

the vendees took advantage of the youth and inexperience of the vendor and that all the transactions are suspicious.

In these circumstances we accept the appeal and restore the decree of the first Court. Parties can bear their own costs in all Courts.

A. N. C.

Appeal accepted.

APPELATE CIVIL.

Before Mr. Justice Broadway and Mr. Justice Martineau.

Mussammatt JIND KAUR AND OTHERS (DEFENDANTS)
Appellants

versus

INDAR SINGH AND OTHERS (PLAINTIFFS)
Respondents.

Civil Appeal No. 252 of 1919.

Succession—Murderer and his son excluded from succession to property of the deceased—Public Policy.

Held, that when a person has been murdered with the sole object of securing his property, the murderer as well as his son is excluded from inheriting the property of the deceased, notwithstanding that it is ancestral property, as their succession would be opposed to public policy. The murderer's right in such a case is swept away and with it is carried away the right of every one who claims *through* and not merely *from* him.

Muhammad Khan v. Sis Bano (1), and *Vedanayaga v. Vedammal* (2), followed.

Sadhu Singh v. Secretary of State (3), distinguished.

Roda v. Harnam (4), *Mussammatt Shar Khanam v. Kalandhar Khan* (5), *Soni Ram v. Kanhaiya Lal* (6), *Sreemutty Manokarani Debi v. Haripada* (7), *Gangu v. Chandrabhagabai* (8), *Nilmodhab Mitter v. Jotindra Nath* (9), and *Sundar v. Satig Ram* (10), Gour's Hindu Code, page 921, and Trevelyan's Hindu Law, pages 357 and 412, referred to.

(1) 41 P. R. 1906.

(2) (1904) I. L. R. 27 Mad. 591, 600.

(3) 18 P. R. 1908 (F. B.).

(4) 18 P. R. 1895 (F. B.).

(5) 74 P. R. 1900.

(6) (1913) I. L. R. 35 All. 227 (P. C.).

(7) (1914) 24 Indian Cases 311 (P. C.).

(8) (1907) I. L. R. 32 Bom. 275.

(9) (1913) 17 Cal. W. N. 341.

(10) 26 P. R. 1911 (F. B.).

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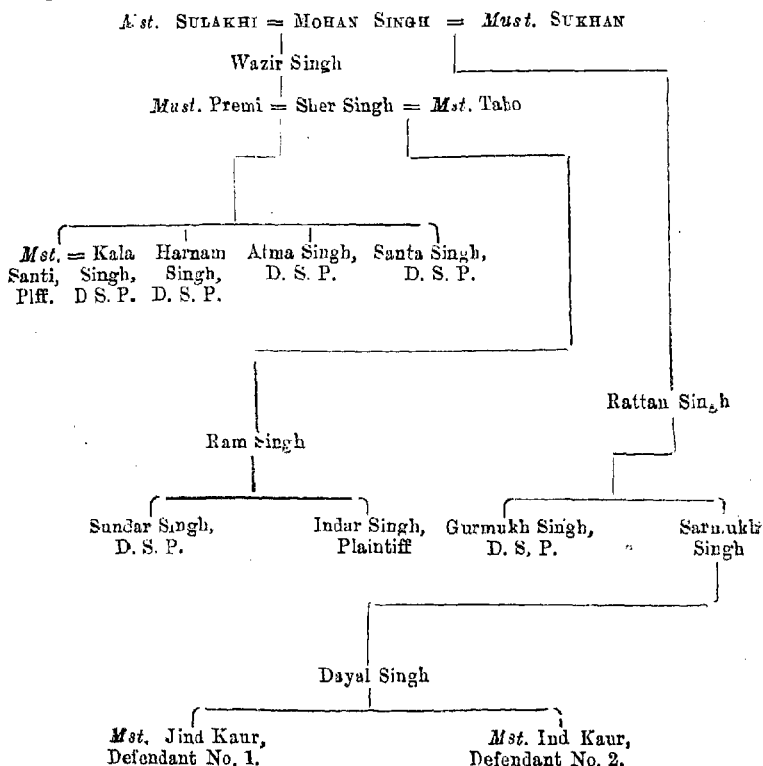
Second appeal from the decree of N. H. Prenter, Esquire, District Judge, Lahore, dated the 22nd January 1919, reversing that of Sheikh Rahim Bakhsh, Subordinate Judge, 1st Class, Lahore, dated the 29th October 1918, dismissing plaintiffs' claim.

J. G. SEHI and DEV RAJ SAWHENY, for Appellants.

MOTI SAGAR and KHARAK SINGH, for Respondents.

The judgment of the Court was delivered by—

BROADWAY J.—The following pedigree table will help to explain the case :—



On the night of the 6th March 1906, Dyal Singh, his wife and only son were murdered, and for their murder Ram Singh was sentenced to death and Harnam Singh to transportation for life (he is dead), while Sundar Singh was sentenced to seven years' rigorous imprisonment for the offence of concealing evidence of the murder (he is also dead), Dyal Singh was murdered

with the object of securing his property, and after the Criminal Case had been disposed of by the Chief Court on the 20th September 1906, mutation of Dyal Singh's lands was entered in the revenue papers on the 17th November 1906 and sanctioned on the 26th June 1907. The revenue records show that Kala Singh and Santa Singh were both present during the mutation proceedings, and that Dyal Singh's lands were mutated as under :—

To Kala Singh $\frac{1}{4}$ th
To Santa Singh $\frac{1}{4}$ th
To <i>Mst.</i> Jind Kaur $\frac{1}{4}$ th; and
To <i>Mst.</i> Ind Kaur $\frac{1}{4}$ th

Atma Singh had died before Dyal Singh's murder. Indar Singh was expressly excluded on the ground that he was the son of Ram Singh, the murderer of Dyal Singh. *Mussammats* Jind Kaur and *Mussammats* Ind Kaur have ever since been in possession of the lands allotted to them, Santa Singh died without issue and his property was taken by Kala Singh, on whose death his widow *Mussammats* Santi succeeded to her husband's estate. On the 3rd January 1918 Indar Singh and *Mussammats* Santi instituted a suit against *Mussammats* Jind Kaur and Ind Kaur claiming possession of the lands held by them belonging to Dyal Singh. It was alleged that the two defendants were not the daughters of Dyal Singh, and that even if they were they had no right to succeed to Dyal Singh's estate in the presence of the plaintiffs, Dyal Singh's collaterals, as the land was ancestral and the parties are governed by custom.

The defendants contested the suit on the ground that it was bad for misjoinder of parties and causes of action, and that as Ram Singh, father of Indar Singh, and Kala Singh, husband of *Mussammats* Santi, had murdered Dyal Singh with the sole object of securing his property, the plaintiffs were debarred from making any claim, and that *Mussammats* Santi had no *locus standi*. The trial Court held that the property was ancestral and that the defendants were the daughters of Dyal Singh, who had been murdered by Ram Singh and others with the sole object of securing

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his property but that Kala Singh was not implicated in the crime. The suit was dismissed as it was held that Indar Singh was debarred from claiming the property, he being the son of the murderer of Dyal Singh, and that *Mussammat* Santi could not sue *firstly*, because her husband Kala Singh had made no claim to succeed, and *secondly*, that if *Mussammat* Santi were allowed to sue it would be Indar Singh who would ultimately benefit by her success which would result in the stultification of the law which excludes the murderer and his descendants from benefiting by the murder. Their suit having thus been dismissed the plaintiffs appealed to the District Judge attacking the findings as to the relationship of the defendants with Dyal Singh and the correctness of the view taken by the trial Court of the law. The learned District Judge came to no definite finding on the question whether the defendants were the daughters of Dyal Singh but this fact appears to have been accepted as correct. The plaintiffs' suit was decreed, it being held that as Indar Singh had a right to succeed as a reversioner, which right he derived from the common ancestor Mohan Singh and not from his father Ram Singh, he was not excluded by the daughters of Dyal Singh in spite of the fact that he was the son of Dyal Singh's murderer. *Qua* the case of *Mussammat* Santi it was held that it stood or fell according to the decision regarding Indar Singh's claim. The learned District Judge appears to have thought that as Kala Singh had made no claim against the daughters of Dyal Singh *Mussammat* Santi ought not to succeed, but that, as Indar Singh was the only person entitled to dispute her claim, and instead of doing so admitted it, she should be granted a decree. Against this decree *Mussammat* Jind Kaur and *Mussammat* Ind Kaur have preferred this second appeal to this Court through Mr. Jai Gopal Sethi and we have heard Mr. Kharak Singh for the respondents.

It has been contended that Indar Singh as a son of the murderer of Dyal Singh cannot be allowed to benefit by the murder committed by his father and is, therefore, debarred from succeeding to the estate of Dyal Singh. This general principle that a son of a murderer cannot be allowed to benefit by the felony committed

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by his father has been conceded by the learned District Judge, but it has not been given effect to in the present case on the ground that Indar Singh did not derive his title to succeed to the estate of the murdered man from his father but by virtue of his community of descent from Mohan Singh, the common ancestor of himself and the last male owner ; namely, Dyal Singh.

In coming to this decision the learned District Judge has apparently departed from the rule laid down by a Division Bench of this Court in the case reported as *Muhammad Khan v. Sis Bano* (1). This decision has not been ignored by the Lower Appellate Court which has however preferred the principles enunciated in *Sadhu Singh v. Secretary of State* (2). The latter ruling, however, does not appear to have any bearing on the present case. It has to be borne in mind that the succession in this case is to the estate of Dyal Singh, *i.e.*, the murdered man. The decision in *Sadhu Singh v. Secretary of State* (2) related to an entirely different matter. There a certain man had been accused of an attempt to murder and had absconded ; proceedings had been taken against him under sections 87 and 88 of the Criminal Procedure Code and his property had been sold by auction, his son sued for a declaration that the sale would not affect his reversionary rights as heir after his father, and the question that was decided by the Full Bench was that all that was sold was the right, title, and interest of the absconder, and that by this sale his son's right of reversion was not taken away. Now the principle on which *Muhammad Khan v. Sis Bano* (1) proceeded was that it was against public policy to allow the descendants of a murderer to succeed, not to the *murderer's* estate but to the estate of the *murderer's victim* when the said victim had been murdered with the sole object of securing his property. The facts of that case were somewhat similar to those of the present one : a man had been murdered by his paternal uncle with the object of securing his property, the land of the murdered man had been mutated in favour of his sister and the son of the murderer sued for possession on the ground that he was the reversioner ; the

(1) 41 P. R. 1906.

(2) 18 P. R. 1908 (F. B.)

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murderer was still alive and it was conceded at the bar that during his lifetime his son who was a minor, could not be allowed to take possession, but it was asked that a declaratory decree should be passed to the effect that the said son would be entitled to the property after his father's, the murderer's, death. In *Mussamat Shah Khanam v. Kalandhar Khan* (1) it was held by a Division Bench of the Chief Court that the murderer himself could not succeed to the estate of his victim. There the murderer, who was the plaintiff, had been convicted of abetment of the murder of his half-brother and sentenced to seven years' rigorous imprisonment; the mother of the victim had succeeded to the property; when the convict had served out his sentence he instituted a suit for possession basing his claim on the ground that he was a customary heir. It was held that the plaintiff was disentitled to succeed upon that principle of public policy and justice which demands that no criminal should benefit by the result of his crime, and that it was unnecessary to consider either the Muhammadan or Customary Law on the point. Following this ruling the learned Judges responsible for *Muhammad Khan v. Sis Bano* (2) held that not only was the murderer excluded from inheritance, but that on the same grounds his descendants were also barred from the succession. It was said that the principle of exclusion applied to all who derived their claim from the criminal and as the plaintiff claimed his inheritance through his father it would be opposed to public policy to allow him to succeed. Reference was made to *Boda v. Harnam* (3) with approval, where it is laid down that in regard to collaterals such heirs take the estate from the sonless owner as his heirs and derive their title to possession of the ancestral estate from him and through him from the common ancestor. It was sought to support the decision of the Lower Appellate Court by the contention that the right of a son to succeed collaterally is wholly independent of his father and derived, not from the father, but from the common ancestor, and that in the present case Ram Singh being excluded by reason of his being the murderer, the right to

(1) 74 P. R. 1900.

(2) 41 P. R. 1906.

(3) 18 P. R. 1895 (F. B.)

succession became vested in Indar Singh. This proposition, however, is entirely opposed to what was held in *Muhammad Khan v. Sis Bano* (1), for there it was specifically laid down that the fact that the father had committed the crime did not serve to vest the right of succession in the plaintiff. Now after Dyal Singh's death Ram Singh would have succeeded to his share (whatever that share might have been) but for the fact that as Ram Singh was the murderer he was excluded from the succession. This exclusion, however, did not serve to vest the right of succession in Indar Singh. So long as Ram Singh was alive Indar Singh could not advance any claim, and as Ram Singh's exclusion did not vest the right to succession in Indar Singh, Ram Singh's subsequent death (by hanging) did not give Indar Singh any right to succeed. Doubtless Indar Singh does not claim to succeed to his father as his heir, but bases his claim on his relationship to the common ancestor Mohan Singh. He does, however, claim *through* Ram Singh inasmuch as it is *through* Ram Singh that he is related to Mohan Singh and Dyal Singh. This appears to have been the *ratio decidendi* in *Muhammad Khan v. Sis Bano* (1) and there seems to be no reason to take a different view. The principle of exclusion merely amounts to this, that on the grounds of public policy a person guilty of felony is debarred from inheritance. As was held in *Vedanayaga v. Vedammal* (2) the vesting of the inheritance itself is not intercepted, *i.e.*, the vesting of the succession is not prevented but what was vested in accordance with the law is wrested away on the ground of justice and equity. The murderer's right in such a case is swept away and with it is carried away the right of every one who claims *through* (and not merely *from*) him. As Indar Singh derives his right to succeed *through*, though not *from*, his father his right to succeed is taken away by the criminal act of Ram Singh.

If this were not so, the object of this principle of exclusion would be, in many cases, rendered nugatory: an aged father who had a right of reversion to a large estate could murder the holder of that estate and suffer

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(1) 41 P. R. 1906.

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the extreme penalty cheerfully knowing that by his action he had benefited his sons very materially. Ram Singh was not the source of Indar Singh's right of succession but he was the channel through which this right went to Indar Singh, and when the channel becomes tainted, or blocked, the right to succeed ceases to flow on to the son.

In these circumstances it is not necessary to consider the authorities cited by Mr. Kharak Singh which deal in the main with Hindu Law. As remarked in *Mus-sammat Shah Khanam v. Kalandhar Khan* (1), the principle is based on public policy and justice, and the Hindu or Customary Law on the point need not be considered. The authorities cited by Mr. Kharak Singh were:—

Soni Ram v. Kanhaiya Lal (2), *Sreemuthy Manokarani Debi v. Haripada* (3), *Gangu v. Chandrabhagabai* (4), *Nilmadhab Mitter v. Jotindra Nath* (5), Gour's Hindu Code, page 921, and Trevelyan's Hindu Law pages 357 and 412.

It was also contended that in *Sundar v. Salig Ram* (6) the view as to collateral succession laid down in *Roda v. Harnam* (7) had been abrogated. A reference to the authority, however, shows that this is not the case. As has been pointed out above the principles enunciated in *Roda v. Harnam* (7) were cited with approval in *Muhammad Khan v. Sis Bano* (8). In *Sundar v. Salig Ram* (6), the 1895 decision is referred to apparently with approval at pages 72 and 73, although at page 74 Rattigan, J., makes certain remarks which would appear to throw some doubt on the subject. It was not held or even explicitly opined that the view taken by the Court in the decision of the 1895 case was wrong. *Muhammad Khan v. Sis Bano* (8) appears to be conclusive on the point and should have been followed by the Lower Appellate Court. The claim so far as Indar Singh is concerned was, therefore, bad and his suit should have been dismissed.

(1) 74 P. R. 1900.

(2) (1913) I. L. R. 35 All. 227 (P. C.)

(3) (1914) 24 Indian Cases 311 (P. C.)

(4) (1907) I. L. R. 32 Bom. 275.

(5) (1913) 17 Cr. L. W. N. 341.

(6) 25 P. R. 1911 (F. B.)

(7) 18 P. R. 1895 (F. B.)

(8) 41 P. R. 1906.

The claim advanced by *Mussammât Sauti* is not on the same footing as that advanced by *Indar Singh*. She derives her claim *from* and *through* her husband who was not guilty of participation in the murder. Her husband *Kala Singh* could have succeeded to all the estate along with *Santa Singh*. He did not, however, do so, but instead stood by and allowed the daughters of *Dyal Singh* to oust him, and to take possession of the property. Up to the time of his death he never advanced any claim to oust the daughters of *Dyal Singh*. The revenue records show that both *Kala Singh* and *Santa Singh* were present during the mutation proceedings. Just as *Kala Singh* advanced no claim against the daughters of *Dyal Singh* so did *Santa Singh* refrain from doing so. Their silence up to their respective deaths appears to indicate that they had acquiesced in the succession of the two daughters, and therefore, *Mussammât Sauti* had no right to advance the claim she has made.

The appeal is accepted and the plaintiffs' suit dismissed with costs throughout.

A. R.

Appeal accepted.

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Mst. JIND KATE

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