming into Santa Singh's hands it lost its ancestral character. Dr. Narang has drawn our attention to *Taj Muhammad* v. *Islam* (1) and other rulings which, however, we need not discuss, as in our opinion the conclusion arrived at by the Courts below is warranted and we are unable to say that it is in any way erroneous. We hold, therefore, that the view taken by the Courts below as to the character of the land is correct.

There remains the question of custom. On this point article 23 of Rattigan's Digest lays down that, according to the general custom of the Province, a daughter excludes collaterals in succession to self-acquired property. It would, therefore, be incumbent on the collaterals to prove a custom opposed to this general custom. In order to do this they have referred to the *Riwaj-i-am* of the settlement of 1865 in which it was stated that a proprietor could not make a gift of even his self-acquired property to his daughter. Our attention was also drawn to the evidence of a certain number of witnesses who have stated that in this village daughters do not succeed to self-acquired property. Dr. Narang contended that an entry in the *Riwaj-i-am* was *primâ facie* evidence of a custom and referred to *Beg* v. *Allah Ditta* (2). The value of the *Riwaj-i-am* of 1865 as a piece of evidence, however, is considerably minimised by the fact that in *Dial Singh* v. *Dewa Singh* (3) in referring to this very *Riwaj-i-am* it was said that it did not lay down what the custom was

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(3) 5 P. R. 1885.

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but what the compilers thought it ought to be. Again, we find that in the settlement of 1914, when a new *Riwaj-i-am* was compiled, it is stated that a gift to a daughter can be made of ancestral or self-acquired property to a certain extent—*vide* answer to question 117. In these circumstances, we are of opinion that the collaterals have failed to prove a custom by which they exclude daughters from succeeding to the self-acquired property of a sonless proprietor. We accordingly dismiss this appeal with costs.

Appeal dismissed.