

APPELLATE CIVIL.

Before Mr. Justice Broadway and Mr. Justice Zafar Ali.

MAMUN AND OTHERS (DEFENDANTS), Appellants,

versus

MST. JOWAI (PLAINTIFF),
MST. BANO AND ANOTHER
(DEFENDANTS), } Respondents.

1926

Nov. 4.

Civil Appeal No. 2098 of 1922.

Custom—Succession—Gondals—Shahpur district—whether mother-in-law or collaterals succeed to widowed daughter-in-law's estate on the latter's remarriage—Riwaj-i-am.

The land in dispute belonged to one Hashu, a *Gondal* of mauza Dhori, tahsil Bhalwal in the Shahpur district, who on his death was succeeded by his son. The latter died childless and was succeeded by his widow and his mother in equal shares. The widow having remarried, the question for decision was whether by custom her husband's collaterals or her mother-in-law succeeded to her share in the property.

Held, that the general principle governing succession to an estate among agriculturists is that where the male line of descendants dies out it is treated as never having existed, so that succession is then reckoned with reference to the last male owner who dies leaving descendants, and that this principle is applicable to the parties.

Riwaj-i-am, Shahpur district, referred to and discussed.

Held therefore, that the widow of Hashu was entitled to succeed to her daughter-in-law's share in preference to the collaterals.

Mussammat Sant Kaur v. Sher Singh (1), referred to.

First appeal from the decree of Lala Ghanshyam Das, Senior Subordinate Judge, Shahpur, at Sargodha, dated the 3rd July 1922, granting the plaintiff a declaratory decree.

G. S. SALARIYA, for Appellants.

NANAK CHAND and SHAMBU LAL, for Respondents.

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BROADWAY J.—Hashu and *Mussammat Jowai* were husband and wife and Sahibu was their son who married *Mussammat Bano*. On the death of Hashu, Sahibu succeeded to the family estate. He died without issue, leaving him surviving his widow *Mussammat Bano* and his mother *Mussammat Jowai*. The family property was taken possession of by the widow and the mother in equal shares. This state of affairs continued for some years when *Mussammat Bano* remarried. The revenue authorities recognised the right of Sahibu's collaterals, or agnates, to that portion of Sahibu's estate which had been held by *Mussammat Bano*, with the result that *Mussammat Jowai* instituted a declaratory suit asking for a declaration to the effect that she was the owner of the property recently held by *Mussammat Bano*. She impleaded one Ghulam Rasul to whom a considerable portion of that property had been given on lease by *Mussammat Bano*. Ghulam Rasul, however, had attorned to *Mussammat Jowai*. The suit was contested by Mamun and others, collaterals of Sahibu, on various grounds, one of them being that the suit for a declaration did not lie. The value of the property was also challenged. No evidence was led with regard to the property and the value placed on the suit was held to be that entered in the plaint. It was also held on the evidence on the record that as *Mussammat Jowai* was in possession through tenants as well as partly through herself, the suit as brought was competent. It was further held that having regard to the custom prevalent in this district among *Gondals* (the parties being *Gondals*), the mother was entitled to the decree prayed for. She was accordingly granted a decree. Against this decree Mamun and others, the collaterals,

have preferred this appeal through Mr. Salariya whom we have heard at great length.

Mr. Salariya has attacked the decree of the Court below on two grounds, firstly, as to the competency of the suit as laid, and, secondly, as to the view taken of the custom as stated in the *Riwaj-i-am* of the Shahpur district. With regard to the first point there can be no doubt that the evidence on the record establishes the fact that *Mussammat Jowai* is in possession of the bulk, if not all, of the property which had been held by *Mussammat Bano* prior to her remarriage. In my judgment the decision on this point is perfectly correct.

Turning to the second point, Mr. Salariya has contended that the view of the Court below was wrong having regard to the answer given to Question No. 11 of the *Riwaj-i-am* of the Shahpur district. The question is as follows :—

“ If the estate devolves upon the widow, define her interest therein. What rights has the widow to alienate by sale, gift, mortgage or bequest ?

“ (i) Are there any special circumstances or expenses under or on account of which alienation is permissible ? If so, what are these ?

“ (ii) Is there any distinction in respect of moveable or immoveable, ancestral or acquired property, or in respect of alienation to the kindred of the deceased husband ?

“ (iii) Supposing alienation to be permissible, whose consent is necessary to make it valid ? ”

The answer given by ‘ all Mussalmans ’ was as follows :—

“ If the estate devolves upon the widow, she is the sole owner of the whole estate for the time being,

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but her interest is a life-interest only, and on her death the whole estate reverts to her husband's agnates, or to his unmarried daughters till their marriage * * *."

Mr. Salariya contended that by this answer it has been established that the custom among the *Gondals* is that on the death of a sonless proprietor leaving a widow she succeeds to the estate, holds during her life or up to the time of her remarriage and that on her death or remarriage the estate reverts to the husband's agnates and that having regard to the fact that the mother is not mentioned in the Question or in the Answer, the mother has no right to succeed once a widow has taken. As pointed out by the Court below Question No. 11 is merely an amplification of Question No. 10 the answer to which shows that when there are no male lineal descendants through males, the widow inherits the whole of the property of the deceased. These questions and answers appear in section V of the *Riwaj-i-am* of the Shahpur district which deals with the matter of succession. After dealing with succession where there are male lineal descendants, the question of succession in the absence of male lineal descendants is taken up. This is followed by the succession of parents which is dealt with in Question No. 21 which is to the following effect:—"When a man dies leaving no male lineal descendants, no widow and no daughters or daughters' sons, upon whom will the inheritance successively devolve?" The answer to this question is general and shows that the mother was recognised as one of the heirs, though postponed to the father and the brothers and their male lineal descendants. Mr. Nanak Chand, for the respondent, has urged that the correct interpretation of this *Riwaj-i-am* is that when a man dies

leaving no male issue but a widow and a mother, the estate would devolve upon the widow and that on her death or remarriage the estate in its entirety would go to the mother who would hold during her life. Now, the general principle governing succession to an estate among agriculturists seems to be that where the male line of descendants dies out it is treated as never having existed, so that succession is then reckoned with reference to the last male owner who dies leaving descendants. In the present case it is clear that on the death of Sahibu without issue his widow was entitled to take the entire estate and on her remarriage, following the principle just enunciated, we have to refer back to Hashu, and *Mussammat Jowai* will, therefore, be entitled to the property during her life. In my judgment, the view taken by the learned Senior Subordinate Judge is correct, and I would dismiss this appeal with costs. I may note that the view expressed by me appears to be in consonance with certain remarks to be found in *Mussammat Sant Kaur v. Sher Singh* (1).

ZAFAR ALI J.—I agree.

A. N. C.

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(1) (1923) I. L. R. 4 Lah. 392, 397, 398.