

APPELLATE CIVIL.

Before Mr. Justice Broadway and Mr. Justice Fforde.

CHAMAN RAM AND ANOTHER (DECREE-HOLDERS)

Appellants

versus

MST. SABAL AND ANOTHER (JUDGMENT-DEBTORS)

Respondents.

Civil Appeal No. 3163 of 1925.

Custom — Succession—Daughter's estate — liabilities of father's ancestral property, to which the daughter has succeeded, for the debts of the father.

Where a male proprietor governed by customary rules has contracted a just debt and dies leaving ancestral property, such property is not liable in the hands of the *next holder* in respect of such debt unless the debt has been expressly charged on the property.

Held however, that a daughter, not being an agnate, does not derive her title from a common ancestor but represents her father, and his estate in her hands is therefore liable for his debts.

Kishan Singh v. Mst. Rahmat Bibi (1), followed.

Mussammat Bhambul Devi v. Narain Singh (2), referred to.

Bawa Jagdip Singh v. Bawa Narain Singh (3), and *Mussammat Mikor v. Chhaju Ram* (4), distinguished.

Miscellaneous first appeal from the order of Mian Ahsan-ul-Haq, District Judge, Dera Ghazi Khan, dated the 13th August 1925, releasing the property from attachment.

FAKIR CHAND, for Appellants.

Nemo, for Respondents.

JUDGMENT.

BROADWAY J.

BROADWAY J.—One Fazal died leaving him surviving his mother *Mussammat Hajani*, a widow *Mus-*

(1) 12 P. R. 1918.

(3) 4 P. R. 1913.

(2) 39 P. R. 1915.

(4) 17 P. R. 1919.

musamm Sabal and a daughter *Mussamm* Gullan, but no male collaterals. After his death, on the 21st August 1923 Chaman Ram and Lala Ram, etc., obtained a simple money decree for Rs. 2,800 and Rs. 334 costs against the said mother, widow and *Mussamm* Gullan, the money being payable out of Fazal's estate in their hands. On the 21st May 1924 the decree-holders asked in execution of their decree for the attachment and sale of certain ancestral land which had belonged to Fazal. The matter was referred to the Collector and 11-18ths of the land sought to be attached was leased for a term of eight years for the satisfaction of 11-18ths of the debt. It appears that some time before the property was attached a dispute had arisen between *Mussamm* Hajani, *Mussamm* Sabal and *Mussamm* Gullan which had ended in a compromise on the 7th December 1923 according to which *Mussamm* Hajani took 11-18ths of Fazal's estate and *Mussamm* Gullan, the daughter, the remaining 7-18ths, *Mussamm* Sabal getting nothing. The lands referred to above as having been leased by order of the Collector were those which had fallen to *Mussamm* Hajani and represented her 11-18ths' share in Fazal's estate. When it was sought to attach the remaining 7-18ths which had fallen to *Mussamm* Gullan's share objection was taken, on the 13th May 1925, to the attachment of this land on the ground that it was ancestral and was not liable for the debt, having regard to the decision in *Bawa Jagdip Singh v. Bawa Narain Singh* (1). This objection was given effect to by an order dated the 13th August 1925 and the property was released. Against this order the decree-holders have preferred this appeal through Mr. Fakir Chand. The respon-

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dents, although served, are neither present nor re-
 presented.

The question for decision is whether the present case falls within the principles laid down in *Bawa Jagdip Singh v. Bawa Narain Singh* (1) which were accepted as correct in *Mussammatt Mikor v. Chhaju Ram* (2). The principles enunciated in these two rulings were that where a male proprietor governed by customary rules has contracted a just debt and dies leaving ancestral property such property is not liable in the hands of the *next* holder in respect of such debt unless the debt has been expressly charged on the property. The question therefore is whether a daughter can be regarded as a 'next holder' within the meaning of these two cases. In *Mussammatt Bhambul Devi v. Narain Singh* (3), it was held by a Division Bench of this Court that a widow's estate was the continuation of her deceased husband's, and that therefore his property, so long as it remains in her hands, is liable to satisfy his debts. In the same way it was held by leRossignol J. in *Kishan Singh v. Mussammatt Rahmat Bibi* (4) that the daughter was not an agnate and derived her title from her father and not from the common ancestor, and, therefore, represented him (her father) and his estate in her hands was liable for his debts. This case is practically on all fours with the one now before us. Fazal has died and the property sought to be brought to sale in execution of a decree for a debt incurred by him is in the hands of his daughter. In my judgment the view taken by the Court below is wrong and *Kishan Singh v. Mussammatt Rahmat Bibi* (4) is applicable. A daughter is not an agnate and

(1) 4 P. R. 1913.

(2) 17 P. R. 1919.

(3) 39 P. R. 1915.

(4) 12 P. R. 1918.

does not derive her title from a common ancestor. She, therefore, represents her father and his estate in her hands is liable for his debts. I would, therefore, accept this appeal with costs and remand the case to the Court below for such further action as may be necessary.

FFORDE J.—I agree.

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Appeal accepted.

APPELLATE CIVIL.

Before Mr. Justice Harrison and Mr. Justice Dalip Singh.

ABDUL RAHMAN (PLAINTIFF) Appellant

versus

GHULAM MUHAMMAD AND OTHERS

(DEFENDANTS) Respondents.

Civil Appeal No. 1421 of 1922.

Indian Contract Act, IX of 1872, section 23—Purchase of land by a Patwari in his own circle—opposed to public policy.

Held, that it was unnecessary to decide whether the rules of the Financial Commissioner, framed under section 28 of the Punjab Land Revenue Act, debarring a Patwari from acquiring land in the village to which he is appointed, are *ultra vires* or *intra vires*, as it is clear that it would be detrimental to the due performance of the duties of a Patwari if he were allowed to become a landlord in the circle in which he is serving, and therefore the sale of land to the Patwari in this case was void, as being opposed to public policy—*vide* section 23 of the Indian Contract Act.

Kerakoose v. Serle (1), referred to.

Bhagwan Dei v. Murari Lal (2), differed from.

Dhirendra Kumar v. Chandra Kanta (3), distinguished.

Shiam Lal v. Chhaki Lal (4) and *Sheo Narain v. Mata Prasad* (5), overruled by *Bhagwan Dei v. Murari Lal* (2),

(1) (1844) 3 Moo. I.A. 329, 346 (P.C.). (3) (1922) 68 I. C. 648.

(2) (1916) I. L. R. 39 All. 51 (F.B.). (4) (1900) I. L. R. 22 All. 220.

(5) (1905) I. L. R. 27 All. 73.

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