PRIVY COUNCIL.

Before Lord Shaw, Lord Blanesburgh, Sir John Edge.

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Feb. 21.

NABI BAKHSH AND OTHERS (PLAINTIFFS) Appellants,

versus

AHMAD KHAN AND OTHERS (DEFENDANTS) Respondents.

(Privy Council Appeal No. 23 of 1923.)

(High Court Appeal No. 2778 of 1915.)

Custom—Succession—Collateral Succession—Ancestor having distributed property between sons of different wives—Subsequent devolution of Property—Whole blood excluding half-blood.

In 1858 S. K., a *Mekhan* of Kot Bhai Khan, *Tahsil* and District Shahpur, governed by customary law, distributed villages between his four sons, of whom two were by one wife and two by another wife. Thereafter each of the two families (if not each son) had separate possession and ownership of the allotted portions. In 1907 a descendant through the second wife died childless in possession of allotted villages which had descended to him. A question arose whether collaterals through the first wife were entitled to share in the succession with collaterals through the second wife. Both Courts in India found that the rule of succession locally applicable was the *pagwand* rule by which sons share equally.

Held, that each portion of property succeeded to by the children of the second wife became a separate entity so that the rules of succession to it were rules of succession to the owner of it, and not to the ancestral owner; and that accordingly the full-blood excluded the half-blood.

Ghulam Muhammad v. *Muhammad Bakhsh* (1) approved.

Judgment of the High Court affirmed upon a different ground.

Appeal (No. 23 of 1923) from a decree of the High Court (January 24, 1920) reversing a decree of the

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Senior Subordinate Judge of Shahpur at Sargodha. The suit was brought by the appellants against Sahib Khan, the father of respondents 1 and 2, and *Mussammats* Ghulam and Jamal, who were respectively the mother and stepmother of Bahadur Khan, deceased. The plaint claimed possession of two-thirds of the property left by Bahadur Khan subject to the maintenance of the *Mussammats*, alternatively a declaratory decree that the appellants were entitled to two-thirds as against the first defendant after the deaths of the second and third defendants.

The parties were *Mekhans* of Kot Bhai Khan in the Tahsil and District of Shahpur governed by the customary law of the Punjab.

It was concurrently found in India that in the district to which the parties belonged the rule of succession was the *pagwand* rule under which all sons inherit in equal shares, as distinguished from the *chundawand* rule under which the sons of each wife divide in equal shares.

The facts and the effect of the judgments in India appear from the judgment of the Judicial Committee.

Montgomery K. C. and *Abdul Majid* for the appellant—referred to *Ghulam Muhammad* v. *Muhammad Bakhsh* (1), Sir W. H. Rattigan's Digest of Customary Law, ss. 26, 27, and to Sir James Wilson's General Code of Tribal Custom in the Shahpur District.

The respondents did not appear.

The judgment of their Lordships was delivered by—

Lord SHAW—This is an appeal from a decree of the High Court of the Punjab at Lahore, dated 24th Janu-

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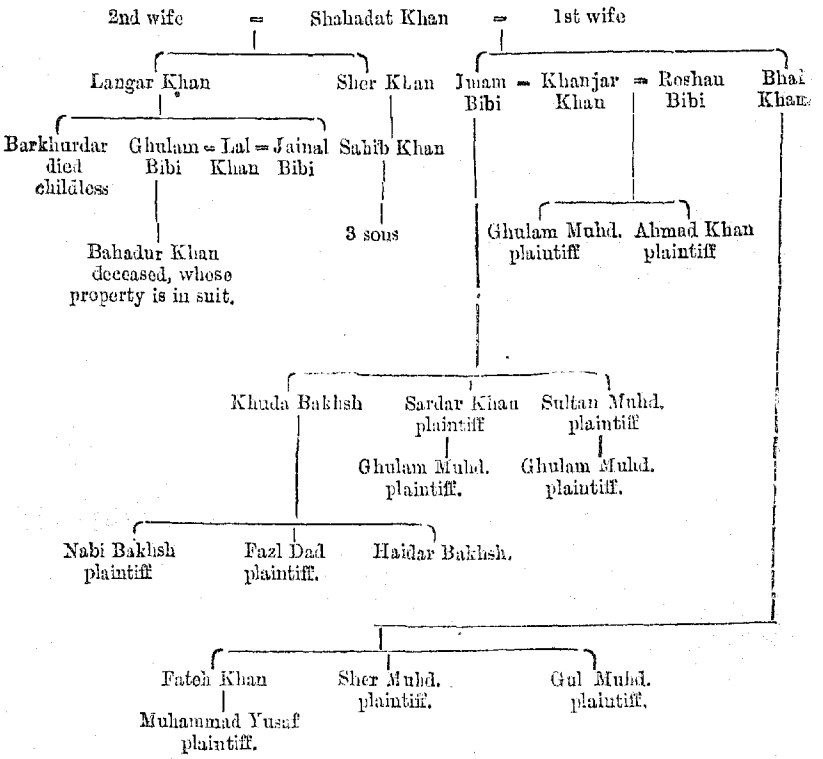
ary 1920, reversing a decree of the Court of the Senior Subordinate Judge of Shahpur, at Sargodha, dated 10th July 1915.

The point for determination in the case relates to the succession to the property of a certain Bahadur Khan who died on the 26th April 1907. The pedigree table is as follows :—



The case raises the question whether that property (of Bahadur Khan) devolves on Sahib Khan, son of Sher Khan, or whether it devolves also upon the descendants of Khanjar Khan and Bhai Khan. Reduced to a still simpler form, which, if necessary, can be particularised in the genealogical table, the question in the appeal is :—in the succession of Bahadur Khan, does the full-blood exclude the half-blood? If it does, then the appeal fails : and Sahib Khan suc-

ceeds, he and Bahadur being descendants of Shahadat Khan by his second wife. If it does not, then the appellants, being descendants of Shahadat by his first wife, come in by right of the half-blood to share in the succession to Bahadur.

It is important to state the matter in this way, apart from committing oneself at the outset, on the subject of whether the case is governed by the *pagwand* rule or by the *chundawand* rule. This, for a reason to be afterwards specified,

Shahadat Khan, by his first wife, had two sons, namely Khanjar and Bhai. He had also two sons by his second wife, namely Langar and Sher. He died in the year 1860. In the year 1855, however, he purported to divide the property of Kot Bhai Khan under *Sanad* of date 30th March of that year, from which *Sanad* it clearly appears that the two sons of the first wife obtained certain specified lands and that the two sons of the second wife obtained certain other enumerated lands.

After a year or two, however, differences arose in regard to the payment of certain debts by the descendants of the first wife. On the 27th January 1858, a petition was filed by Shahadat declaring that these two sons, namely Bhai and Khanjar, had disgraced him and put him to trouble and he accordingly demanded that a *parwana* be issued to the Tahsildar directing him to put the father back into possession and to dispossess these objectionable sons.

An arrangement was speedily come to. In the Court of Pandit Moti Lal, Extra Assistant Collector and Commissioner, there was on the 16th February, 1858, presented an application for partition of the property. Thereafter, on the 10th April 1858, there was executed by Shahadat Khan a deed of partition, the

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construction of which has been the subject of much discussion. Upon that, and generally upon the whole case, the Board had the advantage of a very able argument by Mr. Montgomery.

It appears to the Board to be clear that the property "previously divided" as the deed narrates (that is to say, in 1855), is again divided. It may be difficult to identify the names, but there appears to be no doubt that Kot Bhai Khan was again divided by giving to the two sons of the first wife jointly certain named lands or properties on the one hand, and on the other hand by giving certain other named lands or properties for joint possession and ownership by the sons of the second wife.

This phrase, however, occurs, *viz.*: "All my four sons shall be the owners in equal shares of the lands situated in the Bar." * * * * * * "The property situated at Kot Bhai Khan remains joint among my sons."

This deed, namely of 1858, is executed as deed of partition "so that it may serve as an authority in future. After my death my four sons shall act upon this deed of partition."

This deed had appended to it an endorsement of a threefold character. This question is put:— "whether or not you have any objection to the deed of partition filed by you." That question is put separately and in the first place to the father Shahadat Khan. In the second place it is put to Khanjar and Bhai, the sons of the first wife jointly; and in the third place it is put to Langar and Sher, the sons of the second wife jointly. No objection is tendered, but on the contrary an acceptance is given, first for the sons of the first wife, and second for the sons of the second wife.

From that time, and for the long period of about 60 years, there seems to their Lordships to be little, if no, doubt that as between these two families (or even as between the four sons, a question, however, which it is unnecessary for the purpose of this case to decide), there was a complete separation of the possession and ownership of the properties thus partitioned.

Their Lordships at this stage think it right to observe on the careful and satisfactory nature of the judgments of the Court below, and they have adopted the narrative as to possession so clearly given in the judgment of the High Court.

The differences of opinion, however, in the Courts below arise in this way. In the Court of first instance, the learned Judge holds it to be proved that in the village, partition of property takes place according to the "*pagwand* system," and he concludes that, that being so, he is bound to the conclusion that the property in suit, which *de facto* is part of the property partitioned in 1858 which originally belonged to Shahadat Khan, must fall under the rule that the full-blood and the half-blood, as within the family of that *propositus*, share and share alike, and that accordingly the succession to Bahadur must be regulated upon that footing. The learned Judge is so far confirmed in this that it is established, and it is indeed admitted by the High Court, that the *pagwand* system did obtain there. But the learned Judge makes no allowance for the true effect of the partition of property which had been made 60 years ago and upon which separate possession had followed. In the opinion of the Board it was necessary to take this carefully into account: and the judgment is erroneous in not having given full and correct effect to that transaction.

The learned Judges of the High Court did not fall into this error. In the opinion of their Lordships they

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were right in holding that the separate ownership and possession for about 60 years was as stated. But, in so doing, they appeared to be under the impression that the succession to Bahadur's share must not be governed by the *pagwand* rule, which includes the half-blood, but must be governed by the *chundawand* rule, which excludes it. They, therefore, preferred the respondents—holding, with accuracy, that "in the distribution of 1858 it was intended that thenceforward each group of sons should hold its own portion in the estate independently of the other." But they introduced into their judgment the following sentences:—"*Chundawand* and *pagwand* are, however, rules rather of distribution among heirs entitled than rules of succession, and it was pointed out in *Ghulam Muhammad* v. *Muhammad Bakhsh* (1), that the above presumption could only be made when the existence of an ancestor with issue by at least two wives, and a *pagwand* or *chundawand* distribution of his estate, whether before or after his death, had been proved."

If this means that the succession to Bahadur in this case must be regulated by the abandonment of the *pagwand* rule and as a necessary consequence the adoption of the *chundawand* rule their Lordships cannot agree. They are not quite sure, from consideration of the judgment, whether the learned Judges affirmatively take up that position. In the result, however, they reach the conclusion with which their Lordships entirely agree, to the effect that in the distribution of the succession to Bahadur the full-blood excludes that half-blood which is claiming in this case.

The truth is that, as the learned Judges of the High Court clearly point out, the question being dealt

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with is (1) a collateral succession and (2) a collateral succession to property given to a child of a first wife and partitioned off and separated from property given over to the children of the second wife.

The theory of abandoning the *pagwand* rule for the *chundawand* rule need not necessarily be put forward. For when the distribution or segregation which occurred and has been so long acted on arose, each portion of property thus succeeded to by the children of the first wife became a separate entity ; and the rules of succession to it are rules of succession to the owner of it and not to the anterior or ancestral owner to whom, prior to distribution, a much larger entity inclusive of that portion belonged. It is, therefore, possible and it is necessary to decide this case on the simple ground that when the smaller entity thus formed is succeeded to, the *pagwand* system may still apply, but it applies within the simple family consisting of Shahadat's second wife's children and not within the range of the complex family consisting of the children of his two wives. In short, when a separate entity, created by division or partition, comes into being the full range of the succession to that entity is determined by whatever system is in fact proved to be in operation in that simple family, and it may quite well be assumed that within that simple family, the generally prevailing system of *pagwand* was not abandoned.

But the partition was a definite, an accomplished and a long recognised fact, and cannot be ignored. And accordingly the ambit of that system is confined to searching for the full-blood and half-blood within the divided and separated area. In that search it is not permissible to undo the distribution and search for the collaterals as if under the succession to the owner of the undivided property.

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In affirming accordingly the judgment of the High Court their Lordships are glad to be able to find that in their judgment the law of the Punjab, in this particular, stands as has now been stated upon what in their opinion is the very highest authority, namely, that of the Full Bench of the Punjab and specially of the very valuable exposition of the law in the case already cited by Plowden J.

They mention the following passages:—"That the portion allotted to a group should belong as an entirety to the members, who, for the time being, form or represent the group until the group is extinct, is no departure from the ordinary rule as to the devolution of shares. As to the redistribution of the portion, and devolution of the shares into which the portion is redistributed among the members of a group, that is a matter which concerns them alone, until the group is extinct, exactly as in the case of the share of an individual and his descendants *quâ* other sharers and their descendants. On this view, there is not really, at any time, a competition between half-blood and whole-blood, for the sons have been separated once for all, at the original distribution, into several groups, such that all the members of each are related *inter se* by the whole blood, and so far, each group resembles a single family."

In a further passage the same learned Judge further states the question:—"It is quite intelligible that when, by reason of matters subsequent to a *pagwand* distribution, the sons of several wives have arrived at a condition not distinguishable from the result of a *chundawand* distribution among groups of sons, the same customary rule should apply in cases of collateral succession, as applies when there has been a *chundawand* distribution. But the basis of the preference of the whole blood,

when it exists in such a case, clearly is the association of the uterine brothers into distinct groups, the *pagwand* distribution notwithstanding."

There are other passages in this remarkable judgment which show how clearly the combined issues of a succession which is (1) collateral and (2) to a property after distribution by a common ancestor have been considered. When that ancestor makes a division or partition among the members of his complex family with the result of the creation of a number of single families, then among these simple families, the question in instances like the present has solved itself, for there is within that limited ambit no half-blood to compete.

Their Lordships do not conclude this opinion without observing upon the expense incurred. It was agreed that the entire points in the appeal were substantially covered by a reference to a few documents ; and accordingly these could have been presented to the High Court in a succinct and businesslike paper of a few pages. In the present appeal, however, there was printed in India an elaborate book of 1,163 pages containing, it may be observed, very many inaccuracies. Their Lordships think it right to say that, in their judgment, this mass of printing is an abuse. When the Registrar looked at the case sometime before the hearing, he was of opinion that a large part of the record could not under any circumstances be necessary to put before their Lordships. He, therefore, communicated with the appellants' solicitors, and the latter, after consultation with their counsel, eliminated more than 540 pages. These were actually taken out of the bound books and were never before the Board. Had the judgment been favourable to the appellants the entire cost of that printed matter would have been disallowed.

Their Lordships will humbly advise His Majesty that the appeal shall be disallowed.

A. M. T.

Appeal disallowed.

Solicitors for appellants: *Francis & Harker.*

FULL BENCH.

Before Sir Shadi Lal, Chief Justice, Mr. Justice LeRossignol, Mr. Justice Broadway, Mr. Justice Abdul Raoof and Mr. Justice Martineau.

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Feb. 25.

LAL CHAND-MANGAL SEN (DEFENDANTS) Petitioners,

versus

BEHARI LAL-MEHR CHAND (PLAINTIFFS) Respondents.

Civil Revision No. 344 of 1921.

Punjab Courts Act, VI of 1918, section 44 (corresponding to section 115 of the Code of Civil Procedure, Act V of 1908)—High Court's power to revise an interlocutory order from which no appeal is competent.

The Munsif of Batala overruled the defendants' objection and decided that he had jurisdiction to hear the suit. The defendants applied to the High Court for revision of the order.

Held, that the High Court has no jurisdiction to entertain the application for revision. An interlocutory order does not constitute a " case " within the meaning of section 44 of the Punjab Courts Act (corresponding to section 115 of the Code of Civil Procedure).

Pandit *Rama Kant* v. Pandit *Ragdeo* (1), overruled.

Makhan Lal-Parsottam Das v. *Chuni Lal-Birj Lal* (2), *Bhargava and Co.* v. *Jagannath Bhagwan Das* (3), and *Buddhu Lal* v. *Mewa Ram* (4), referred to.

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(1) 60 P. R. 1897 (F. B.).
(2) (1918) 16 All. L. J. 777
(3) (1919) I. L. R. 41 All. 602.
(4) (1921) I. L. R. 43 All. 564 (F. B.).