APPELLATE CIVIL.

Before Tek Chand and Agha Haidar JJ.

1930

Nov. 10.

KEHAR SINGH AND ANOTHER (DEFENDANTS) Appellants,

versus

MST. BACHNI (PLAINTIFF) Respondent.

Civil Appeal No. 1113 of 1925.

Custom—Succession—Self-acquired property—Handal Jats, Tahsil *Kharar, District Ambala, who have migrated to Lyallpur—daughter or collaterals in third degree*—Riwaj-i-am.

Held, that among *Handal Jats* of the Ambala district, who have migrated to Lyallpur, a married daughter is a preferential heir to the self-acquired property of the last male-holder, as against his collaterals in the third degree.

First appeal from the decree of Khwaja *Abdus Samad, Senior Subordinate Judge, Lyallpur, dated the 23rd March 1925, decreeing the plaintiff's suit.*

JAGAN NATH BHANDARI and V. N. SETHI, for Appellants.

BIHARI LAL and BISHAN NARAIN, for Respondents.

TEK CHAND J.

TEK CHAND J.—One Talok Singh, a *Handal Jat* of Kharar *Tahsil* in the Ambala district, was the grantee of a square of land in the Lyallpur Colony. He having fulfilled the conditions of the grant was recognised as an occupancy tenant of the land. In 1911 Talok Singh died sonless, leaving him surviving a widow, *Mussammat* Ishar Kaur, and a minor daughter, *Mussammat* Bachni. In January, 1912, mutation of the occupancy tenancy was effected in favour of *Mussammat* Ishar Kaur for life or till re-marriage. On the 14th August 1924, *Mussammat* Ishar Kaur applied to the revenue authorities intimating that she had relinquished her interest in the

land in favour of her daughter, *Mussammat* Bachni (who was still a minor but had married in the meantime) and praying that mutation be effected in her name. On objection by the defendants, who are collaterals of Talok Singh in the third degree, the application was rejected by the Collector on the 14th November, 1924.

A few days later *Mussammat* Bachni instituted the present suit for a declaration that she was a preferential heir as against the defendants and that the latter had no right to object to the mutation of the land being effected in her favour.

The suit was resisted by the defendants mainly on the ground that under custom, by which the parties were governed, collaterals of the third degree were entitled to succeed to the land in dispute, in preference to the daughter of the original grantee. They also pleaded that as *Mussammat* Bachni had married and on the death of her husband had inherited his property, she was debarred from succeeding to the property of her father.

On these pleadings the following three issues were framed :—

"(1) Are defendants the preferential heirs?

(2) Has plaintiff inherited property of her husband?

(3) If so, is she debarred from inheriting her father's property?"

The learned Subordinate Judge found the first issue against the defendants, and as there was no evidence on the second and third issues which was not pressed before him, he passed a decree in favour of the plaintiff.

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TEK CHAND J.

The defendants have preferred a first appeal to this Court and we have heard Mr. Jagan Nath Bhandari on their behalf. Under section 21 (*b*) of Act V of 1912, as amended by Act III of 1920, succession to this tenancy is to be governed "as if it were agricultural land acquired by the original tenant" Talok Singh. This being so the question arises whether among *Handal Jats* of the Ambala district collaterals of the third degree are preferential heirs to the self-acquired property of a sonless Jat as against his married daughter. The onus of proving this issue was rightly laid upon the defendants. Mr. Jagan Nath has drawn our attention to the entries in the *riwaj-i-am* of the Ambala district prepared in 1888 : question No. 40 of which deals with the "circumstances under which daughters succeed." This question and the answer given by the *Jats* as printed at page 35 of the paper book, does not specifically refer to non-ancestral property. The entry therefore, is of no assistance whatsoever in determining issue No. 1. Reference was also made to pages 21 and 22 of Whitehead's Customary Law of the Ambala district, prepared in 1920. In this *riwaj-i-am*, no enquiry seems to have been held with regard to succession to self-acquired property. The entry, therefore, must be taken to relate to ancestral property, as has been ruled in a large number of decisions by the Chief Court and this Court. There being no initial presumption in favour of the appellants, the case has to be decided on the evidence led at the trial. This consisted of the oral testimony of seven persons, some of whom are *Jats* of the *Handal got* and others of the *Bhangu* and *Dhanoa gots* of the Ambala district. These witnesses make bald statements that daughters

are excluded from succession to the self-acquired property of their fathers by collaterals, but they either cite no instances in support of the alleged custom, or refer to events of which they have got very little personal knowledge and cannot furnish the necessary particulars. In none of the "instances" cited by them were the witnesses personally concerned, and except in one case no effort was made to place on the record mutations or other revenue papers which might have thrown light on the circumstances under which the alleged succession took place. The only instance, which is supported by documentary evidence, is that of one Man Singh whose widow *Mussammat* Daya Kaur died in 1907, and the square held by her was taken by her husband's brother, Gian Singh. The mutation entry does not, however, show that any daughter was alive. On the other hand, it is stated in it that there was no objector. Moreover, this mutation was sanctioned in April, 1907, when succession to these tenancies was governed by Act III of 1893, under which a daughter had no right to succeed to an occupancy tenancy held by her father. The instance, therefore, is of no value whatsoever. With regard to other "instances" mentioned by these witnesses the evidence is, as stated already, very meagre and inconclusive and it is not necessary to discuss it at length.

In my opinion the learned Senior Subordinate Judge has come to a correct conclusion in holding that the collaterals have no right to succeed to the square in question in preference to *Mussammat* Bachni, daughter of Talok Singh, deceased. The gift by *Mussammat* Ishar Kaur, widow of Talok Singh, in favour of *Mussammat* Bachni is, therefore, in the nature of a mere acceleration of succession and must

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be given effect to in spite of objection by the defendants.

Issues 2 and 3 were not argued before us and are not supported by any evidence led at the trial.

In my opinion the learned Subordinate Judge has rightly decreed the suit and I would dismiss the appeal with costs.

AGHA HAIDAR J.

AGHA HAIDER J.— I agree.

A. N. C.

Appeal dismissed.

APPELLATE CIVIL.

Before Broadway and Johnstone JJ.

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Nov. 10.

INTIZAMIA COMMITTEE GURDWARA GURU GRANTH SAHIB, AT SAMADH BHAI, AND OTHERS (PLAINTIFFS) Appellants,

versus

PREM DAS AND OTHERS (DEFENDANTS) Respondents.

Civil Appeal No. 2375 of 1928.

Sikh Gurdwaras (Punjab) Act, VIII of 1925, sections 28, 145—Suit on behalf of Gurdwara—for recovery of notified property—Irregularity in procedure—no meeting of Committee—whether suit invalidated or whether defect curable under section 145.

Proceedings under section 28 of the Sikh Gurdwaras Act were instituted through two persons who claimed to be members of the Committee of the Gurdwara in question, which, however, admittedly consisted of five members, the other three of whom were made defendants together with the alleged possessor of the premises in suit.

Held, that as no meeting of the Committee of the Gurdwara had been lawfully convened, the petition under section 28 had been rightly dismissed.

Held also, that as no meeting actually took place, the defect could not be cured by section 145 of the Act.