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MUSSAMMAT WIRAN WALI v. HIRA NAND.

holders to attach the private property of *Mussammat* Wiranwali.

For the aforesaid reasons I would *dismiss* the appeal with costs.

COLDSTREAM J.

COLDSTREAM J.—I agree.

A. N. C.

Appeal dismissed.

APPELLATE CIVIL.

Before Tek Chand and Gordon-Walker JJ.

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Dec. 1.

GHULAM MUHAMMAD AND OTHERS (DEFENDANTS) Appellants

versus

MST. RALLI AND ANOTHER, (PLAINTIFFS)
MST. AMON AND ANOTHER, (DEFENDANTS) } Respondents.

Civil Appeal No. 1323 of 1925

Custom—Succession—Self-acquired property—Arains—Nawanshahr Tahsil, District Jullundur—daughters and collaterals—Riwaj-i-am—evidentiary value of—when entry adversely affects the rights of women.

Held, that an entry in the *Riwaj-i-am* recording a special custom is *prima facie* proof of that custom, but can be rebutted by the party disputing the correctness of the entry.

Labh Singh v. *Mst. Mango* (1), *Beg* v. *Allah Ditta* (2), and *Vaishno Ditti* v. *Rameshri* (3), followed.

Karim Bakhsh v. *Nizamuddin* (4), and *Sultan* v. *Mst. Sharfan* (5), referred to.

Held also, that where, as in this case, such an entry adversely affects the rights of women, who had no opportunity of appearing before the Revenue authorities, the presumption in favour of its correctness can be rebutted by a few well-ascertained instances to the contrary.

Khan Beg v. *Fateh Khan* (6), followed.

(1) (1927) I.L.R. 8 Lah. 281.
(2) 45 P.R. 1917 (P.C.).
(3) (1929) I.L.R. 10 Lah. 86 (P.C.).
(4) 1930 A.I.R. (Lah.) 596.
(5) (1929) I.L.R. 10 Lah. 249.
(6) (1926) 108 I. C. 518.

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Held further, that in this case the plaintiffs had succeeded in rebutting the initial presumption raised against them by the entry in the *Riwaj-i-am* and had established that by custom, among Arains of Nawanshahr Tahsil, District Jullundur, daughters are entitled to succeed to their father's self-acquired land in preference to his collaterals.

First appeal from the decree of Khwaja *Abdus Samad, Senior Subordinate Judge, Lyallpur, dated the 20th March 1925, declaring that plaintiffs are the rightful heirs to their father in preference to defendants Nos. 2 to 6.*

RAM CHAND and S. C. MANCHANDA, for Appellants.

ABDUL RASHID, for MUHAMMAD SHAFI, and MUHAMMAD RAFI, for Respondents.

GORDON-WALKER J.

GORDON-WALKER J.—The parties to this dispute are Arains of Nawanshahr *Tahsil* in the Jullundur District. One Jaimal was granted " squares " in the Lyallpur District as *abadkar* (settler) and in due course acquired occupancy rights in the land. When he died, some 17 or 18 years ago, his rights in this land passed as a life estate to his widow *Mussammat* Amon, who in 1924 applied to the Collector for permission to gift these rights to her daughters by Jaimal, Zainab and Ralli, but permission was refused, because certain of her husband's collaterals objected to the proposed gift, claiming the land for themselves. In consequence, these daughters of Jaimal brought the present suit for a declaration that they were the heirs of Jaimal and so entitled to their father's rights in the land in suit, in preference to his collaterals. Of the defendants the widow *Mussammat* Amon is formal while Amir Din admits the plaintiffs' rights, and only Umar Din and the representative of Nura, who died *pendente lite*, are contesting the case. The matter

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was decided by the Senior Subordinate Judge at Lyallpur in favour of the plaintiffs who were granted the declaration for which they asked, and we have now before us the appeal against that order.

The decisions on two of the three issues of the trial Court are not now disputed and we are only concerned here with the issue, "Are defendants 2-4 preferential heirs to the daughters?" It has been contended that the onus has been wrongly placed on the defendants, but the general custom is clear (See Rattigan's Digest of the Civil Law of the Punjab, paragraph 23) that in regard to the acquired property of her father the daughter is preferred to collaterals and the burden of proof was, therefore, rightly placed in the first instance, though it at once shifted, as shown in a ruling of this Court, *Jagir Singh* versus *Mussammat Santi* (1), when the defendants produced entries in their favour in the *Riwaj-i-Am*. These entries consist of two Questions Nos. 45 (A) and (B) and their Answers in the "Customary Law of the Jullundur District" compiled by the Settlement Officer, *Rai Bahadur Bhai* Hotu Singh, in connection with his Revised Settlement of 1913-1917. According to these Answers, in the four *tahsils* of Jullundur District, collaterals exclude daughters from inheritance to the landed property, whether ancestral or acquired, of their father.

There has been some disagreement as to the evidentiary value of the *Riwaj-i-Am*, but the matter has been set at rest by the decisions of the Privy Council in *Beg* versus *Allah Ditta, etc.* (2), and *Vaishno Ditti* versus *Rameshri and others* (3), and a Bench of this Court in *Labh Singh and others* versus *Mussammat*

(1) (1922) 68 I. C. 711. (2) 45 P. R. 1917 (P. C.).
(3) (1929) I. L. R. 10 Lah. 86 (P. C.).

Mango and another (1), expressly following the ruling in *Beg* versus *Allah Ditta* (2), enunciated the principle which now obtains that an entry in a *Riwaj-i-Am* recording a special custom is *prima facie* proof of that custom and must be rebutted by the party disputing the correctness of the entry. That this initial presumption in favour of a *Riwaj-i-Am* can be rebutted has been established by rulings of this Court such as *Karim Bakhsh and others* versus *Nizamuddin and others* (3), and *Sultan* versus *Mussammat Sharfan and another* (4), and the only question in such cases is as to the quantum of proof required to rebut the presumption. The position has been clearly stated in *Khan Beg and others* versus *Fateh Khan and another* (5), and in the present case where the special custom recorded in the *Riwaj-i-Am* adversely affects the rights of women, who had no opportunity of appearing before the Revenue authorities, the presumption in favour of the *Riwaj-i-Am* can be rebutted by a few well ascertained instances to the contrary. The onus of proof on these two women plaintiffs, light as it is on the above principle, becomes even less burdensome when one finds that the instances quoted in the Jullundur *Riwaj-i-Am* to support this special custom do not relate to Arains and are in any case only oral or cases of mutations without details. I now turn to the evidence on the record.

And first the oral evidence. Seven witnesses appeared on behalf of the defendants, all Arains, and all deposing that collaterals exclude daughters with regard to the inheritance of acquired property. Muhammad Yasin, a *lambardar*, mentions the cases

(1) (1927) I. L. R. 8 Lah. 281.
(2) 45 P. R. 1917 (P. C.).
(3) 1930 A. I. R. (Lah.) 596.
(4) (1929) I. L. R. 10 Lah. 249.
(5) (1929) 108 I. C. 518.

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of Ghasita and Jiwan whose landed property went to their male collaterals and not to their daughters, but the whole of Ghasita's land and most of Jiwan's was ancestral and the daughters did not file any suit or even appear before the *Tahsildar*. Shah Din supports the special custom in the case of one Karm Bakhsh, whose nephews inherited his land excluding his daughters, but here again, the land was ancestral property and the daughters did not dispute the inheritance. Abdur Rahman also mentions Ghasita's case. The cases of Ghulam Ghaus and Hasan quoted by another witness Nur Ahmad are also with regard to ancestral land and the daughters did not prefer any claim in revenue or civil Court. Two witnesses, Haku and Umra, contented themselves with the bald statement that daughters are excluded by collaterals, without giving instances, one of them, Haku, admitting that he could quote no instance. The seventh witness, Roshan, in cross-examination said that his brother had not given land to his daughters, only to correct himself almost in the next breath by admitting that she and the witness had shared the brother's land equally. These witnesses even give instances which go to some extent against the very custom which they are produced to support, *viz.*, those of Dalel and Karm Bakhsh who gave land to their daughters without objection from their collaterals, while Nur Ahmad even admits that he gave land to his sister without protest from his sons. All these alleged instances of this special custom, being oral and unsupported by documentary proof, would be of little value even if the witnesses were definite and agreed as to the facts and are of no value when, as in the present case, the witnesses are vague and contradictory. Thus Muhammad Yasin says that Ghasita's land was ancestral

property but Abdul Rahman tells us that he died leaving both ancestral and acquired land, while Nur Ahmad talks of Dalel's "daughters" and Roshan of his "daughters." Against this the plaintiffs put into the witness box two witnesses and the defendant Amir Din who proved that the latter and Nura came to Lyallpur District and executed a deed accepting the preferential right of the plaintiffs, but Nura did not abide by this and this evidence is of no great assistance to the plaintiffs.

The oral evidence is, therefore, of no help, but when we turn to the documentary evidence we find more than sufficient to rebut the initial presumption of the *Riwaj-i-Am*. The only ruling on which the defendants rely is *Mussammat Fajje and another* versus *Sher Muhammad* (1), in which the District Judge of Jullundur on appeal found that on the evidence before him the plaintiff had discharged the onus which lay on him to show that collaterals exclude daughters from inheritance to their father's acquired land amongst Arains of Nakodar *Tahsil* and, when the matter came to the High Court on the revision side, Mr. Justice Ryves held that the decision was on a question of fact, and therefore, not assailable on revision. This, therefore, is not a ruling of this Court on the point now before this Bench. The defendants on the other hand have a number of Court decisions in their favour, *viz.*, those here exhibited as P. 3 to P. 8 and the High Court ruling mentioned above, *Karim Bakhsh and others* versus *Nizamuddin and others* (2). Exhibit P. 3 is a decision of the Divisional Judge of Jullundur, dated the 20th February, 1911, in *Muhammad Bakhsh* versus *Mussammat*

(1) (1910) 10 I. C. 681. (2) 1930 A. I. R. (Lah.) 596.

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Rabian and others, in a dispute between Arains of the Jullundur *Tahsil* of Jullundur District. The learned Judge agreed with the Munsiff that daughters could in that particular case succeed to the property of their father, but this was an *obiter dictum* because the rights of these daughters were not "really disputed." Exhibit P. 4 is the decision on appeal of the same Divisional Judge of Jullundur dated the 27th June, 1911, in *Mussammat Fatima and others* versus *Imam Din and others*, the parties being Arains of Nakodar *Tahsil* of the Jullundur district. In this case it was held by the Munsiff that among Arains of this *Tahsil* daughters cannot exclude collaterals even as regards self-acquired property, but on appeal counsel for the collaterals stated that he did not wish to rely on the isolated case on which the Munsiff had relied (Civil Revision No. 666 of 1910), as he did not regard it as a correct exposition of Arain custom and conceded the right of the daughters to the acquired property; wherefore the appeal was partially accepted, the acquired property being excluded from the decree. Exhibit P. 5 is a decision, dated the 9th April, 1906, of the District Judge of Jullundur in a case, *Mussammat Rabia* versus *Mussammat Mahri*, in which it was found that in the case of self-acquired property the daughter undoubtedly succeeds against her father's brother. In *Mussammat Jiwan* versus *Ibrahim*, decided by the Additional Judge of Jullundur on the 21st February, 1921 (Exhibit P. 5-A), counsel for the collateral in the trial Court admitted that the daughter was entitled to succeed to the self-acquired property of her father, and, therefore, the learned Additional District Judge on appeal held that the collateral could not be allowed to "rake up the question afresh because he finds that the *Riwaj-i-Am* on this point is in his favour."

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This was a case of Arains of the Jullundur *Tahsil*. The District Judge of Jullundur on the 1st December 1915, in the case *Fattu* versus *Mussammat Rabian and others*, the parties being Arains of Nakodar *Tahsil* of Jullundur District, after carefully considering the *Riwaj-i-Am* and various rulings, decided that daughters succeeded to the acquired property of their father in preference to his collaterals. This is Exhibit P. 6. The next Exhibit is P. 7, the decision of the Senior Subordinate Judge of Lyallpur District in a dispute between daughters and collaterals, Arains of *Tahsil* Jullundur of Jullundur District. Here again it was held by the learned Judge, after careful consideration of the evidence, including the *Riwaj-i-Am*, and the law, that daughters inherited the self-acquired property of their father. The last exhibit, P. 8, is the decision of the District Judge of Lyallpur, dated the 29th August, 1921, in a dispute between a daughter and collaterals, the parties being Arains of Nakodar *Tahsil* of Jullundur District, as to the inheritance to the self-acquired property of the woman's father. The District Judge, agreeing with the trial Court, held that "the weight of instances is in favour of the daughter's succession to self-acquired property to the exclusion of the collaterals, though the *Riwaj-i-Am* entries run against the general custom that (*sic*) the *Riwaj-i-Am* entries are not supported by clear and unequivocal instances" and that, therefore, the collaterals had not shown that under custom they could exclude the daughter, even though she be married, from succession to her father's self-acquired property. And to top all this comes the ruling of Mr. Justice Bhide in *Karim Bakhsh and others* versus *Nizamud-din and others* (1), in which it was held, the dispute

(1) 1930 A. I. R. 8 (Lah.) 596.

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being between Arains of the Phillaur *Tahsil* of the Jullundur District, that, despite the very entries in the *Riwaj-i-Am* which are relied on by the collaterals in the case now before us, the daughters succeeded to their father's landed property in preference to the latter's collaterals. I have, therefore, come to the conclusion that the plaintiffs in this case, the daughters of Jaimal, have been able to rebut the initial presumption raised against them by the *Riwaj-i-Am*, and to establish that they, as daughters, have the right, preferential to their father's collaterals, to succeed to their father's acquired land. This appeal, therefore, stands dismissed with costs.

TEK CHAND J. TEK CHAND J.—I agree.

A. N. C.

Appeal dismissed.

APPELLATE CIVIL.

Before Tek Chand and Gordon-Walker JJ.

1930

Dec. 2.

RAM DHAN (PLAINTIFF) Appellant

versus

COURT OF WARDS OF MALIK DOST MUHAMMAD KHAN (DEFENDANT) Respondent.

Civil Appeal No. 1312 of 1925.

Indian Limitation Act, IX of 1908, Article 85—"mutual open and current account"—meaning of Article 57—Suit for money lent—applicability of.

The dealings between the parties were of the nature of simple money loans, the defendant D. M. K. borrowing money from the plaintiff from time to time, making payments to him occasionally, and striking balances in his favour. On two occasions he executed lease-deeds of his lands in favour of the creditor, and authorised him to credit the lease money towards the loan account.