

APPELLATE CIVIL.

Before Harrison and Tek Chand JJ.

1931

March 16.

SHIB DAS (DEFENDANT) Appellant

versus

NAND LAL AND OTHERS (PLAINTIFFS) } Respondents.
AND MST. RADHI (DEFENDANT)

Civil Appeal No. 1921 of 1925.

Hindu Law—Succession—alteration of order of—during pendency of appeal—effect of—upon declaratory decree passed prior to new Act—which came into force while present incumbent was still alive—Hindu Law of Inheritance (Amendment) Act, II of 1929, section 2—sister's son of last male holder—right of, to succeed in priority to collaterals of fourth degree.

Mst. R. having succeeded to the property of her deceased son, made a gift of the same to her daughter's son, The reversioners in the fourth degree were in April 1925 granted a decree declaring that the gift would not affect their rights after the death of *Mst. R.*, but while the appeal from this decision was pending and while *Mst. R.* was still alive, the Hindu Law of Inheritance (Amendment) Act, II of 1929, came into force. This altered the order of succession so as to make the donee (sister's son), rank before the plaintiff-reversioners.

Held, that as *Mst. R.* was still alive at the date of the coming into force of the new Act, the appeal must be accepted and the suit must be dismissed.

First appeal from the decree of Lala Chuni Lal, Senior Subordinate Judge, Gurdaspur, dated the 16th April 1925, decreeing the plaintiffs' suit.

TIRATH RAM and DARBARI LAL, for Appellant.

JAGAN NATH BHANDARI and HEM RAJ MAHAJAN,
for (Plaintiffs), Respondents.

The judgment of the Court was delivered by—

HARRISON J.—In this case certain descendants of one Ganesh Das brought a suit challenging a deed of

gift executed by a widow *Mussammat* Radhi in favour of her daughter's son Shib Das. The suit was successful and a decree was passed that the gift would not affect the rights of the reversioners when succession opened out. The property was found to be that of the late Mela Ram, who died in 1913 and was the son of Ram Ditta and *Mussammat* Radhi. On Mela Ram dying unmarried *Mussammat* Radhi succeeded him. The status, therefore, of Shib Das, the donee is that of a sister's son of the last male owner. The decree was passed in April 1925. An appeal was lodged by the donee and on the 21st of February 1929 Act II of 1929 came into force. This Act altered the order in which certain heirs of a *Hindu* male dying intestate are entitled to succeed to his estate, and section 2 lays down that a sister's son is entitled to rank after certain other relations and next after the father's father and before the father's brother. The plaintiffs in this case are collaterals of the fourth degree of Mela Ram, and Shib Das, donee, is his sister's son. There can be no question, therefore, that he is entitled to succeed to the property now held by *Mussammat* Radhi, who is still alive. Had she died before the Act came into force, the position would have been different, but in the present circumstances the suit must fail. The appeal will thus be accepted.

1931
SHIB DAS
v.
NAND LAL.

The suit will be dismissed and the parties will be left to pay their own costs throughout.

N. F. E.

Appeal accepted.