APPELLATE CIVIL.

Before Harrison and Dalip Singh JJ.

1931

May. 6.

MUSSAMMAT INDAR KAUR (DONEE-DEFENDANT) Appellant.

versus

HARI SINGH (PLAINTIFF)
MST. RAM KAUR (DONOR) } Respondents.
AND ANOTHER (DEFENDANTS)

Civil Appeal No. 154 of 1926.

Custom—Succession—Ancestral property inherited by adopted son (a stranger)—daughter of adopted son or collateral of adoptive father—Resumption.

One *H.S.* was adopted by *K.S.* as a customary heir and after the death of the latter's widow succeeded to his ancestral land. He himself died leaving two widows and a daughter, but no son. One of the widows made a gift of part of the land to her daughter, and a collateral of 3rd degree of *K.S.* brought the present suit for a declaration that the gift should not affect his reversionary rights. The sole question for decision in second appeal was whether in the absence of a son the land held by a nominated heir passes to his daughter or reverts to the collaterals of the donor.

Held, that the succession must be governed by the same rule as would govern a gift and although a resumption takes place on the total extinction of the line of the nominated heir, his daughter being as truly his child as his son and the reversioner being no relation, she must succeed as the child of the stranger to whom a portion of the ancestral property has been given.

Nathal v. *Mst. Dhan Kaur* (1), and *Sita Ram* v. *Raja Ram* (2), referred to and discussed.

Second appeal from the decree of Diwan Bahadur Diwan *Som Nath, District Judge, Hoshiarpur, dated the 8th October 1926, reversing that of* Lala *Munshi*

(1) (1924) 79 I. C. 115. (2) 12 P. R. 1892 (F.B.).

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Ram, Subordinate Judge, 2nd Class, Hoshiarpur, dated the 3rd January, 1925, and granting the plaintiff a declaration as prayed for.

BADRI DAS, for Appellant.

AJIT PARSHAD, for (Plaintiff) Respondent.

HARRISON J.

HARRISON J.—One Hanuman Singh was adopted by one Kishen Singh, and, after the death of Kishen Singh's widow, succeeded to his ancestral land. He himself died leaving two widows, *Mussammat* Ram Kaur and *Mussammat* Bishen Kaur, *Mussammat* Ind Kaur, a daughter by *Mussammat* Ram Kaur and no son. *Mussammat* Ram Kaur made a gift of part of the land to *Mussammat* Ind Kaur; and a collateral in the third degree of Kishen Singh has brought the present suit claiming a declaration that the gift will not affect his reversionary rights. He has been given a decree and, on second appeal, the sole question for decision is, whether, in the absence of a son, the land held by a nominated heir passes to his daughter or reverts to the collaterals of the donor.

The learned District Judge has applied the same reasoning as is to be found in *Nathal* v. *Mst. Dhan Kaur* (1), though this ruling was not brought to his notice. He thinks that the nominated heir cannot be treated more favourably than a true son, and, therefore, just as a reversioner can challenge the succession of a daughter of a blood relation on his father's side so he can challenge that of a daughter of the nominated heir. No reason is given for the major premiss that the heir can under no circumstances be more favourably treated than a son, and it appears to me that it is based on a misconception of his position. This nominated heir may be a complete stranger,

(1) (1924) 79 I. C. 115.

who receives a benefaction in the shape of a bequest of land. He suffers the disabilities of a stranger and equally does he enjoy the immunities and privileges and liberties of a stranger as opposed to one of the family. The view originally held in the Punjab as to who ultimately succeeds, in the absence of all descendents of this heir, was that, the property having gone out of the family, the collaterals of the heir would succeed in preference to the collaterals of the donor. This view was reversed in *Sita Ram* v. *Raja Ram* (1). In the judgment now before us on appeal and also in *Nathal* v. *Mst. Dhan Kaur* (2) and in two *obiter dicta*, which have been quoted, decisions have been given based on somewhat similar reasoning to that of the Full Bench, namely, that the nominated heir is not precisely the same as a donee and therefore the agnatic principle must be extended to govern the succession to his estate. As the learned District Judge has pointed out, the property is not transferred to the heir at once but is a bequest which comes into effect on the death of the appointer. The nominated heir does not become the son of his benefactor as in the case with a true adopted son, and is not grafted on to the family. He does not inherit collaterally as he would do were he an adopted son and he does inherit collaterally in the family of his true father as he would not do were he a truly adopted son of his benefactor. The only difference, it appears to me, between the position of such an heir and a donee is that, on his line dying out completely, the land reverts to the reversioners of the benefactor and this distinction has been introduced by a somewhat artificial extension of the agnatic theory. No reason has been shown for stretching it any further.

(1) 12 P. R. 1892 (F.B.). (2) (1924) 79 I. C. 115.

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HARRISON J.

The second distinction emphasized by the learned District Judge that there is no immediate transfer of the property does not, in my opinion, affect the situation. A gift may be saddled with conditions, and it appears to me that this is what happens in the case of a nominated heir.

The question, therefore, being whether the transaction resembles more closely a gift or a true adoption, the answer must be, I think, that for all practical purposes it is a gift and the succession must be governed by the rules which govern gifts. I can see no valid reason why this nominated heir, who does not enjoy all the privileges of a son, should not be more favourably treated than a true son. A resumption of what has once been gifted is repugnant to all and, although such resumption does take place on the total extinction of the line of the nominated heir, his daughter being as truly his child as his son and the reversioner being no relation, she must, I think, succeed as the child of the stranger to whom a portion of the ancestral property has been given.

I would, therefore, accept the appeal and dismiss the plaintiff's suit. The defendants' costs will be paid throughout by the plaintiff.

DALIP SINGH J.

DALIP SINGH J.—I agree.

A. N. C.

Appeal accepted.