tion was never raised in any of the Courts below, and has not been mentioned even in the grounds of appeal to this Court, and we consequently decline to allow Mr. Fakir Chand to take up this entirely new point at the last stage. No arguments have been addressed to us on behalf of *Mussammat* Parmeshri, and we take it that the appeal so far as she is concerned is dropped.

The result is that the appeal fails, and is dismissed with costs.

A. R.

Appeal dismissed.

APPELLATE CIVIL.

Before Mr. Justice Scott-Smith and Mr. Justice Zafar Ali.

BUDHA AND OTHERS (PLAINTIFFS) Appellants,

versus

Mst. FATIMA BIBI AND ANOTHER (DEFENDANTS) Respondents.

1922

Dec. 19.

Civil Appeal No. 2122 of 1919.

Custom—Succession—Self-acquired property—Jats of Mauza *Begowala, District Sialkot—whether collaterals exclude daughters—Value of entry in* Riwaj-i-am, *when opposed to general custom.*

Held, that the plaintiff-collaterals, on whom the *onus* lay, had failed to prove a special custom among *Jats* of Begowala, District Sialkot, by which they exclude daughters from succession to self-acquired property.

Rattigan's Digest of Customary Law, article 23, *clause* (2), referred to.

Held also, that it is now a well established rule that a statement in a *Riwaj-i-am* opposed to general custom and unsupported by instances possesses very little evidential value.

Chhuttan v. *Hazari Lal* (1), *Wazira* v. Mst. *Maryam* (2), and *Khuda Bakhsh* v. Mst. *Fatteh Khatun* (3), followed.

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(1) 7 P. R. 1916. (2) 84 P. R. 1917.
(3) 13 P. R. 1919.

1922

BUDHA
v.
Mst. FATIMA
BIBI.

Second appeal from the decree of Rai Sahib Lala *Ganga Ram, District Judge, Sialkot, dated the* 3rd *May* 1919, *affirming that of* Lala *Har Dial, Subordinate Judge,* 2nd *Class, Sialkot, dated the* 5th *December* 1918, *dismissing plaintiff's suit.*

SLEEM AND MUHAMMAD AMIN, for Appellants.

JALAL-UD-DIN AND N. C. MEHRA, for Respondents.

The judgment of the Court was delivered by—

ZAFAR ALI J.—This second appeal was admitted on a certificate on a question of custom which was—

"Whether among the agricultural tribes of the Sialkot District the collaterals of a sonless proprietor exclude daughters from succession even in the case of self-acquired property."

The last male owner of the land and house in dispute was Pirna, a *Jat* of the village Begowala, District Sialkot. On his death the land was mutated in the name of *Mussammat* Fatima, the minor daughter of his predeceased son. His own daughter *Mussammat* Muhammad Bibi relinquished her rights in favour of *Mussammat* Fatima, her niece, and the latter entered into possession. The plaintiffs, claiming to be reversioners of Pirna, sued to recover possession of his property from her, stating that the property was ancestral, and that the defendant *Mussammat* Fatima possessed no right of inheritance. Her plea, on the other hand, was that the property was non-ancestral and had lawfully devolved upon her, and that the plaintiffs were not entitled to exclude her. The trial Court found that the property was not ancestral *qua* the plaintiffs, that therefore in accordance with the general custom the daughter was a preferential heir, and that the plaintiffs had failed to establish a special custom by which they could exclude her. They appealed to the District Judge and produced before him for the first time the *Riwaj-i-am* of the district, and contended on the strength thereof that the special custom alleged by them did obtain in the district. The learned District Judge after citing the proposition laid down in *Chhuttan* v. *Hazari Lal* (1) and followed in *Waziria* v. Mst. *Maryam* (2) and again in *Khuda Bakhsh* v. Mst. *Fatteh Khatun* (3) that a

(1) 7 P. R. 1916. (2) 84 P. R. 1917.
(3) 13 P. R. 1919.

"statement in a *Riwaj-i-am* in support of a special custom when opposed to the general custom can carry very little weight unless supported by instances," overruled the appellants' contention and decided in accordance with the said *dictum* that the *Riwaj-i-am* in question which was not supported by instances and was opposed to the general custom stated in clause (2) of article 23 of Rattigan's Digest of Customary Law was not sufficient to prove the special custom set up by the plaintiffs. Counsel for the plaintiffs-appellants contends before us :

(1) that the land was presumably ancestral though there was no direct evidence to show that it had descended from a common ancestor ; and

(2) that in the presence of the *Riwaj-i-am* which afforded presumptive evidence of the existence of the special custom, it lay on the defendants to rebut the same ; and

Lastly, urges that in any case the plaintiffs should be allowed an opportunity to produce evidence to prove the special custom by citing instances, because the question as to the special custom was not specifically raised in the issues framed by the trial Court.

No. 1 is quite untenable and there is nothing on the record to raise the presumption that the land had descended from a common ancestor.

No. 2 does not carry any weight in the face of the authorities cited above and relied upon by the learned District Judge. It is now a well established rule that a statement in a *Riwaj-i-am* opposed to general custom and unsupported by instances possesses very little evidential value.

As regards the prayer for a remand, we are of opinion that there is no justification for it. Though the plaintiffs were represented by counsel in the first Court, they did not produce the *Riwaj-i-am* before it nor adduced any other evidence in proof of the alleged special custom. As they did not conduct their case with due care and attention they must bear the consequences. The appeal fails and we dismiss it with costs.

A. N. C.

Appeal dismissed.