1928

NARSI DAS
v.
THE CROWN.

DI LAL C.J.

The case before us is a simple one, and no circumstance has been shown which would warrant our interference with the right of the complainant to invoke the aid of the criminal Courts. Indeed, the Courts below have not only entertained the complaint but pronounced their verdict in favour of the complainant, and I am unable to discover any valid reason to justify interference by a Court of revision.

I accordingly dismiss the application.

A HAIDAR J.

AGHA HAIDAR J.—I agree.

N. F. E.

Revision dismissed.

APPELLATE CIVIL.

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

MUSSAMMAT KAMAN (DEFENDANT) Appellant

versus

1928

Jan. 17.

GHAFOOR ALI AND OTHERS (PLAINTIFFS)
HASHDAR AND OTHERS (DEFENDANTS) } Respondents.

Civil Appeal No. 406 of 1923.

Custom—Succession—Self-acquired property—Daughter's daughter—whether succeeds in preference to collaterals—Mussalman Rajputs—*Hissar tahsil—entry in* Riwaj-i-am—*opposed to women's rights—weight of.*

G. H. gifted his self-acquired property in certain shares to his three sons and other relatives, including his son Mir Khan (since deceased), whose share in the property is in dispute in the present suit, brought by Mir Khan's collaterals against his daughter's daughter.

Held, that the property having been gifted to Mir Khan by his father became his self-acquired property.

Held also, that it had been proved that by custom among Mussalman Rajputs of *mauza* Prabhuwala, *tahsil* and district

Hissar, the daughter's daughter has a preferential right of succession to the self-acquired property of her maternal grandfather to his collaterals, notwithstanding the entry to the contrary in the *Riwaj-i-am*.

Where a custom is acknowledged by which women's right to succeed is admitted, such an acknowledgment has great force, but it is equally true that where the *Riwaj-i-am* is to the contrary, the *onus* on the females is not so heavy as it would be in the case of males.

First appeal from the decree of Sheikh *Rukn-ud-Din, Senior Subordinate Judge, Hissar, dated the 24th January, 1923, decreeing the plaintiffs' claim.*

MEHR CHAND, MAHAJAN, and NIAZ MUHAMMAD, for Appellant.

G. C. NARANG, PANDIT NANAK CHAND and NAWAL KISHORE, for Respondents.

The judgment of the Court was delivered by—

DALIP SINGH, J.—The pedigree-table of the parties is printed at page 35 of the paper-book. The plaintiffs are the descendants of Hassan Ali and the defendant *Mussammat* Kaman is the daughter's daughter of Mir Khan, brother of Hassan Ali. Ghulam Hussain, the father of Hassan Ali and Mir Khan, had three sons, Hassan Ali, Nur Khan, who married *Mussammat* Nuri and died without issue, and Mir Khan. It is common ground that the property in dispute was acquired originally by Ghulam Hussain, the common ancestor of the plaintiffs and of the defendant. It is also clear from page 9 of the paper-book that Ghulam Hussain in his life gifted the property acquired by him in various shares to his sons and other relatives of his and Mir Khan got the property in dispute from Ghulam Hussain by way of gift and not by way of succession.

1928

MST. KAMAN
v.
JAFOOR ALI.

It has been urged by counsel for the plaintiffs that Ghulam Hussain merely accelerated the succession of his sons, but Ghulam Hussain reserved a portion of the property for himself and there were other donees besides the sons and therefore this argument has no force. The land that was reserved by Ghulam Hussain for himself was taken in equal shares by Nur Khan and the sons of Hassan Ali. Mir Khan got no share by way of inheritance. It is, therefore, clear that the property was the self-acquired property of Mir Khan and we hold accordingly.

It has been contended that even if the property be held to be the self-acquired property of Mir Khan the *riwaj-i-am* of the parties shows that daughters are not the heirs even to the self-acquired property of their father in this tribe of *Mussalman Rajputs* of the Hissar District. As has been pointed out by Their Lordships of the Privy Council, where a custom is acknowledged by which women's right to succeed is admitted, such an acknowledgment has great force, but it is equally true that where the *riwaj-i-am* is to the contrary the *onus* upon the females is not so heavy as it would be in the case of males. In this particular case there is a note by the officer who prepared the *riwaj-i-a*m, printed at page 136 of the paper-book, that he has great doubts as to the accuracy of the reply that daughters in no case inherit their father's property, whether ancestral or acquired, and he gives instances against the alleged custom, including one of *Mussalman Rajputs* of the district. He is of opinion that the people who give no explanation of these cases have stated their wishes for the future in this matter and not their

1928

Mst. KAMAN
v.
GHAFOOR ALI.

existing custom. Besides this note, at least two instances have been produced by the defendants in which daughters succeeded to the estate of their fathers. One is Ex. D. 6, printed at page 128, where after a contest it was decided by the learned District Judge that daughters did succeed to their father's self-acquired property. The other instance is Ex. D. 65, at page 93 of the paper-book, in which a daughter succeeded to the property of her father. In this case the area of the property was 233 *kanals*, and though there was no contest it cannot be said that this was a small amount of land, which the daughter was allowed to keep in lieu of maintenance. On the other hand, the plaintiffs have not been able to prove a single instance in which collaterals have excluded daughters in succession to self-acquired property of the father. A number of witnesses have come forward to state that in this tribe there is no custom that daughters succeed to their father's property. But after considering this evidence, we are of opinion that the presumption raised by the *riwaj-i-am* has been rebutted in this particular case and that daughters have a right to succeed to the self-acquired property of their father.

On the death of Mir Khan, his widow, *Mussammat* Tajo, succeeded to the property. *Mussammat* Tajo gifted the land to her daughter *Mussammat* Umdan with the consent of all the collaterals now suing or of their predecessors-in-interest. It is contended, however, that the gift to *Mussammat* Umdan was not an acceleration of the estate of the next heir by the widow but was a gift conditional on *Mussammat* Umdan having male issue and that as *Mussammat* Umdan predeceased *Mussammat* Tajo without leaving male issue the property reverted to *Mussam-*

1928

Mst. KAMAN *v.* GHAFOOR ALI.

mat Tajo and, on the death of *Mussammat* Tajo, which took place during the pendency of this case, *Mussammat* Kaman could only succeed as a daughter's daughter and that there is no evidence to the effect that a daughter's daughter would exclude near collaterals. It has been contended on the other side that the word '*pisri*' in the mutation order is an interpolation and that the order itself makes no mention of any such condition and further that *Mussammat* Tajo, the donor, withdrew her claim and, therefore, waived the condition which was in her favour.

It is unnecessary to decide any of these points because we are of opinion that where a daughter is herself entitled to succeed, the mere fact that she predeceased the widow of her father would not deprive her heirs of the succession to the property left by her father, and there is no logic in holding that whereas a daughter could succeed as full heir to her father's self-acquired property a daughter's daughter would not so succeed in case her mother had predeceased the father's widow. In any case, the daughter's daughter is the defendant, and it was for the plaintiffs to prove that collaterals would exclude a daughter's daughter from inheritance of self-acquired property of the father in such a case. There is no evidence to show this and we therefore consider that *Mussammat* Kaman is entitled to the property.

We, therefore, accept the appeal and dismiss the plaintiff's case with costs throughout.

A. N. C.

Appeal accepted.