APPELLATE CIVIL.

Before Harrison and Tek Chand JJ.

JAGTAR SINGH AND OTHERS (DEFENDANTS) Appellants

versus

RAGHBIR SINGH AND ANOTHER (PLAINTIFFS)
KHUSHAL SINGH AND ANOTHER (DEFENDANTS) } Respondents.

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March 12.

Civil Appeal No. 896 of 1925.

Custom—Ancestral property—self-acquired property of father—gifted to his son—whether ancestral qua *the son's sons, and whether donee's alienations can be controlled by his sons—Acceleration of succession.*

J.S., a *Jat* of Sialkot district, who owned considerable landed property there, was granted squares of land in the Lyallpur colony. Some time after the grant he gifted the squares to his sole surviving son *B.S.*, who had been adopted many years before by a distant collateral of his. The gift did not comprise the Sialkot property, which *J.S.* continued to hold till his death, some six years later. The donee *B.S.* having alienated portions of the gifted squares to the appellants, his minor sons brought the present suit challenging the alienations on the ground that the property alienated was " ancestral " in the hands of *B.S.* and that he had no power to transfer it without necessity.

Held, that the gift could not be held to be a mere " acceleration of succession " as *J.S.* did not completely efface himself and pass his " whole interest in the whole estate to the entire body of heirs " who would be entitled to take it in the event of his death, but kept other valuable property in his possession until his death.

Behari Lal v. *Madho Lal* (1), *Rangasami Goundan* v. *Nachiappa Goundan* (2), and *Wazir Chand* v. *Makhu* (3), followed.

(1) (1892) I. L. R. 19 Cal. 236 (P. C.). (2) (1919) I. L. R. 42 Mad. 523 (P. C.).
(3) 17 P. R. 1902.

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Held also, that the property which was self-acquired by *J.S.*, not having devolved on *B.S.* by inheritance from his father, it was not ancestral in his hands *qua* his own sons, the plaintiffs. *B.S.* had, therefore, full power to deal with the property as he liked, uncontrolled by his sons, whose suit must consequently be dismissed.

Kasu v. *Barkat Ali*, Civil Appeal No. 1767 of 1921 (unpublished) and *Muhammad Shafi* v. *Wali Ahmad*, Civil Appeal No. 1765 of 1925 (unpublished), followed.

First appeal from the decree of Khwaja *Abdus Samad, Senior Subordinate Judge, Lyallpur, dated the 23rd March 1925, granting the plaintiffs possession of properties in suit on payment of certain sums*

MEHR CHAND MAHAJAN, and AJIT PRASADA, for Appellants.

BADRI DAS, J. L. KAPUR and BHAGWAT DAYAL, for Respondents.

TEK CHAND J.

TEK CHAND J.—This appeal arises out of a suit instituted by two minors, Raghbir Singh and Sarjit Singh, sons of Bahadur Singh, to contest certain alienations of agricultural land situate in the Lyallpur District, effected by their father in favour of defendants Nos. 1 to 13 on various dates between the 1st of August 1918 and 6th of September 1922. The suit has been decreed on payment of a part of the consideration. The alienees appeal.

The relevant facts are that the alienor's father Subedar-Major Jiwan Singh was a *Jat* of the Daska *Tahsil* of Sialkot District where he owned considerable landed property. He had two sons Chattar Singh and Bahadur Singh. Of these, Bahadur Singh was adopted by a distant collateral named Nam Singh, as far back as 1892. In 1893, Nam Singh died and his property was taken by his adopted son Bahadur

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Singh. Chattar Singh, the other son of Jiwan Singh, died childless in 1903. In June 1912, Government granted five squares of land in the Lyallpur District to Jiwan Singh in recognition of his military services on condition that proprietary rights would be conferred on him on payment of a small sum as *nazrana*. The *nazrana* was duly paid by Jiwan Singh, and on 4th February 1913, mutation of the squares was effected in his name as full owner. About a month later, Jiwan Singh appeared before the revenue authorities and stated that he had gifted these squares to his son Bahadur Singh, who as stated above, had been adopted by Nam Singh in 1892. Jiwan Singh prayed that his name be struck off and that of the donee entered as full owner. After the usual enquiries the revenue officer, on the 12th March 1913, sanctioned mutation in favour of Bahadur Singh as owner "by virtue of the gift." At that time Bahadur Singh was childless, but a few years later he got two sons. In the lower Court, there was a dispute as to the dates of birth of these sons, but before us it was admitted by the appellants' learned counsel that the first plaintiff Raghbir Singh was born on the 11th September 1917 and the second plaintiff Sarjit Singh was born on the 26th February 1921.

In August 1918, Bahadur Singh raised money from some of the defendants by executing four mortgage deeds in respect of a part of the property in Lyallpur District, which had been gifted to him by Jiwan Singh in 1913. Jiwan Singh was alive at the time but raised no objection. He died in April 1919 and after his death Bahadur Singh sold one of the squares to defendants 1 to 4, part of the consideration being the money secured on the mortgages of

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August 1918 and the remainder cash. In 1920-21 he executed four more mortgage-deeds and thus raised further sums from the defendants.

Bahadur Singh died on the 30th January 1923, and his minor sons, through their mother as next friend, instituted the present suit on the 29th of January 1924, challenging the alienations on the ground that the property alienated was ancestral in the hands of Bahadur Singh, and that he had no power to transfer it without necessity. The alienees pleaded *inter alia* that the land was not ancestral *qua* the plaintiffs and that the alienations were effected for consideration and necessity. The learned Subordinate Judge, however, found that the property was ancestral, and he also held that necessity was established only for a part of the consideration mentioned in the various deeds.

On appeal the first contention raised on behalf of the defendants-appellants is that the land was not ancestral in the hands of Bahadur Singh and that he had full and unrestricted power of disposition over it. After hearing both counsel at length, I am of opinion, that this contention is sound and must prevail. It is well-settled that under customary law " ancestral property " means, as regards sons, property *inherited* from a direct male lineal ancestor. In this case, the land in question was admittedly the self-acquired property of Jiwan Singh and he possessed absolute power of disposition over it. He gifted it six years before his death to Bahadur Singh. It did not devolve on the alienor by inheritance from a male ascendant and, therefore, was not ancestral in his hands *qua* his own sons, the plaintiffs. Mr. Badri Das, feeling the strength of this argument, contend-

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ed that the transfer by Jiwan Singh in favour of Bahadur Singh, though nominally designated a gift, was in reality nothing more than an arrangement by which he appointed Bahadur Singh as his *Mukhtar* for the purpose of managing the squares, he himself being an old man and unable to live in the Lyallpur District. There is, however, no warrant for this suggestion either in the record of the mutation proceedings or in any evidence led at the trial. The transaction was one of gift, pure and simple, whereby he divested himself of all rights in the squares and invested Bahadur Singh with full ownership. The change of title was duly given effect to in the revenue papers and Bahadur Singh continued to exercise rights of ownership for six years, without protest by Jiwan Singh. Mr. Badri Das urged that there was no occasion for Jiwan Singh to make a gift of the squares in favour of his sole surviving son so soon after he had acquired proprietary rights in them. But if an explanation for this act on the part of Jiwan Singh is required, it will be found in the fact that Bahadur Singh had been adopted by Nam Singh about 20 years before, that he had succeeded to his adoptive father's estate and it was at best a moot point, whether on Jiwan Singh's death his property would devolve on Bahadur Singh, or whether it would be taken by his widows on a life tenure and on their death by his collaterals. It is obvious that in order to defeat these claims and to benefit Bahadur Singh, he made the gift.

It was next contended that the gift was in reality a mere 'acceleration of succession' and the gifted property should be taken to be subject to the same incidents as it would have been if it had actually descended by inheritance. In reply the learned

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counsel for the appellants has strenuously argued that under the custom of the *Jats* of Sialkot District a son, who has been adopted by a distant collateral, does not succeed to his natural father even though the latter had no other son alive at the time of his death. It is, however, not necessary to go into this question as, even if Bahadur Singh be assumed to be the next heir of Jiwan Singh, the gift can by no stretch of reasoning be treated as an "acceleration of succession." It is of course true that a person can surrender his estate to the next heir and thus accelerate the succession. But it is settled law that if he wishes to do so, he must completely efface himself and pass his "whole interest in the whole estate" to the entire body of heirs who would be entitled to take it in the event of his death. *Behari Lal* v. *Madho Lal* (1), *Rangasami Gounden* v. *Nachiappa Gounden* (2) and *Wazir Chand* v. *Makhu* (3). In the case before us, it is admitted that Jiwan Singh owned other valuable property in the Sialkot District, which was not included in the gift and which continued to be held by him until his death six years later. In face of this fact it cannot be said that the gift was in the nature of an "acceleration of succession."

In his judgment the learned Subordinate Judge has referred to certain rulings under Hindu Law, but counsel for both parties are agreed that these rulings have no real bearing on the case before us It is, therefore, not necessary to discuss them. It may, however, be stated that under Hindu Law also the consensus of authority is that such property is

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not ancestral. It is also conceded by Mr. Badri Das that the other cases [like *Sri Ram* v. *Ramji Das* (1)] relied upon by the learned Subordinate Judge are also irrelevant, as they related to property which was admittedly ancestral in the hands of the donor, but this is not the case here. The decisions which are really in point are Civil Appeal No. 1767 of 1921 *Kasu* v. *Barkat Ali* decided by LeRossignol and Broadway JJ. on the 10th of April 1924 (printed at pages 243 and 244 of the paper book) and Civil Appeal No. 1765 of 1925, *Muhammad Shafi* v. *Wali Ahmad* decided by this Bench on the 11th of February 1931. The respondents' learned counsel expressed his inability to distinguish those cases or to challenge their correctness.

I have no doubt whatever that the squares in question were not ancestral in the hands of Bahadur Singh and he had full power to deal with them as he liked, uncontrolled by his sons. On this finding the plaintiffs have no *locus standi* to maintain the suit and it is not necessary to decide the other points raised in the pleadings.

I would, therefore, accept the appeal, set aside the judgment and decree of the learned Subordinate Judge and dismiss the plaintiffs' suit with costs throughout.

The cross-objections necessarily fail and are dismissed.

HARRISON J.—I agree.

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A. N. C.

Appeal accepted.

(1) 59 P. R. 1909.