APPELLATE CIVIL.

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

1924

Feb. 14.

GURDIT SINGH AND OTHERS (PLAINTIFFS) Appellants

versus

Mst. MALAN AND OTHERS (DEFENDANTS) Respondents.

Civil Appeal No. 1456 of 1920.

Custom—Succession—Ancestral property—Daughter or collaterals in tenth degree—Khera Jats, Batala Tahsil—Onus probandi—Riwaj-i-am.

Held, that the *onus* was upon the plaintiffs, collaterals in the tenth degree, to prove that by custom among Khera Jats of the Batala Tahsil they excluded the daughter from succession to the ancestral property of her father.

Jiwan Singh v. *Mst. Har Kaur* (1), *Abdul Karim* v. *Sahib Jan* (2), *Bholi* v. *Man Singh* (3), and *Mussammat Dhan Kaur* v. *Sunder* (4), followed.

Held also, that the entry in the *Riwaj-i-am* of the Gurdaspur district to the effect that daughters are excluded from succession to their father's property, of any kind, in presence of collaterals, however remote, being opposed to general custom and unsupported by instances was not sufficient to shift the *onus* from the plaintiffs, and that plaintiffs had failed to discharge the *onus*.

Beg v. *Allah Ditta* (5), and *Wazira* v. *Mst. Maryan* (6), referred to.

First appeal from the decree of Maulvi *Barkat Ali Khan, Subordinate Judge, 1st Class, Gurdaspur, dated the 6th May 1920, dismissing the suit.*

MORTON and COOPER, for Appellants.

AZIZ AHMAD and KANHAYA LAL, GAUBA, for Respondents.

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(1) 41 P. R. 1914.
(2) 5 P. R. 1908.
(3) 86 P. R. 1908.
(4) (1922) I. L. R. 3 Lah. 184, 187.
(5) 45 P. R. 1917 (P. C.).
(6) 84 P. R. 1917.

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GURDIT SINGH v. *Mst.* MALAN.

The judgment of the Court was delivered by—

SCOTT-SMITH J.—On the 29th July 1918 *Mussammat* Malan, widow of Ghasita Singh, a Khera Jat of the Batala Tahsil, made a gift of certain land left by her husband, which has been held to be ancestral *quâ* the plaintiffs-appellants, in favour of her daughter *Mussammat* Lachhmi. The plaintiffs-appellants who are collaterals in the tenth degree of Ghasita Singh, brought the suit out of which the present appeal arises for a declaration that this gift should not affect their reversionary rights. The lower Courts held that the plaintiffs had not discharged the *onus* which lay on them of showing that they were entitled to succeed to Ghasita Singh's estate in preference to a daughter.

Mr. Morton in arguing the appeal contends that the *onus* of proof, if it originally lay upon the plaintiffs, has been shifted. In *Jiwan Singh and others* v. *Mussammat Har Kaur* (1) it has been 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 their judgment in that case the Judges of the Division Bench referred to *Abdul Karim* v. *Sahibjan* (2) and *Bholi* v. *Man Singh* (3) and said that they entirely agreed with the decisions therein. This question was again considered by a Division Bench of this Court in *Mst. Dhan Kaur* v. *Sunder* (4) where the Judges said: "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 plaintiffs are, as already stated, related to Ghasita

(1) 41 P. R. 1914.
(2) 5 P. R. 1908.
(3) 86 P. R. 1908.
(4) (1922) I. L. R. 3 Lah. 184, 187.

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Singh in the tenth degree, and we are, therefore, of opinion that a very heavy *onus* lay upon them to prove that they exclude the daughter. Mr. Morton, however, relies upon the *Riwaj-i-am* of the Gurdaspur District which was prepared in 1910-11. The material questions and answers are to be found printed at pages 23-24 of the paper-book and also in Kennaway's Customary Law of Main Tribes in the Gurdaspur District published in 1913; see the answers to questions 16 and 17 at pages 30-32. Briefly, these answers are to the effect that daughters are excluded by collaterals, however remote, not only from succession to the immoveable or ancestral property of their father, but also from succession to the moveable or acquired property. Now, there can be no doubt that this sweeping exclusion of daughters from succession to property of all sorts belonging to their father by collaterals, however remote, is opposed to general custom. As pointed out above, the *onus* is on the collaterals more distantly related than the fifth, or at least the seventh degree, to prove that they exclude daughters from succession even to the ancestral property of their father, and paragraph 23 of Rattigan's Digest of Customary Law shows that in regard to the acquired property of the father the daughter is usually preferred to collaterals.

Mr. Morton, however, contends that the entry in the *Riwaj-i-am* is a strong piece of evidence in support of the custom put forward by the plaintiffs having regard to the decision of their Lordships of the Privy Council in *Beg* v. *Allah Ditta* (1). This decision was considered by a Division Bench of this Court in *Wazira and others* v. *Mst. Maryan and others* (2) in which it was held that " statements in a *Riwaj-i-am* when opposed to general custom can carry very little weight

(1) 45 P. R. 1917 (P. C.). (2) 84 P. R. 1917.

unless supported by instances." A reference to Kennaway's Customary Law, moreover, shows that the general rule stated in the answers to questions 16 and 17 above referred to has been subject to numerous exceptions which are enumerated in Appendix C at pages 73 and 74 of the book where mutation in which daughters inherited their father's land are given. These tables show that the general rules have been subject to many exceptions. Under the circumstances we do not think that the statements in the *Riwaj-i-am* are in the present case sufficient to shift the *onus* which was a heavy one from the plaintiffs. The oral evidence produced by them is really of no value, and the copies of judicial decisions, which have been placed on the record, are all cases where the reversioners were much nearer than the tenth degree, and therefore they are not in point. We therefore agree with the lower Court that the plaintiffs have not discharged the *onus* which lay upon them, and we dismiss their appeal with costs.

C. H. O.

Appeal dismissed.