

## APPELLATE CIVIL.

Before Mr. Justice LeRossignol and Mr. Justice Ffordē.

1925

JAWAYA SHAH AND OTHERS (PLAINTIFFS)

April 2.

Appellants,

versus

Mst. FATIMA AND ANOTHER (DEFENDANTS)

Respondents.

Civil Appeal No. 354 of 1922.

*Custom—Succession—Self-acquired property—Sayyads of Shahpur District—married daughters and collaterals—Riwaj-i-am.*

*Held*, that among *Sayyads* of the Shahpur district a daughter loses on her marriage her right to retain any portion of her deceased father's property, whether ancestral or self-acquired.

Wilson's Tribal Custom of Shahpur District, referred to.

*First appeal from the decree of Lala Murari Lal, Senior Subordinate Judge, Shahpur, at Sargodha, dated the 6th January, 1922, dismissing the claim.*

NANAK CHAND and NAND LAL, for Appellants.

AMOLAK RAM and BARKAT ALI, for Respondents.

The judgment of the Court was delivered by—

LEROSSIGNOL J.—The property involved in this suit belonged to Bagh Shah who died some 22 years before suit, and was succeeded by his widow *Mussammah* Sahib Bibi. On her death mutation was effected in favour of his two daughters *Mussammah* Jalal Bibi and *Mussammah* Fatima. In 1919 on the marriage of *Mussammah* Jalal Bibi mutation of her half share was effected in favour of her unmarried sister *Mussammah* Fatima, but she subsequently brought a suit against *Mussammah* Fatima for a declaration that, in spite of her marriage, she was still entitled to her half share of the deceased father's estate, and her claim was

decreed on the confession of *Mussammat* Fatima. The suit, out of which this appeal arises, was brought by the collaterals on the ground that *Mussammat* Fatima was entitled to the estate only until her marriage and in the meantime was wasting the property. The Court below has dismissed the plaintiffs' claim, holding that the land in suit is not ancestral *qua* the plaintiffs, and that consequently they have no right to the property in the presence of daughters of the last male owner.

In appeal before this Court it has been contended, first, that the property is the ancestral property of the plaintiffs; and, secondly, even if it is not their ancestral property, daughters in their tribe are entitled to succeed to their father's property only till their marriage. Since the institution of this appeal *Mussammat* Fatima has married and has compromised with the plaintiffs, so that *Mussammat* Jalal Bibi is the only defendant resisting this appeal. On the question whether the land is to be regarded as the ancestral property of the plaintiffs, we are entirely in agreement with the Court below. It is true that the family, to which the parties belong, have for many generations back, been in spasmodic possession of the lands of this village, but there has been no continuous possession of the village such as would justify the conclusion that all the descendants of Bahlol Shah can regard the lands of this village as their ancestral property. Although this clan first settled in the lands of this village some 300 years ago, the community broke up 150 years later, and the village lay waste for 80 years. After that period it was again founded by some of the descendants of Bahlol Shah, but after some 10 years it was again abandoned and remained abandoned for 60 years, and the present representatives of the clan settled in the village only about 1816. Now, the common ancestor of the parties was Hasham Darya,

1925

JAWAYA SHAH  
v.  
Mst. FATTMA.

1925

JAWAYA SHAH  
v.  
Mst. FATIMA.

and he was not alive when the village was resettled for the third time about 1816. On these facts we hold that the land in suit is not ancestral *qua* the plaintiffs.

This notwithstanding, we hold that daughters of *Sayyads* in Shahpur do not succeed to the immoveable property of their father in the presence of collaterals, even though the common ancestor did not hold possession of the land. The tribal custom relevant to their case is set forth in Wilson's Tribal Custom of Shahpur District. Therein it is uncompromisingly stated that daughters do not succeed to their father's estate in any case if they are married, and when an unmarried daughter does take the succession, that right lapses on her marriage. In many such compilations of tribal custom no distinction is drawn between ancestral and self-acquired property, but in this particular compilation it is expressly provided that married daughters do not succeed even to their father's self-acquired property. This statement of custom governing the parties to this case was open to rebuttal, but the defendants have failed to prove one single instance in which married daughters have succeeded to, or retained, their father's estate, and it is significant that on the marriage of *Mussammat* Jalal Bibi herself mutation of her share in favour of her unmarried sister *Mussammat* Fatima was actually sanctioned.

For the foregoing reasons we hold that *Mussammat* Jalal Bibi lost on her marriage her right to retain any portion of her deceased father's estate, and we decree the plaintiffs' claim other than the appointment of a Receiver, but in view of the relationship between the parties we direct that parties shall bear their own costs throughout.

A. N. C.

*Appeal accepted.*