

APPELLATE CIVIL.

Before Mr. Justice Zafar Ali and Mr. Justice Jai Lal.

PIR MAL AND ANOTHER (DEFENDANTS) Appellants

versus

TEJA SINGH (PLAINTIFF) AND RAM DITTA

(DEFENDANT) Respondents.

Civil Appeal No. 2836 of 1924.

Custom—Alienation—Status of appointed heir and collateral of the 7th degree—to challenge alienation by appointer—Ancestral property—Punjab Custom (Power to Contest) Act, II of 1920, section 6.

The suit was brought by an heir appointed under the Customary Law, who was also a collateral in the 7th degree, to contest an alienation of ancestral property made by the appointer. The question was whether the plaintiff had *locus standi* to sue.

Held, that the plaintiff had no *locus standi* to sue as a collateral in the 7th degree, as the Punjab Custom (Power to Contest) Act, II of 1920 provides that no collateral beyond the fifth degree is entitled to institute a suit to set aside an alienation of ancestral land, nor was he competent to sue in his capacity as an appointed heir, as the property could not be held to be ancestral in the hands of the alienor *qua* such an heir.

Held further, that it made no difference that the plaintiff was both a collateral in the 7th degree and also an heir appointed under the Customary Law.

Mela Singh v. Gurdas (1), and *Amin Chand v. Bujha* (2), referred to.

Thaman Singh v. Jit Singh (3), and *Shah Muhammad v. Fazal Ilahi* (4), distinguished.

Second appeal from the decree of Khan Bahadur Munshi Rahim Bakhsh, District Judge, Sialkot, dated

(1) (1922) I. L. R. 3 Lah. 362.

(3) 9 P. R. 1893.

(2) 107 P. R. 1915.

(4) (1920) 56 I. C. 913.

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the 1st August 1924, affirming that of Sayyad Shaukat Hussain, Subordinate Judge, 2nd class, Sialkot, dated the 12th May 1923, granting the plaintiff the declaration prayed for.

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NAND LAL, for Appellants.

GOBIND RAM KHANNA, for Respondents.

The judgment of the Court was delivered by—

JAI LAL J.—This second appeal arises out of a suit brought by an heir appointed under the Customary Law, to avoid an alienation made by the appointer. Besides being his appointed heir the plaintiff is a collateral in the seventh degree and the land is ancestral inasmuch as it has been found to have descended from their common ancestor. The Punjab Custom (Power to Contest) Act, II of 1920, provides, however, that no collateral beyond the fifth degree, is entitled to institute a suit to set aside an alienation of ancestral land. It is clear, therefore, that as a collateral by direct descent from the common ancestor the plaintiff has no *locus standi* to sue. The question is whether he is entitled to sue as an heir appointed under the Customary Law.

In *Thamman Singh versus Jit Singh* (1), it was assumed, but not actually decided, that an adopted son has *locus standi* to contest an alienation of property made by his adoptive father. The case, therefore, is no authority in support of the plaintiff's contention.

In *Mela Singh versus Gurdas* (2), it was held that an heir appointed under the Customary Law does not become the grandson of the appointer's father. That

(1) 9 P. R. 1893.

(2) (1922) I. L. R. 3 Lah. 362.

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being so, it follows that the plaintiff as heir appointed under custom or as an adopted son has no *locus standi* to contest the alienation. This, in fact, was the view of the learned District Judge also. He has, however, held that as the property is ancestral *quâ* the plaintiff as a collateral, and as he has also been appointed an heir, he is entitled to maintain the suit, though as a collateral alone he is not entitled to do so under the Punjab Custom (Power to Contest) Act. Reliance is placed on *Shah Muhammad versus Fazal Ilahi* (1), in support of this view; but a reference to that case shows that it has no bearing on the point in question. In *Amin Chand versus Bujha* (2), the suit was by the son of the son adopted under the Customary Law to contest an alienation of property made by the adopter, and it was held that he had no *locus standi* to maintain the suit as the property could not be called ancestral

There is, therefore, no direct authority in support of the view of the learned District Judge, that "as the plaintiff has vested rights in the property in suit he has a *locus standi* to contest the alienation." In our opinion the plaintiff's present status even coupled with his previous relationship with his adoptive father, does not confer upon him the capacity to contest the alienation.

The respondent's counsel raised the contention that this second appeal was incompetent and could not be entertained as it involved a question of custom and was not supported by the usual certificate. We do not think there is any force in this contention. There is no evidence on the record one way or the

(1) (1920) 56 I. C. 913.

(2) 107 P. R. 1915.

other on the question of any custom and the decision of the case depends on the proper application of the Judicial authorities cited before the learned District Judge and before us. It is, therefore, a question of law and not a question of custom that is the subject of dispute before us.

We accept this appeal, set aside the decrees of the Courts below and dismiss the plaintiff's suit with costs throughout.

A. N. C.

Appeal accepted.

APPELLATE CIVIL.

Before Sir Shādi Lal, Chief Justice and Mr. Justice Skemp.

BALKISHAN (DEFENDANT) Appellant

versus

SOHAN SINGH (PLAINTIFF), LADHA RAM
(DEFENDANT) Respondents.

Civil Appeal No. 2339 of 1924.

Civil Procedure Code, Act V of 1908, Schedule II, paragraph 15, clause (1), sub-clause (c), and paragraph 16, subparagraph (2)—reference to arbitration without the concurrence of all parties to the suit—objection to validity of award on that ground overruled and decree passed in accordance with award—Appeal against decree—whether competent.

Where the plaintiff and L. R., one of the two defendants, referred their dispute to two arbitrators who made their award, and against this award L. R. alone filed objections, one of which was to the effect that the reference was invalid because it had been made without the concurrence of B. L., the other defendant, and the District Judge rejected the objection and passed a decree in accordance with the award, the question was whether an appeal was competent against

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