APPELLATE CIVIL.

Before Mr. Justice Scott-Smith and Mr. Justice Broadway.

1922

Jan. 6.

Mst. DHAN KAUR, ETC. (DEFENDANTS)—*Appellants,*

versus

SUNDER, ETC. (PLAINTIFFS)—*Respondents.*

Civil Appeal No. 3172 of 1918.

Custom—Succession—Ancestral property—Hindu Jats *of Ludhiana District—daughter or collaterals in 6th degree—initial* onus—*when shifted by entry in* Riwaj-i-am.

Held, that among *Hindu Jats* of the Ludhiana District collaterals in the sixth degree exclude daughters from succession to ancestral property.

Held also, that the initial *onus* was on the collaterals, being more remote than the fifth degree, but that the entry in the *Riwaj-i-am* of 1911, to the effect that among *Hindu Jats* daughters inherit only if there are no collaterals in the sixth degree or nearer, not being opposed to general custom, was sufficient to shift the *onus* from the collaterals to the daughters, and that the latter had failed to discharge the *onus*.

Chhuttan v. *Hazari Lal* (1), *Beg* v. *Allah Ditta* (2) and *Wazira* v. Mst. *Maryam* (3), followed.

Raushan v. *Lehna* (4), and *Khuda Bakhsh* v. Mst. *Fatteh Khatun* (5), distinguished.

Bholi v. *Man Singh* (6) and *Jiwan Singh* v. Mst. *Harkaur* (7) referred to, also article 23 of Rattigan's Digest of Customary Law, Remark 1 (ninth edition).

Second appeal from the decree of Khan Bahadur Khawaja *Tasadduq Hussain, District Judge, Ludhiana, dated the 1st August 1918, affirming that of* Lala *Chuni Lal, Senior Subordinate Judge, Ludhiana, dated the 5th February 1918, decreeing the claim.*

SHEO NARAIN, for Appellants.

TEK CHAND, for Respondents.

(1) 7 P. R. 1916.
(2) 45 P. R. 1917 (P. C.).
(3) 84 P. R. 1917.
(4) 36 P. R. 1895.
(5) 13 P. R. 1919.
(6) 86 P. R. 1908.
(7) 41 P. R. 1914.

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The judgment of the Court was delivered by—

SCOTT-SMITH J.—This is a second appeal upon a certificate granted by the District Judge of Ludhiana under section 41 (3) of the Punjab Courts Act. The facts briefly are as follows :—

The last male owner of the land in suit was Dhiana whose relationship with the plaintiffs appears from the pedigree-table printed on page 4 of the paper book. His widow, *Mussammat* Mahan Kaur, made a gift of her husband's land in favour of her daughters, *Mussammat* Dhan Kaur and *Mussammat* Ind Kaur, defendants, appellants, and the plaintiffs sued for a declaration that this gift would not affect their reversionary rights after the death of the widow. The plaintiffs are, as appears from the pedigree-table, the reversioners of Dhiana in the sixth degree. The Courts below have concurrently held that the land in suit is ancestral property of the plaintiffs, and that according to custom the plaintiffs are heirs to the exclusion of the married daughters of Dhiana.

In the grounds of appeal to this Court various points have been raised, but the only one argued before us was that of custom, namely, whether the plaintiffs, who are collaterals in the sixth degree of Dhiana, are preferential heirs to his daughters. According to the *Riwaj-i-am* of 1882 daughters are entirely excluded from inheritance by collaterals no matter how distantly related. According to the *Riwaj-i-am* of 1911, which was prepared by Mr. Dunnett, Settlement Collector, they are only excluded by collaterals not more remote than the sixth degree. If there are no collaterals in the sixth degree or nearer, then amongst *Hindu Jats* daughters inherit. A perusal of the *Riwaj-i-am* shows that it was prepared with great care Numerous instances are given, though there are none exactly on all fours with the present case, *i.e.* no instances were given where collaterals of the sixth degree excluded daughters from inheritance. Some copies of judgments have been put upon the record by both the parties. P. 9 is a copy of a judgment by Mr. Lewis, District Judge, dated 30th July 1890. In that case the

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daughters of one Karman sued his collaterals in the sixth degree for possession of his land. It was there held that the collaterals were the heirs according to custom and the plaintiffs' suit was dismissed. The daughters rested their claim on Hindu Law by which they said they were governed, but it was held that they were governed by Customary Law. No reference was made to the *Riwaj-i-am* and it appears to have been conceded that if the parties were not governed by Hindu Law the daughters would have no right as against the collaterals. This instance undoubtedly supports the position taken up by the plaintiffs. P. 8 is a judgment of *Lala* Achhru Ram, District Judge, dated 24th October 1904, in a case where daughters were opposed to collaterals in the seventh degree, and it was held that the latter were preferential heirs. In support of its decision the Court referred to *Kaushan* v. *Lehna* (1), but that case was not really in point, because there the plaintiff was a nephew of the donor, in other words, a near collateral, and the parties were *Arains*. D. 2 is a judgment, dated 10th July 1903, where it was found that there was no rule that the collaterals from the seventh to the ninth degree were preferred to daughters. This instance is not in point, nor is D. 1, a judgment, dated 18th February 1913, in which it was held that the plaintiffs, who were collaterals in the seventh degree, were not entitled to succeed in the presence of daughters.

Pandit Sheo Narain has referred to *Bholi* v. *Man Singh* (2) in which the question of *onus* in cases like the present was fully considered, and it was laid down that the burden of proof as to whether remote collaterals such as of the sixth degree exclude daughters rests on the party who asserts it. In *Jiwan Singh* v. Mst. *Har Kaur* (3), it was held that under Customary Law, where collaterals more distantly related than the fifth, or, at any rate, the seventh degree, claim to succeed to ancestral property in preference to a daughter, the *onus probandi* is on them. In this case *Bholi* v. *Man Singh* (2) was approved. Again in Remark 1 to Article 23 of Rattigan's Digest of Customary Law it is laid down that the seventh degree is sometimes found to be the extreme limit of collateral male relationship

(1) 36 P. R. 1895. (2) 86 P. R. 1908.
(3) 41 P. R. 1914.

which excludes the succession of a daughter, but it is also stated that more usually the fifth degree is found to be the customary limit. We may, therefore, take it that where a collateral is more distantly related than the fifth degree, the initial *onus* is on him to prove that he excludes the daughters and the more remote the collateral is the more heavily does the *onus* lie upon him. In the present case the collaterals are related in the sixth degree, and, therefore, the *onus* upon them would not be a very heavy one.

Now, the plaintiffs rely upon the answer to question 43 of Mr. Dunnett's *Riwaj-i-am* of 1911. According to that collaterals in the sixth degree exclude daughters. In the case *Beg v. Allah Ditta and others* (1), their Lordships of the Privy Council held that the entry in the *Riwaj-i-am*, which was not supported by instances, in favour of the succession of a daughter's son, whose father was a *Khanadamad* in preference to collaterals was a strong piece of evidence in support of such custom which it lay upon the plaintiffs, collaterals, to rebut. This ruling of the Privy Council was considered in a subsequent decision of the Chief Court in *Wazira and others v.* Mussammat *Maryan and others* (2). It was held there following *Chhuttan v. Hazari Lal* (3) that statements in a *Riwaj-i am* when "opposed to general custom can carry very little weight unless supported by instances." Again in *Khuda Bakhsh, etc.* v. Mussammat *Fateh Khatun* (4), it was held that answer 13 in the *Riwaj-i-am* of the Multan District (unsupported by instances), being a very peculiar one, quite opposed to Customary Law and the method of calculating relationship laid down therein being also peculiar, was not sufficient to shift the *onus* on to the plaintiffs to prove that they are not excluded by a sister. The entry in the *Riwaj-i-am* relied upon by the plaintiffs in the present case can certainly not be said to be opposed to general custom, nor to be a very peculiar one. What is the extreme limit of

(1) 45 P. R. 1917 (P. C.).
(2) 84 P. R. 1917.
(3) 7 P. R. 1918.
(4) 13 P. R. 1919.

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collateral male relationship which excludes the succession of a daughter has been the subject of numerous decisions and a good deal of doubt has been expressed on the point, and in *Jiwan Singh* v. Mst. *Har Kaur* (1), referred to above, it was doubted whether the seventh or the fifth degree should be fixed as the extreme limit. It, therefore, cannot be said that an entry which says that the collaterals in the sixth degree exclude daughters is opposed to general custom. Therefore having regard to the decision of the Privy Council in *Beg* v. *Allah Ditta and others* (2), we hold that the entry in the 1911 *Riwaj-i-am* is quite sufficient to shift the initial *onus* from the plaintiffs to the donees defendants, and we find that the latter have not discharged it.

The appeal accordingly fails and is dismissed with costs.

A. R. *Appeal dismissed.*

LETTERS PATENT APPEAL.

Before Sir Shadi Lal, Chief Justice and Mr. Justice Harrison.

RULDU SINGH, ETC. (DEFENDANTS)—*Appellants,*

versus

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Jan. 14.

SANWAL SINGH (PLAINTIFF)—*Respondent.*

Letters Patent Appeal No. 130 of 1921.

Appeal—Letters Patent, clause 10—meaning of the word 'judgment,' explained—Limitation—suit under customary law by a collateral for possession of land, gifted by a male proprietor to his step-son, brought more than 12 years after mutation was effected—nearest reversioner assented to the gift and died 4 or 5 years before date of suit—donor died in 1901, after enforcement of Punjab Limitation Act, 1 of 1900—Meaning of 'heir' in article 2 of the Schedule to that Act.

On 17th March 1894 one B, a *Jat* of the Ludhiana District made a gift of the land in dispute to his step son, R. S., and on 11th January 1896 a mutation in respect of it was effected in favour of the donee. One B. S., who was the nearest reversioner of B, assented to the alienation and

(1) 41 P. R. 1914. (2) 45 P. R. 1917 (P. C.).