

APPELLATE CIVIL.

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

KHUSHI RAM AND OTHERS (PLAINTIFFS),

Appellants

versus

MANGAL SINGH AND OTHERS (DEFENDANTS),

Respondents.

Civil Appeal No. 1810 of 1922.

Custom—Adoption—Dhilwan Jats of Ludhiana District—Nominated heir—whether entitled to succeed collaterally.

Held, that among the Dhilwan Jats of the Ludhiana District no special custom has been proved entitling a nominated heir to succeed collaterally in the family of his adoptive father.

Rattigan's Customary Law, 9th Edition, paras. 48-49, and Mr. Dunnett's *Riwaj-i-am* of 1911, referred to and approved.

Second appeal from the decree of Sardar Sewaram Singh, District Judge, Ludhiana, dated the 14th June 1922, reversing that of Lala Chandu Lal, Honorary Munsif, 1st class, Ludhiana, dated the 10th February 1922, and dismissing the suit.

. BADRI DAS, for Appellants.

MANOHAR LAL, for Respondents.

The judgment of the Court was delivered by—

HARRISON J.—The only question involved in this second appeal is whether amongst Dhilwan Jats of the Ludhiana District a nominated heir succeeds collaterally in virtue of his nomination and as the son of his adoptive father.

The facts are simple and the pedigree table is to be found at page 6 of the paper book. One Maluka nominated as his heir one Hari Ram, his brother's son. This man Hari Ram has died leaving three

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sons who claim to succeed as the grandsons of Maluka, the suit being brought by Maluka's brother's sons to establish that they are not entitled to do so.

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The suit was decreed by the trial Court but the appeal was accepted by the District Judge who held that the sons of the nominated heir had established their claim. In coming to his conclusion he has relied upon a paragraph unsupported by instances in the *Riwaj-i-am* of Mr. Gordon Walker in the settlement of 1882, three judgments, D. 1, D. 2 and D. 7, and four instances, Nos. 67, 68, 69 and 70, cited under the Answer to Question No. 69 in the current *Riwaj-i-am* compiled by Mr. Dunnett in 1911. The general rule amongst agriculturists is to be found in paragraphs 48 and 49 of Rattigan's Customary Law and paragraph 69 of Mr. Dunnett's *Riwaj-i-am* is in accordance with that rule.

It has to be seen whether the rulings and the instances relied upon by the District Judge establish the contrary position in the case of these Dhilwan Jats. D. 1 does support this view. D. 2 is a judgment based on the acquiescence of the defendant. D. 7 is a judgment decided on two points: the first is the estoppel of the defendant and the second a special custom established for village Malaud by its own private *Riwaj-i-am*. So far as the instances are concerned No. 67 supports the view. It is not shown that instances Nos. 68 and 69 were cases of collateral succession and so far as No. 70 is concerned the record of the case, which is before us, shows that the result was incorrectly given by the Settlement Officer. This leaves us with nothing but one judgment and one instance. The rule as laid down by Mr. Dunnett is supported by many instances quoted by him. We find that the defendants have wholly failed to establish that they are governed by any special custom in this

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matter and hold that they follow the rule as laid down in the current *Riwaj-i-am*, namely, that while they do not succeed to their father's estate in the presence of their brothers they retain the right of collateral succession in their father's family and do not acquire any right of collateral succession in the adoptive father's family.

We accept the appeal and restore the decree of the trial Court. The costs of the plaintiff will be paid throughout by the contesting defendants, Mangal, Sundar and Chanan, in all three Courts.

N. F. E.

Appeal accepted.

APPELLATE CIVIL.

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

JOLI AND ANOTHER (PLAINTIFFS), Appellants

versus

KHAZANA AND ANOTHER (DEFENDANTS),

Respondents.

Civil Appeal No. 2134 of 1922.

Custom—Adoption—of a person of the same tribe but of a different got—Jats of Tika Mallan, Dakhli Pathiar, Tahsil and District Kangra—Onus of proof of validity of—Suit by reversioner contesting gift to adoptee—Limitation—Indian Limitation Act, IX of 1908, Article 118—whether applicable to a suit for possession.

Held, that article 118 of the Limitation Act, does not apply to a suit to recover possession which involves the decision of an issue as to the validity or invalidity of defendant's adoption. The reversioner has the option of treating an adoption as a nullity and to bring a suit for possession, whether the transaction in question was void or voidable.

Kalyandappa v. Chanbasappa (1), followed.

Khushal Singh v. Kanda (2), referred to.