APPELLATE CIVIL.

Before Shadi Lal C. J. and Abdul Qadir J.

JAGAT SINGH AND OTHERS (DEFENDANTS) Appellants

versus

ISHAR SINGH (PLAINTIFF) Respondent.

1930

March 20.

Civil Appeal No. 2606 of 1927.

Custom—Adoption (under Punjab Customary Law)—whether debars adopted son from succeeding collaterally in his natural family in the presence of his natural brothers.

Held, that a person appointed an heir under the customary law of the Punjab is not debarred from succeeding collaterally in his natural family in the presence of his natural brothers, although he cannot compete with them in the matter of succession to the estate of his natural father.

Mela Singh v. *Gurdas* (1), referred to, also Rattigan's Customary Law, articles 48, 49, and Craik's Manual of Customary Law of the Amritsar District, question 89, and *Vaishno Ditti* v. *Rameshri* (2).

Second appeal from the decree of A. L. Gordon-Walker, Esquire, District Judge, Amritsar, dated the 16th August 1927, affirming that of Lala *Giyan Chand* Bahl, *Subordinate Judge, 4th Class, Amritsar, dated the 1st March 1927, decreeing the plaintiff's suit.*

FAKIR CHAND and S. L. PURI, for Appellants.

JAGAN NATH BHANDARI, for Respondent.

ABDUL QADIR J.—The facts of the case which have given rise to this second appeal are briefly as follows :— ABDUL QADIR J.

The plaintiff Ishar Singh, along with his brother, Kala Singh, sued for a declaration that they were entitled to a share in the land of their cousin, Arjan

(1) (1922) I.L.R. 3 Lah. 362 (F.B.). (2) (1929) I.L.R. 10 Lah. 86 (P.C.).

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Singh, who died childless. The suit was resisted by Jagat Singh and others, sons of the brothers of the plaintiff who urged that Ishar Singh had been adopted by his maternal uncle, Wasakha Singh, and was debarred from succeeding collaterally in the family of his natural father, on account of the said adoption. The Subordinate Judge, fourth class, Amritsar, decreed the claim of Kala Singh, but held that Ishar Singh had no right to the property. Ishar Singh appealed to the District Judge, who remanded the case. The Subordinate Judge, who succeeded the officer who had previously decided the case, decreed the suit, as he held that the *onus* was on the defendants to show that Ishar Singh was debarred from succession in the presence of his nephews and that they had not quoted any instance to prove the alleged custom. The defendants again appealed to the District Judge, who dismissed their appeal. This second appeal was then filed by the defendants, with a certificate under section 41 (3) of the Punjab Courts Act, that it involved a question of custom. It came up for hearing before Mr. Justice Jai Lal, who was inclined to hold that the status of an adopted son having been clearly defined in *Mela Singh* v. *Gurdas* (1), this appeal must fail on the question of the general custom of the Province, but he referred the matter to a Division Bench, in view of the general importance of the question involved, that is, " whether an adopted son under the Customary Law of the Province is entitled to succeed collaterally (in his natural family) in the presence of his natural brothers."

Before the Division Bench, Mr. Fakir Chand has argued the case for the appellants and Mr. Jagan

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

Nath Bhandari for the respondent. Stress is laid by Mr. Fakir Chand on the wording of Article 48 of Rattigan's Digest, which says that an heir appointed, in accordance with Article 47 (which describes the manner in which customary appointment of an heir may be made), " does not thereby lose his right to succeed to property in his natural family, as against collaterals, but does not suceed in the presence of his natural brothers."

It is urged that this rule should be strictly interpreted and a person so adopted should be held to be precluded from succeeding to property in his natural family, in all cases where his natural brothers are present. It is contended, on the other side, that the proper and reasonable interpretation of Article 48 would be that a son adopted by another cannot suceed to the property of his natural father in the presence of his natural brothers, but would succeed to any property that may be left by a collateral of his natural father even in the presence of his brothers. Mr. Fakir Chand refers to Craik's Customary Law of the Amritsar District, where, in answer to question 89, all tribes, with the exception of *Brahmans* and *Khatris*, are said to have answered that an adopted son loses his right to inherit from his natural father " even if the latter dies without leaving other sons." He goes on to say that their Lordships of the Privy Council have laid down in *Vaishno Ditti* v. *Rameshri and others* (1) that manuals of customary law, prepared in accordance with the *riwaj-i-am* issued by authority for each district, stand on much the same footing as the *riwaj-i-am*, as evidence of custom, and that therefore Craik's Customary Law furnishes valuable

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evidence of the custom prevailing in Amritsar District. Without differing in any way from the general expression of opinion in *Vaishno Ditti* v. *Rameshri and others* (1) as to the value of such manuals, I must say that, on this particular point, the manual cited by the counsel for the appellants, states the proposition too broadly to be accepted as correct, inasmuch as it is materially at variance with the view embodied in Article 48 of Rattigan's Digest, which clearly gives an adopted son the right of succession to his natural father's property, when there are no natural brothers in existence. Article 48 may, therefore, be taken as a more reliable basis for decision in a case like this.

As regards the meaning which Mr. Fakir Chand seeks to place on Article 48 of Rattigan's Digest, I think valuable help can be derived from a consideration of the probable reason underlying the rule of custom as stated in that Article. It is recognised as a general rule that an appointed heir does not altogether sever his relations with his natural family and is not completely transplanted into the family of his adoptive father. He retains the right to succeed to the property of his natural father as against collaterals. However as it was presumably felt that it would give him an undue advantage over his brothers if he succeeded to the property of his adoptive father, as well as to that of his natural father, in the presence of his brothers, an exception was made in favour of the brothers, but the exception was probably meant to be confined to the property inherited from the natural father, because his collateral succession rests on a different footing. For that purpose he has ordinarily no status in the family of the adoptive father and he

(1) (1929) I. L. R. 10 Lah. 86 (P. C.).

cannot succeed collaterally in the latter family, according to the rule embodied in Article 49 of Rattigan's Digest, which runs as follows :—

"Nor, on the other hand, does the heir acquire a right to succeed to the collateral relatives of the person who appoints him, where no formal adoption has taken place, inasmuch as the relationship established between him and the appointor is a purely personal one."

No doubt Article 48 is somewhat unhappily worded, for the purposes of the rational and equitable meaning which I am placing on it, but any other construction of it would be extremely inequitable. Mr. Fakir Chand was asked if he knew any decided case in which a person adopted according to the Customary Law of the Punjab and deprived of collateral succession in his adoptive family, had been debarred from collateral succession in his natural family, because of the presence of his natural brothers and he was unable to do so.

I hold therefore that the reservation at the end of Article 48 as to the appointed heir not succeeding in the presence of his brothers refers only to his succession to his natural father, but does not apply to cases of collateral succession in his natural family. This appeal, therefore, fails and is dismissed with costs.

SHADI LAL C. J.

SHADI LAL C. J.—The question for determination in this appeal is whether a person appointed an heir under the Customary Law of the Punjab is debarred from succeeding to the estate of his collateral relative in the natural family in the presence of his natural brothers. It has been repeatedly laid down that the customary appointment of an heir does not involve the

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transplanting of the heir from one family to another. The tie of kinship with the natural family is not dissolved, and the fiction of blood relationship with the members of the new family has no application to the appointed heir. The relationship established between the appointor and the appointee is a purely personal one and does not extend beyond the contracting parties on either side—*vide, inter alia, Mela Singh* v. *Gurdas* (1).

It is, therefore, clear that the appointed heir does not cease to be a member of his natural family and does not lose his right of succession in that family. His appointment as an heir, however, confers upon him the right of succeeding to the estate of his adoptive father; and it was, therefore, considered unjust that he should be allowed to compete with his natural brothers in the matter of succession to the estate of his natural father. Equity and justice demanded that he should not succeed to the property of his natural father in the presence of his natural brothers, and an exception was grafted on the general rule allowing him to succeed in his natural family.

This exception has, however, no application to the case of a succession to the estate of a collateral in the natural family; because it is common ground that the appointed heir has no right of succession to the collateral relatives of the appointor. Neither the nature of the relationship created by the appointment of an heir, nor the rule of equity can be invoked to support the contention that the appointed heir, who does not succeed to the estate of the collateral relatives of the appointor, should be deprived of his right of succession to a collateral in the natural family, merely because he has got his natural brothers in that family.

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

I would, therefore, affirm the judgment of the District Judge and dismiss this appeal with costs.

A. N. C.

Appeal dismissed.

APPELLATE CIVIL.

Before Broadway and Tapp JJ.

LACHHMAN DAS (DEFENDANT) Appellant

versus

INTIZAMIA COMMITTEE OF GURDWARA OF CHARAN KANWAL AND OTHERS (PLAINTIFFS) Respondents.

1930

March 24.

Civil Appeal No. 413 of 1928.

Sikh Gurdwaras (Punjab) Act, VIII of 1925, section 28 —Proceedings under—whether suits—Valuation of.

Held, that although a proceeding under section 28 of the Sikh Gurdwaras Act is treated as a suit, it was not the intention of the Legislature to enable plaintiffs to fix more or less their own value on such proceedings in order to enhance the costs incurred.

First appeal from the decree of Sardar *Sewaram Singh, District Judge, Hoshiarpur, dated the 17th November 1927, decreeing the plaintiffs' suit.*

NIHAL SINGH, for Appellant.

CHARAN SINGH, for Respondents.

BROADWAY J.—On the 28th of April 1926 a *Gurdwara* situated in village Kiratpur in the Una *Tahsil* of the Hoshiarpur District was notified as a Sikh *Gurdwara* under the Sikh Gurdwaras Act of 1925. On the 17th of September 1926 another notification was issued publishing a consolidated list containing the description of the property of the *Gurdwara* together with all the necessary boundaries thereof. On the 30th of May 1927 another notification was issued (No. 125-G.) in which it was declared, under section 5 (3) of the Act, that no claim to any

BROADWAY J.