APPELLATE CIVIL.

Before Mr. Justice Abdul Raoof and Mr. Justice Moti Sagar.

LALU AND OTHERS (DEFENDANTS) Appellants,

versus

1922

Dec. 21.

FAZAL DIN AND OTHERS (PLAINTIFFS) Respondents.

Civil Appeal No. 2159 of 1919.

Declaratory Suit—Suit to have it declared that plaintiffs will have a right to succeed to property on the death or marriage of defendants—spes successionis.

Held, that as the plaintiffs in the present suit wanted to obtain an affirmative declaration that they would have a right to succeed to the property in suit on the death or marriage of the defendants, they were asking for a declaration "not of an existing right, but of a *spes successionis*, *i.e.*, the chance or possibility of acquiring a right in the future. The Courts will not grant such a declaration, as it will be open to the plaintiffs, when succession opens out, to sue for possession of the property if possession is denied them.

Strimathoo v. *Dorasinga Tever* (1), *Greeman Singh* v. *Wahari Lall Singh* (2), and Rani *Pirthi Pal Kunwar* v. Rani *Guman Kunwar* (3), followed.

Second appeal from the decree of B. H. Birl, Esq., District Judge, Rawalpindi, dated the 4th July 1919, *varying that of* Malik *Ahmad Yar Khan, Junior Subordinate Judge, Rawalpindi, dated the* 21*st October* 1918.

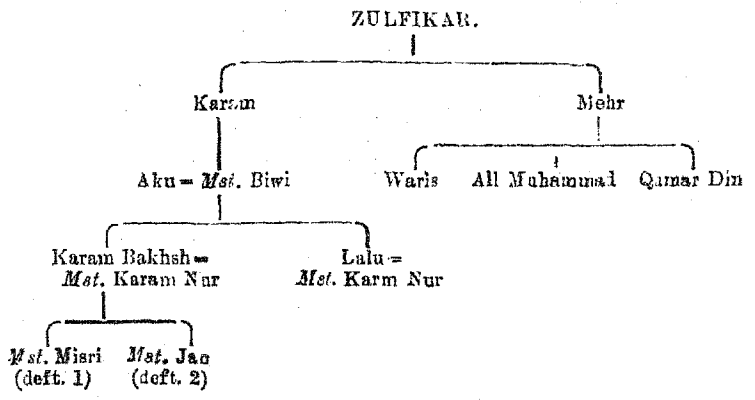
M. S. BHAGAT, for Appellants.

KHARAK SINGH, for D. R. SAWHNEY, for Respondents.

The judgment of the Court was delivered by—

MOTI SAGAR J.—The following pedigree table will explain how the parties are related to each other :—

(1) (1875) L. R. 2 I. A. 169. (2) (1881) I. L. R. 8 Cal. 12.
(3) (1890) L. R. 17 I. A. 107.



On the 20th January 1883, Karam, son of Zulfikar, gifted the property in suit to *Mussammat* Biwi, his daughter, and Karam Bakhsh, his daughter's son. Lalu, the second son of *Mussammat* Biwi, was evidently not born at this time. In 1884 the plaintiffs who are the sons of Mehr, brought a suit against the donor and the donee for a declaration that the said gift was invalid, and that it would not affect the reversionary rights of the plaintiffs after the death of the donor. This suit was dismissed. On *Mussammat* Biwi's death the property in suit was mutated in the name of her son, Karam Bakhsh, and when he died his widow, *Mussammat* Karam Nur, succeeded to the property on a life tenure. *Mussammat* Karam Nur married Lalu, brother of her deceased husband, and then the property had to be mutated again, this time in the names of her two minor daughters, *Mussammat* Misri and *Mussammat* Jan. This mutation was effected in 1908, and since that date the daughters have been in uninterrupted possession of the land in question. In April 1918 the plaintiffs brought the present suit for a declaration that they were the next reversionary heirs of defendants (1) and (2), *viz.*, *Mussammat* Misri and *Mussammat* Jan, and that on the death or the marriage of the latter they would be entitled to succeed to the property now in their possession. The suit was resisted on the ground that the plaintiffs had no cause of action, that they had no *locus standi* to maintain the suit in the presence of Lalu, their uncle, who was a nearer heir than the plaintiffs, that the gift made by Karam in 1883 was intended for the benefit of the whole family, and

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that the property could not revert to the plaintiffs until the total extinction of the lineal descendants, male and female, of the donees. On these pleadings Lalu was also impleaded as a defendant in the case. The trial Court dismissed the suit on the ground that the plaintiffs were remote collaterals and had no right to sue in the presence of Lalu, a nearer reversioner than themselves. On appeal the learned District Judge by an order, which is wholly unintelligible, modified the decree of the first Court and held that, on the failure of the line of *Mussammat* Misri and *Mussammat* Jan, Lalu would be entitled to succeed to half the property in suit. Against this judgment and decree both parties have appealed.

In our opinion the order of the learned District Judge is clearly wrong and must be set aside on the short ground that there is no cause of action for this suit. What the plaintiffs want to obtain is an affirmative declaration that they may have the right to succeed to the property on the death or the marriage of the two defendants, in other words, they ask for a declaration "not of an existing right but of a *spes successionis*," *i.e.*, the chance or possibility of acquiring a right in the future. It has been repeatedly held that the Courts will not grant such a declaration—*vide Strimathoo* v. *Dorasinga Tever* (1), *Greeman Singh* v. *Wahari Lall Singh* (2), and Rani *Pirthi Pal Kunwar* v. Rani *Guman Kunwar* (3). It will be open no doubt to the plaintiffs when succession opens out to sue for possession of the property if possession is denied them.

We accept the appeal and dismiss the plaintiffs' suit, but, having regard to the fact that the plaintiffs are not to blame for this appeal which has been necessitated by the wholly unintelligible order passed by the Court below, we leave the parties to bear their own costs in this Court.

A. R.

Appeal accepted.

(1) (1875) L. R. 2 I. A. 169. (2) (1881) I. L. R. 8 Cal. 12.
(3) (1890) L. R. 17 I. A. 107.