APPELLATE CIVIL.

Before Addison and Bhide JJ.

1933

March 22.

MUSSAMMAT KARMON AND ANOTHER (DEFENDANTS) Appellants

versus

HIRA SINGH AND OTHERS (PLAINTIFFS) Respondents.

Civil Appeal No. 1214 of 1926.

Custom — Succession—Non-ancestral property—Gareiwal Jats — Samrala Tahsil, Ludhiana district — Collaterals—whether exclude married daughters—Riwaj-i-am—*entries in—whether include non-ancestral property.*

Held, that according to custom prevailing among *Garewal Jats* of the Samrala Tahsil of the Ludhiana District, collaterals of the last male holder are entitled to succeed to non-ancestral property left by him in preference to his married daughter.

Also, that the entries in the *Riwaj-i-ams* of the Ludhiana District, excluding married daughters, leave no doubt that they refer to both ancestral and non-ancestral property.

Mussammat Ishar Kaur v. *Raja Singh* (1), *Partap Singh* v. *Mst. Punjabu* (2), and *Riwaj-i-am*, relied upon.

Sham Das v. *Mst. Moolo Bai* (3), *Ghulam Muhammad* v. *Mst. Gohar Bibi* (4) and *Reham Ali Khan* v. *Mst. Sadiq-ul-nisa* (5), referred to.

Second appeal from the decree of R. B. Lala *Ganga Ram, Soni, District Judge, Ludhiana, dated the 11th January, 1926, affirming that of* Lala *Sakhir Chand, Subordinate Judge, 2nd Class, Ludhiana, dated the 13th May, 1925, declaring that the gift in suit shall not affect the plaintiffs' reversionary rights after the death of* Mussammat *Jatan, defendant.*

BALWANT RAI, for Appellants.

AMAR NATH CHONA, for Respondents.

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(1) 94 P. L. R. 1911.
(2) 25 P. R. 1912.
(3) (1926) I. L. R. 7 Lah. 124.
(4) (1920) I. L. R. 1 Lah. 284.
(5) (1932) I. L. R. 13 Lah. 404.

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BHIDE J.—Plaintiffs, who are the collaterals of one Lakha, sued in this case for a declaration that the gift of certain land and houses made by *Mussammat* Jatan, widow of Lakha, in favour of *Mussammat* Karmon, her widowed daughter, shall not affect their reversionary rights. The suit was decreed by the trial Court and the decision was upheld by the District Judge on appeal. The defendants have now preferred a second appeal to this Court, supported by a certificate from the District Judge on the question of custom under section 41 (3) of the Punjab Courts Act.

The decision of the case turned mainly on the question whether, according to the custom governing the parties (who are *Garewal Jats* of the Samrala Tahsil of the Ludhiana District), plaintiffs as collaterals of Lakha are entitled to succeed to the property in dispute in preference to his widowed daughter *Mussammat* Karmon after the death of *Mussammat* Jatan, his widow, who holds a life interest in it at present. It has been held that the property in dispute was not proved to be ancestral *qua* the plaintiffs and this finding is not now challenged.

The learned District Judge has held, relying chiefly on *Mussammat Ishar Kaur* v. *Raja Singh* (1), and *Partap Singh* v. *Mst. Punjabu* (2), that the plaintiffs have a preferential right to succeed to the property, although it was not proved to be ancestral *qua* plaintiffs. An attempt was made to challenge the correctness of the above decisions before the learned District Judge on the ground that the entries in the *riwaj-i-am* of the Ludhiana District on which the decisions were based to a certain extent should have

(1) 94 P. L. R. 1911. (2) 25 P. R. 1912.

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been taken to refer to ancestral property only. The learned District Judge, however, refused to go into this question and felt himself bound to follow the aforesaid decisions.

The same argument which was put forward before the learned District Judge was reiterated before us. There is no doubt, that there are rulings of this Court in which it was held that, in the absence of any indication to the contrary, entries in the *riwaj-i-am* should be taken to refer to ancestral property (see *e.g. Sham Dass* v. *Mst. Moolo Bai* (1), *Ghulam Muhammad* v. *Mst. Gohar Bibi* (2), *Rehman Ali Khan* v. *Mst. Sadiq-ul-Nisa* (3). In the present instance, however, an examination of the *riwaj-i-am* will show that the language of the answers to the questions which relate to the point now under discussion is very wide, and may reasonably be taken to cover non-ancestral property as well. For example in the *riwaj-i-am* of the Samrala Tahsil (to which the parties belong) prepared in the year 1882, the following question and answer appear:—

Question.	*Answer.*
Under what circumstances do daughters inherit? If a son or a widow or a near collateral is alive, do daughters inherit or not? Up to what degree of relationship has a near collateral a right prior to that of a daughter?	In our community daughters, whether married or virgin, major or minor, do not succeed *in any case.* Father's collaterals, however distantly related, succeed to the property. They have got a preferential right.

(1) (1926) I. L. R. 7 Lah. 124. (2) (1920) I. L. R. 1 Lah. 284.
(3) (1932) I. L. R. 13 Lah. 404.

In the column of 'instances and memoranda' it is further noted: "This is a universal practice, that a daughter does not inherit *under any circumstances.*" (*Vide* Exhibit P/2). The question was not in any way restricted to ancestral property, and if a daughter succeeded to self-acquired property, one would have expected the fact to be mentioned in the answer. The absence of any such mention and the use of expressions such as 'in any case' and 'under any circumstances' would seem to indicate that daughters do not succeed even to self-acquired property.

The above view receives support from the remarks of the author of the Customary Law of the Ludhiana District prepared at the settlement of 1882 (*vide* paragraph 79 at page 40) to the effect that no distinction between self-acquired and ancestral property was, as a rule, recognised in the answers of the tribesmen with regard to the rules of succession, alienation, etc.

The answer to question 43 in the Customary Law of the Ludhiana District prepared in the year 1911 shows a change in the custom with regard to the rights of unmarried daughters, but, so far as married daughters are concerned, it is again mentioned in unqualified language that "they have no rights of succession whatever." It may be mentioned here that it appears from the answers to some of the questions in this volume of Customary Law that the spokesmen of the tribes did distinguish between self-acquired and ancestral property when any such distinction was recognised (see *e.g.* Q. 34 and the answer thereto). It would thus appear that the *riwaj-i-am* of

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the district is in favour of the plaintiffs, and this evidence by itself would be sufficient to shift the burden of proof to the defendants [*cf. Beg* v. *Allah-Ditta* (1)].

In addition to the entries in the *riwaj-i-am* of the district, we have also two decisions of the Punjab Chief Court, *viz. Mussammat Ishar Kaur* v. *Raja Singh* (2), and *Partap Singh* v. *Mst. Punjabu* (3), which support the above interpretation of the *riwaj-i-am* and are clearly in favour of the defendants. Both of these cases relate to *Garewal* Jats of the Ludhiana District. In the former case an elaborate enquiry was made through a local commissioner, who visited fourteen or fifteen villages and examined over a hundred witnesses and it was found that collaterals excluded daughters in the matter of succession to self-acquired property. This ruling was followed in *Partap Singh* v. *Mst. Punjabu* (3). It is true that these decisions cannot be treated as conclusive on the point. They are, strictly speaking, admissible in evidence under section 13 of the Indian Evidence Act, only as instances in which the custom in question was judicially recognised. It was open to the defendants to rebut them by adducing fresh evidence to show that the custom was not correctly ascertained in those cases or that it had since been modified. But the defendants have entirely failed to produce any such evidence. They relied merely on the oral testimony of three witnesses, which is altogether vague and inadequate to rebut the evidence in favour of the plaintiffs, which has been referred to above.

I see, therefore, no reason to interfere with the decree of the learned District Judge, and would dis-

(1) 45 P. R. 1917 (P.C.). (2) 94 P. L. R. 1911.
(3) 25 P. R. 1912.

miss the appeal. But in view of all the circumstances I would leave the parties to bear their costs in this Court.

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ADDISON J.—I agree.

A. N. C.

Appeal dismissed.

APPELLATE CIVIL.

Before Addison and Bhide JJ.

RAM LAL AND ANOTHER (DEFENDANTS) Appellants

versus

MST. SITA BAI (PLAINTIFF) } Respondents.
JAI CHAND (DEFENDANT) }

1933

March 28.

Civil Appeal No. 51 of 1928.

Hindu Law—Partition of Joint family property by family arrangement—reduced to writing—but not registered—whether final—when performed in part.

Held, that a family arrangement, if it is in fact reduced to the form of a document, requires registration, if it affects property of the value of over Rs. 100, as it does in the present case.

Ram Gopal v. *Tulshi Ram* (1), followed.

But, that the doctrine of part performance applied inasmuch as the settlement as regards the house property was fully acted upon. Partition walls were put up where necessary; new doors were opened; an application was made to the Municipal Committee admitting partition between the brothers, and the brothers paid to each other the various sums fixed by their father in order to adjust the value of the shares allotted to each, which showed conclusively that the partition of the house property was meant to be a final partition thereof, and was not merely a temporary arrangement for the convenience of the females of the family.

Mahomed Musa v. *Aghore Kumar Ganguli* (2), and *Vizagapatam Sugar Develoment Company* v. *Muthuramareddi* (3), relied upon.

(1) (1920) I.L.R. 51 All. 79 (F.B.). (2) (1915) I.L.R. 42 Cal. 801 (P.C.).
(3) (1923) I. L. R. 46 Mad. 919 (F.B.).