

APPELLATE CIVIL.

*Before Sir Shadi Lal, Chief Justice and Mr. Justice
Agha Haider.*

SHAHAMAD (DEFENDANT) Appellant

versus

MST. MUHAMMAD BIBI

(PLAINTIFF).

MST. AISHA BIBI (DEFENDANT).

}

Respondents.

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Nov. 1.

Civil Appeal No. 1228 of 1927.

Declaratory suit—brought by daughter—to establish her claim to her father's occupancy rights on the death of her mother in preference to collaterals—for the purpose of satisfying the Revenue authorities on this point—whether incompetent—as relating to spes successions—Colonization of Government Lands (Punjab) Act, V of 1912, section 19.

One F., having been granted by Government one square of land in the Lyallpur District, was its occupancy tenant at the time of his death. The land was mutated in the name of his widow, and she subsequently made an application to the Collector that the property should be mutated in favour of her daughter. It appeared that the Collector would have considered the application favourably if the daughter had satisfied him that she would inherit the property after the death of her mother, but in default of this he rejected the application and directed the daughter to establish her rights to the property in a Civil Court. She accordingly brought the present suit for a declaration to that effect, which was decreed by the trial Court. It was objected in appeal that the suit was not maintainable, as it related to a *spes successions*:

Held, that as the object of the suit was to get a decision from the Civil Court that the daughter had a preferential right of succession to her father's collaterals, so that she may go to the Collector and ask him to allow the transfer in her favour, the suit could not be said to relate to a *spes successions* and was competent.

In this case the plaintiff would derive practical benefit from an adjudication in her favour, for if she gets the de-

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claration sought for and the Collector on the strength of that allows the transfer in her favour she would obtain possession of the estate at once, and it will not be necessary for her to wait until the death of her mother.

Ram Manorath Singh v. Dilraji Kunwari (1), relied on.

First appeal from the decree of Sheikh Abdul Aziz, Senior Subordinate Judge, Lyallpur, dated the 27th January 1927, decreeing the plaintiff's suit.

MEHTA AMAR NATH and PARTAP SINGH, for Appellant.

KHURSHID ZAMAN and RAFIQ AHMAD, for Respondents.

The judgment of the Court was delivered by :—

SIR SHADI LAL C. J.—One Fateh Din was granted by Government one square of land in the Lyallpur district, and was the occupancy tenant of the estate when he died before 1903. The land was thereupon mutated in the name of his widow *Mussammât Aishan Bibi*, and she subsequently made an application to the Collector that the property should be mutated in favour of her daughter *Mussammât Muhammad Bibi*. Fateh Din's nephew Shahamad objected to the transfer of the land to *Mussammât Muhammad Bibi*, with the result that the Collector rejected the application of the mother and directed the daughter to establish her rights to the property in a Civil Court. She has accordingly brought the present suit for a declaration that after the death of her mother she will inherit the property. Her claim is resisted by Shahamad. The trial Judge has, upon an examination of the evidence produced by the parties, come to the conclusion that among the Jats of the Sialkot district, wherefrom

Fateh Din migrated to Lyallpur, a daughter is, by custom, entitled to succeed to the self-acquired property of her father in preference to his nephew; and this finding has not been impeached before us.

The only question raised by the learned counsel for the appellant is that a suit for a declaration does not lie. It is to be observed that under section 19 of the Colonization Act (V of 1912) a tenant under Government can transfer his rights of tenancy with the consent in writing of the Commissioner or revenue officer empowered in this behalf, and it was for this reason that *Mussamat* Aishan Bibi applied to the Collector for the requisite permission. It appears that the Collector would have considered the application favourably, if *Mussamat* Muhammad Bibi had satisfied him that she would inherit the property after the death of her mother. In that case the transfer of the occupancy rights in her favour would have amounted to an acceleration of the right of succession. The object of the present suit is to get a decision from the civil Court that the daughter has the preferential right of succession, so that she may go to the Collector and ask him to allow the transfer in her favour. It cannot, therefore, be said that the suit relates to a *spes successionis*, and that the Court should decline to entertain such a suit. There can be little doubt that if she gets the declaration sought for and the Collector on the strength of that declaration allows the transfer in her favour, she would obtain possession of the estate at once and it would not be necessary for her to wait until the death of her mother. It is true that a Court does not make a declaration of an abstract right exclusive of practical utility, but in this case the plaintiff would derive

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practical benefit from an adjudication of the Court in favour of her right of succession. In cases of this description the rule enunciated by the Allahabad High Court in *Ram Manorath Singh v. Dilraji Kunwari*, (1) applies. It is laid down in that judgment that a person entitled to property on the death of a *Hindu* widow may, where the parties are referred by a revenue Court to a civil Court, sue for a declaration that the widow is in possession of the property, not as an heir of a separated *Hindu*, but as the widow of a deceased co-parcener in lieu of maintenance.

For the aforesaid reasons we hold that in the circumstances mentioned above the suit for a declaration was competent. We accordingly dismiss the appeal with costs.

A. N. C.

Appeal dismissed.