APPELLATE CIVIL.

Before Mr. Justice Abdul Raoof and Mr. Justice Martineau.

1921

Nov. 25.

WARYAMAN AND OTHERS (PLAINTIFFS)—*Appellants,*

versus

KANSHI RAM AND OTHERS (DEFENDANTS)—*Respondents.*

Civil Appeal No. 939 of 1918.

Custom—Adoption—Hindu Jats of Hoshiarpur Tahsil in the Hoshiarpur District—collateral succession of the adopted son, where there has been a complete adoption—whether any specific ceremonies are necessary to constitute such an adoption.

Held, in a case in which the question was whether an adopted son was entitled to succeed to the estate of his adoptive father's brothers, that in the Punjab no specific ceremonies or formalities are provided under the Customary Law for adoption. What had to be determined was whether it was intended that the adopted boy should be altogether taken out of his natural family and introduced into the adoptive father's family as his son; in other words whether the adoption was a *complete adoption* having the effect of severing the connection of the boy with his natural family. Where the *intention to make a complete change of family is manifested*, there the right of collateral succession may be presumed till the contrary is shown.

Uttam Singh v. *Wazir Singh* (1), followed.

Second appeal from the decree of N. H. Prenter, Esquire, Additional Judge, Hoshiarpur, at Jullundur, dated the 10th December 1917, affirming that of Maulvi *Barkat Ali Khan, Subordinate Judge, 2nd class, Hoshiarpur, dated the 7th July 1917, dismissing the claim.*

SUNDER DAS, for Appellants.

SHAMAIR CHAND and FAKIR CHAND, for Respondents.

The judgment of the Court was delivered by—

ABDUL RAOOF, J.—This was a suit for a declaration that Kanshi Ram, defendant, an appointed heir of Ram Ditta, was not entitled to succeed collaterally to the estate of Kharku and Fattu, brothers of Ram Ditta, and that he was not entitled to have 425 *kanals* 5 *marlas* of land, situate in *Mauza* Bains Khurd repartitioned, the land having been partitioned already.

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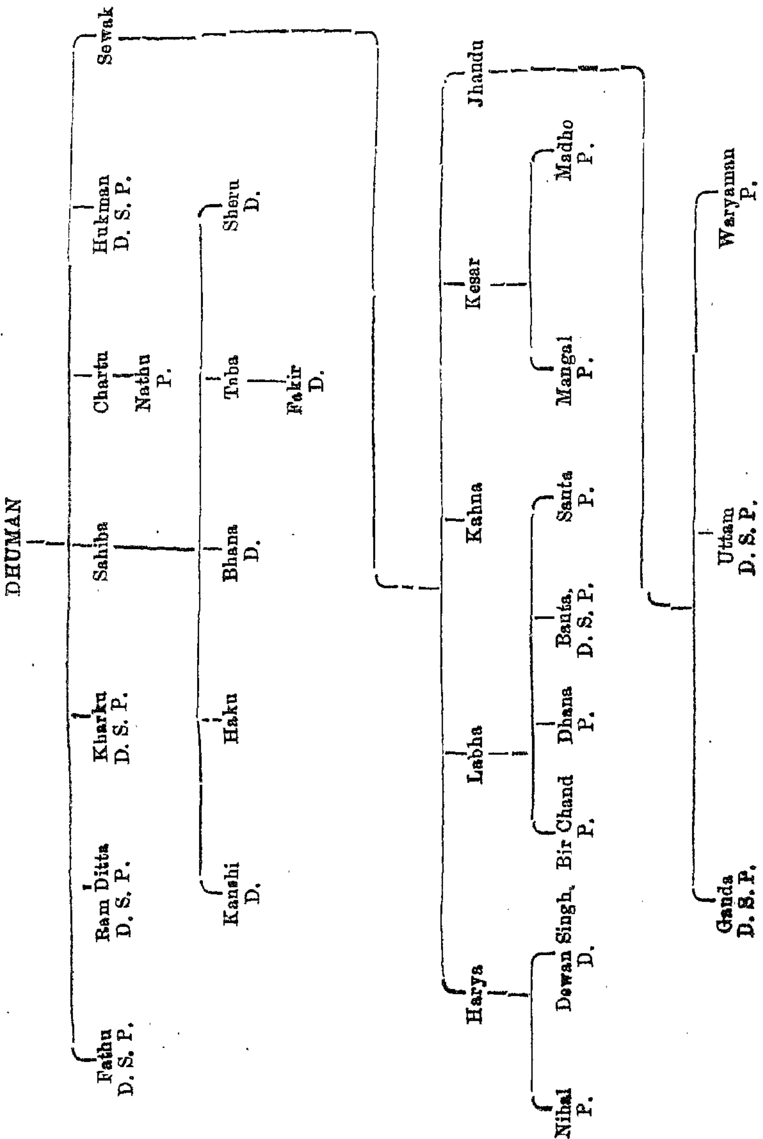
In order to understand the facts of the case reference must be made to the pedigree table printed on page 6 of the paper book (*printed below*—Ed.).



One Dhuman had seven sons. Kanshi Ram was the son of one of those namely Sahiba. He was adopted

by Ram Ditta, his uncle. This fact is evidenced by a deed of adoption dated the 21st October 1884. In this deed it is recited that the boy had been adopted at the age of two years and was taken out of the family of his natural father, Sahiba, and was brought up as his son by the adopter. The deed further recites that—

"Now by this writing I declare the said boy as my adopted son and provide that after my death he will perform the *Kirya Karim* ceremony and shall succeed to my property as my son."

Ram Ditta after executing the deed died three days after, namely, on the 24th October 1884. Kanshi Ram succeeded to the estate of Ram Ditta as his adopted son. Some half-hearted objections were made by some of the collaterals but eventually they were all brushed aside and Kanshi Ram's claim to succeed to the full share of Ram Ditta in the joint holding was recognised. Subsequently Sahiba, the natural father of Kanshi Ram, died leaving Kanshi Ram and four other sons Kanshi Ram was excluded from the inheritance in the property of Sahiba, and the rest of his brothers succeeded to the entire estate. In 1891 Kharku, one of Ram Ditta's brothers, died and Kanshi Ram was allowed to succeed collaterally and his name was mutated in the same manner as the name of a natural born son of Ram Ditta would have been entered. In 1911 Fathu, another brother of Ram Ditta, died and Kanshi Ram was again allowed to succeed as a collateral. In 1916 Kanshi Ram applied to the Revenue authorities for the partition of the ancestral holding. Waryaman, the grandson of Sewak, a brother of Ram Ditta, along with others filed objections against the application for partition presented by Kanshi Ram. The Revenue Court referred the parties to a Civil Court. Thereupon Waryaman along with some of his cousins instituted the present suit for declaration. The main ground upon which the suit was based was that Kanshi Ram was merely an appointed heir of Ram Ditta and as such he was not entitled to succeed collaterally in the family of his adoptive father, according to the custom prevailing among the Hindu Jats of the Hoshiarpur *Tahsil* in the Hoshiarpur District. The

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suit was resisted by Kanshi Ram on the ground that he was the adopted son of Ram Ditta and that he was entitled to succeed collaterally to Kharku and Fattu. The trial Court after going into the evidence and the circumstances of the case held in favour of Kanshi Ram and dismissed the suit. An appeal was preferred to the Lower Appellate Court which was dismissed and the decree of the first Court was upheld.

The plaintiffs have come up in second appeal to this Court and it has been argued by Mr. Sunder Das on their behalf that, according to the custom and decided cases relating to the custom, Kanshi Ram being only an appointed heir of Ram Ditta was not entitled to succeed collaterally in the family of his adoptive father. In the alternative he has also argued that even if Kanshi Ram be admitted to have been adopted by Ram Ditta he was not entitled to succeed collaterally for the reason that his adoption was merely an informal adoption and it was not attended with the formal ceremonies prevalent among the Hindu Jats. The learned Judge of the Court below in his judgment makes the following observation :—

"On the 21st October 1884 Ram Ditta, having no sons, appointed one of his nephews Kanshi Ram, son of Sahiba, as his heir. It is not disputed that this appointment was in reality an adoption. In fact, all along ever since that date Kanshi Ram has been recognised as the adopted son of Ram Ditta and this point is not even now in dispute."

Apparently the fact of adoption was never disputed in the Courts below, and it is scarcely open to Mr. Sundar Das to argue that in reality there was no adoption and that it was merely an appointment of an heir. The real contention put forward, however by Mr. Sundar Das is that unless it is shown that Kanshi Ram's adoption was a formal adoption according to the authorities he would not be entitled to succeed to the property collaterally. Now it is difficult to understand what the learned Counsel meant by formal adoption. There are certain formalities and ceremonies provided by the Hindu Law for the adoption of a boy according to the

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Dattaka form. In the Punjab, however, no specific ceremonies or formalities are provided under the Custormary Law for adoption. In this sense all adoptions made under the custom must be looked upon as being informal. After a careful perusal of the authorities on this point it appears that in an adoption made under the Customary Law, it is to be determined whether it was intended that the adopted boy should be altogether taken out of his natural family and introduced into the adoptive father's family as his son ; in other words whether the adoption was a *complete adoption* having the effect of severing the connection of the boy with his natural family.

In the case of *Uttam Singh (plaintiff), appellant* v. *Wazir Singh and others (defendants), respondents* (1), the Judges of a Division Bench of the Punjab Chief Court made the following observation :—

" But in a Jat adoption where there is no *standard* of formality, no precise customary rule as to what is to be done to produce all the effects of adoption, it is impossible to say that any *class* of adoptions always carries certain consequences with it. All that can be said is that where the adoption is as complete as a Jat adoption ever is, and *where the intention to make a complete change of family is manifested*, there the right of collateral succession may be presumed till the contrary is shown. "

We have, therefore, to see whether in this case it has been shown that the adoption of Kanshi Ram was intended to be a complete adoption and had the effect of bringing about a complete change of family. Admittedly there is no direct evidence on the record as to the adoption, and after the lapse of such a long period since 1884 there is nothing strange if direct evidence is not available. The Court below, however, relying upon certain strong circumstantial evidence has come to the conclusion that " Kanshi Ram was the fully adopted son of Ram Ditta. " The *onus* of proving this adoption lay on Kanshi Ram and this, in the opinion of the learned Judge of the Court below, he has successfully discharged. At this conclusion the Court below arrived from the following proved facts :—

That Kanshi Ram was an agnate being a nephew of Ram Ditta, that he was taken away from the family of his

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natural father and kept by Ram Ditta as his son from his childhood, that in 1884 a formal deed of adoption was executed by Ram Ditta, under which Kanshi Ram who was described as his son, was directed to perform his *Kirya Karam* ceremony after his death ; that on Ram Ditta's death he succeeded to his lands and without any serious objection was recognised as his own son ; that on the death of Sahiba, his natural father, he was excluded from inheritance ; that after Kharku and Fattu he was allowed to succeed collaterally as the son of Ram Ditta to the properties of those two persons ; that although Waryaman made a faint attempt to object to the right of Kanshi Ram to succeed collaterally he did not press the objection seriously ; that Kanshi Ram was made to contribute towards the discharge of debts due from Kharku and Fattu ; that he was made to contribute 1/4th of the mortgage money to redeem a mortgage of Fattu : and that in fact all along Waryaman and others treated him as the fully adopted son of Ram Ditta.

The learned District Judge has also referred to three decided cases which prove the custom set up by Kanshi Ram. It is not necessary to notice in any detail the particulars of the custom pleaded, for the findings of fact fully establish the conditions, which, according to the argument of Mr. Sundar Das, are necessary for a complete adoption.

In our opinion the Courts below have arrived at a correct conclusion and this appeal must fail. We accordingly dismiss it with costs.

A. R.

Appeal dismissed.