rule 13 would be barred by limitation, and hence I see no reason for adopting the course taken in *Bua Ditta* v. *Ladha Mal* (1). I would simply dismiss this appeal with costs.

FFORDE J. FFORDE J.—I agree.

N. F. E.

Appeal dismissed.

APPELLATE CIVIL.

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

NIZAM-UD-DIN (DEFENDANT) Appellant

versus

MUHAMMAD BASHIR KHAN (PLAINTIFF) Respondent.

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Feb. 14.

Civil Appeal No. 278 of 1923.

Custom—Succession—Sheikh Qureshis of Palwal town, district Gurgaon—son of predeceased daughter or collateral—Riwaj-i-am.

Held, that it had been proved that by custom among Sheikh Qureshis of Palwal town a son of a predeceased daughter excludes a collateral, as stated in the *Riwaj-i-am* of the Gurgaon district.

Muzaffar Ali v. *Mst. Zainab* (2), and *Beg* v. *Allah Ditta* (3), relied on.

Wazira v. *Mst. Maryam* (4), and *Budha* v. *Mst. Fatima Bibi* (5), referred to.

Rattigan's Digest of Customary Law, para. 23, doubted.

First appeal from the decree of Lala *Suraj Narain, Senior Subordinate Judge, Gurgaon, dated the 12th December 1922, decreeing half of the land in suit and half of house No. 1 in favour of plaintiff, etc.*

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(1) (1919) 54 I. C. 833.
(2) 58 P. R. 1910.
(3) 45 P. R. 1917 (P. C.).
(4) 84 P. R. 1917.
(5) (1922) I. L. R. 4 Lah. 99.

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NIZAM-UD-DIN
v.
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MUHAMMAD SHAFI, J. N. BHANDARI, KHURSHAID ZAMAN and NEWAL KISHORE, for Appellant.

ABDUL QADIR and SLEEM, for Respondent.

The judgment of the Court was delivered by—

HARRISON J.—Plaintiffs brought this suit for possession of the property left (*a*) by his grand-father Shams-ud-Din and (*b*) by his great-uncle Ibrahim Bakhsh. The defendant is a collateral, who is in possession. Ibrahim Bakhsh was the first of the two brothers to die and he left no children but a widow *Mussammat* Saghir-un-Nisa, who succeeded to his land and made a gift of a portion in favour of her brother-in-law, Shams-ud-Din. *Mussammat* Sakina Begam, the mother of the plaintiff and the daughter of Shams-ud-Din, died before him and, on his death, the widow of Ibrahim Bakhsh, *Mussammat* Saghir-un-Nisa, took the whole of the property for her life. On her death which occurred 10½ years before the suit was instituted, the collateral obtained possession.

The plaintiff's suit is based on a custom alleged to exist amongst the Sheikh Qureshis of the Gurgaon District and more especially of Palwal town, by which a son of a predeceased daughter excludes a collateral. The finding is that the custom has been established, and from this finding the collateral has appealed.

There is admittedly an entry in favour of the plaintiff in the *Riwaj-i-am*. In this and indeed throughout this *Riwaj-i-am* as also throughout the Codes of Tribal Custom of the Gurgaon District, *Sayads* and *Sheikhs* are treated as one group, having the same customs, and as different from other tribes. This view has also been taken in *Muzaffar Ali* v. *Mussammat Jainab* (1), and the reason for it is obvious and simple, namely, that these two tribes stand

(1) 58 P. R. 1910.

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apart as foreigners of Arab descent. In accordance with this entry in the *Riwaj-i-am* the Subordinate Judge has decreed the plaintiff's claim.

The entry is attacked before us on various grounds. It is contended that it is unsupported by instances in the *Riwaj-i-am* itself and that the instances adduced by the plaintiff by means of oral evidence are worthless, that there is a distinction between *Shiah* and *Sunni Sheikhs* and *Shiah* and *Sunni Sayads*, and that the answer given should be treated as referring only to *Shiah Sheikhs*. It is further contended that in the absence of any instances in support of the alleged custom there is a lacuna in the customary law which must be filled by going to the Muhammadan Law, which is the personal law of the parties. For his main proposition counsel relies more especially on *Wazira* v. *Mussammat Maryam* (1), and various other rulings which have followed it, such as *Budha* v. *Mussammat Fatima Bibi* (2), the proposition being that a mere entry in a *Riwaj-i-am* unsupported by instances and opposed to general custom is not sufficient to establish a rule of inheritance. It is not necessary for us to discuss the question of how far, if at all, *Wazira* v. Mst. *Maryam* (1), qualifies or distinguishes or is entitled to qualify or distinguish *Beg* v. *Allah Ditta* (3), a Privy Council ruling. If we accept the dictum and the test laid down in *Wazira* v. Mst. *Maryam* (1), in its entirety, we have to see whether the custom in this case is unsupported by instances and is opposed to general custom. We have been taken through the *Riwaj-i-am* and find that there are instances of sons of daughters succeeding their mothers, who in their turn had succeeded their fathers; we find

(1) 84 P. R. 1917. (2) (1922) I. L. R. 4 Lah. 99.
(3) 45 P. R. 1917 (P. C.).

that both amongst *Sheikhs* and *Sayads* daughters have succeeded their fathers, and no distinction has been drawn between ancestral and self-acquired property, but so far as the present custom is concerned, it is not supported by instances in this *Riwaj-i-am*. We find, however, that good and reliable instances have been established by the oral evidence, more especially that of Risaldar Abdul Majid (P. W. 5). He succeeded his maternal grandfather, and, though it is true that he says that there were no collaterals, he is obviously using the word in the sense of cousins, for in the next breath he says that his grandfather's real brother was alive. There is also a case quoted by Iqbal Hussain, one quoted by Abdul Gafur and instances of Sayads, which are relevant, given by Manzur Abbas (P. W. 1). There are therefore instances in support of the custom. In the second place we are of opinion that in the true sense this custom cannot be said to be opposed to general custom. It has undoubtedly been laid down as a dictum in Sir William Rattigan's Digest of Customary Law that a son of a predeceased daughter does not succeed. No authority and no instances are given for this far-reaching generalisation, and we are not prepared to accept it in its entirety, and, even if it were accepted, we are of opinion that it would not be conclusive where, as in this tribe, the daughters' rights are so clearly established. It is one thing for the son of a predeceased daughter to succeed, where his mother would have succeeded had she lived, and a very different one for him to succeed where she would have had no rights. There is a third distinction between this case and *Wazira* v. Mst. *Maryam* (1). Some doubt was cast as to the care and thoroughness with which

(1) 84 P. R. 1917.

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the *Riwaj-i-am* had been prepared in that case, but we find that the *Riwaj-i-am* of this district (Gurgaon) has been specially commended in *Muzaffar Ali* v. Mst. *Zainab* (1), as having been compiled with great care. We hold that the custom has been established and that the plaintiff's suit has rightly been decreed so far as his grandfather's property is concerned.

He has presented a cross-appeal as regards the property of his great uncle regarding which his suit has been dismissed. This his counsel has not been able to support very seriously. He contends that there should have been a separate issue about the great-uncle's property instead of its being included in one main issue. He has also drawn our attention to ground No. 6 of the appeal to the effect that so far as one-half of the property left by the grand-uncle was concerned there was a gift by the widow in favour of the plaintiff's grandfather; but he cannot support the proposition that there can be partial acceleration by such a gift, it being borne in mind that the collateral obtained possession in spite of the gift within 12 years.

Both appeals are dismissed with costs.

C. H. O.

Appeals dismissed.

(1) 58 P. R. 1910.