APPELLATE CIVIL.

1926

March 31.

Before Mr. Justice Broadway and Mr. Justice Fforde.

FAKIR AND ANOTHER (PLAINTIFFS) Appellants

versus

RAMZAN (DEFENDANT) Respondent.

Civil Appeal No 1097 of 1922.

Custom—Succession—Donated property—whether it reverts to donor's collaterals in presence of a daughter of the donee and sister of the last male holder.

One H. B. gifted certain property to his married daughter *Mst.* K. B. On the latter's death the property was mutated in the name of her son, the daughter *Mst.* B. B. not succeeding to anything. The son died childless and the property was entered in the name of his widow and on her remarriage in the name of the defendant-respondent, a collateral of the donor. The present suit was then brought by F., the husband of the donee *Mst.* K. B. and their daughter *Mst.* B. B. for a declaration that they were entitled to hold the property in preference to collaterals.

Held, that donated property does not revert to the donor's collaterals so long as descendants of the donee, whether in the male or female line, are existing, and that therefore the plaintiff *Mst.* B. B., a daughter of the donee and sister of the last male holder, was entitled to succeed in preference to the defendant, a collateral of the donor.

Tani v. *Tara Chand* (1), *Gurdit Singh* v. *Mst. Prem Kaur* (2), *Lachhman* v. *Bhagwan Sahai* (3), *Kaman* v. *Samand Khan* (4), and *Jindu* v. *Gopala* (5), followed.

Sita Ram v. *Raja Ram* (6), and *Shahanchi Khan* v. *Mst. Begam Jan* (7), referred to.

Mussammat Janat v. *Abdulla* (8), disapproved.

Second appeal from the decree of C. L. Dundas, Esquire, District Judge, Sialkot, dated the 27th

(1) 82 P. R. 1918.
(2) 84 P. R. 1909.
(3) 68 P. R. 1911.
(4) (1912) 15 I. C. 99.
(5) (1912) 15 I. C. 266.
(6) 12 P. R. 1892 (F.B.).
(7) 13 P. R. 1914.
(8) 4 P. R. 1916.

March 1922, affirming that of Diwan *Uttam Chand, Munsif, 1st class, Sialkot, dated the 24th December 1921, dismissing the plaintiff's suit.*

1926.

FAKIR
v.
RAMZAN.

PARKASH CHANDAR, FOR B. A. COOPER, for Appellants.

KHURSHID ZAMAN, for Respondent.

JUDGMENT.

BROADWAY J.—One Hazur Bakhsh gifted certain property to his daughter *Mussammat* Karim Bibi, wife of Fakir. On Karim Bibi's death this donated property devolved on her son Buta, her daughter Begam Bibi not succeeding to anything. Buta died childless and this property was mutated in the name of *Mussammat* Resham Bibi, his widow. *Mussammat* Resham Bibi remarried and the property in question was mutated in the name of Ramzan who is a collateral of Hazur Bakhsh. Fakir, husband of *Mussammat* Karim Bibi and their daughter *Mussammat* Begam Bibi instituted a suit asking for a declaration that the mutation in favour of Ramzan was incorrect and that they were entitled to hold the property, on the ground that the collaterals of the donor could not succeed to the donated property until the donee's line had become totally extinct. Their suit was dismissed and an appeal preferred by them failed. BROADWAY J.

They have come up to this Court in second appeal and it has been urged on their behalf that the view taken by the Courts below is opposed to the established principle that donated property does not revert to the donor's collaterals so long as there are any descendants, male or female, of the donee, or, in other words, so long as the donee's line is in existence. The most recent reported authority on this question is

1926

FAKIR v. RAMZAN.

BROADWAY J.

Tani, etc. v. *Tara Chand* (1), where it was held that there is no reversion to the donor's collaterals so long as the descendants of the donee, whether in the male or female line, are existing. In that case reference was made to *Gurdit Singh* v. *Mussammat Prem Kaur* (2) and *Lachhman* v. *Bhagwan Sahai* (3), which lay down the same principle. In *Shahanchi Khan* v. *Mussammat Begam Jan, etc.* (4) a similar rule was laid down, and it was there held that the rule regulating succession to property gifted to a son-in-law is that there must be failure of all female as well as male heirs in the donee's line before the collaterals of the donor can come in to claim the inheritance. This view is in consonance with the principles under which this departure from the ordinary customary law of succession is based. As was pointed out in *Sita Ram* v. *Raja Ram* (5) where gifts to, or adoptions of, such relations as daughter's sons or sister's sons were allowed, this was done from a tender feeling to benefit the direct descendants of the old stock and not in order to benefit the family in which the daughter of a tribe happens to be married.

Applying this principle to the case before us it seems clear that the intention of Hazur Bakhsh was to benefit *Mussammat* Karim Bibi and her line, and it is only when Karim Bibi's line has become extinct that the reversion of the donated property in favour of the collaterals of Hazur Bakhsh can take place. The only authority that has been brought to our notice which is in conflict with the cases already referred to is that of *Mussammat Jannat* v. *Abdulla* (6). In that case, as the headnote shows, it was held that the presence of sisters of the last holder of donated property

(1) 82 P. R. 1918.
(2) 84 P. R. 1909.
(3) 68 P. R. 1911
(4) 13 P. R. 1914.
(5) 12 P. R. 1892 (F.B.).
(6) 4 P. R. 1916.

1926

FAKIR
v.
RAMZAN.

does not prevent its reversion to the donor's family, notwithstanding that they are daughters of the original donee. A reference to the judgment itself, however, shows that this question was not necessary to decide for the decision of the case itself. The learned Judges after expressing their opinion in the manner set out in the headnote go on to say that "in view, however, of our finding that the family of the parties has in the past observed custom and not Muhammadan Law, this point is not of great importance". As this is nothing more than an *obiter dictum* I do not feel bound to follow it in face of the large number of authorities which have taken a different view, more especially as one of the Judges responsible for that *obiter* expressed a totally different view in *Kaman* v. *Samand Khan* (1), where it was held that gifted property does not revert to the collaterals of the donor so long as there are any descendants, male or female, of the donee in existence. The same Judge took a similar view in *Jindu* v. *Gopala* (2).

BROADWAY J.

I would, therefore, accept this appeal and grant the plaintiffs a decree for a declaration as prayed for with costs throughout.

FFORDE J.—I agree.

FFORDE J.

A. N. C.

Appeal accepted.

(1) (1912) 15 I. C. 99. (2) (1912) 15 I. C. 266.