

APPELLATE CIVIL.

Before Addison and Bhide JJ.

1933
Feb. 20.

AHMAD YAR AND OTHERS (PLAINTIFFS) Appellants
versus
MST. FATEH BIBI (DEFENDANT) Respondent.

Civil Appeal No. 2774 of 1925.

Custom — Succession — Mussalman Tiwanas — Khushab Tahsil, District Shahpur—Unmarried sister—whether excludes collaterals.

Held, that by custom among Mussalman Tiwanas of Khushab Tahsil, District Shahpur, the unmarried sister of the last male-holder excludes his collaterals till marriage or death.

Customary Law of Shahpur District, relied upon.

Second appeal from the decree of Lala Jaswant Rai, District Judge, Shahpur at Sargodha, dated the 12th June 1926, reversing that of Sayed Shaukat Hussain, Subordinate Judge, 2nd Class, Sargodha, dated the 17th November 1925, and dismissing the plaintiffs' suit.

SHAMBU LAL PURI, for M. L. PURI, for Appellants.

M. L. BATRA, for Respondent.

ADDISON J.

ADDISON J.—Mohammad Sher, a *Tiwana* of Khushab *tahsil* in the Shahpur district, died without issue and without leaving a widow in December 1923. His land was mutated in favour of his unmarried sister *Mussammât* Fateh Bibi and his collaterals thereupon instituted a suit for a declaration that they were entitled to inherit the land by the custom of their tribe to the exclusion of his unmarried sister.

The Lower Appellate Court has held that an unmarried sister among *Tiwanas* in the Shahpur dis-

trict excludes collaterals till marriage or death. The plaintiffs' suit was, therefore, dismissed and they have preferred this second appeal after having obtained the usual certificate.

The question appears to me to be simple. In the Customary Law of this district prepared by Sir James Wilson it is stated, in reply to Question No. 26, at page 53, that all Musalmans said that, if the deceased left no father, mother, widow or daughter and no male lineal descendants through males of his father nor the widow of such lineal descendant of his father, then his unmarried sisters succeed to the whole of his property to the exclusion of his uncles. It was added that the sisters' powers were equal to those of a daughter, and that, on her death or marriage, the estate reverted to the collaterals. Sisters' sons and married sisters do not inherit. An exception is appended to this reply, which is to the effect that, in some families of *Tiwanas* and *Sayyads*, sisters do not inherit but are only entitled to maintenance. It seems to me that it was for the plaintiffs to show that they were amongst the few families of *Tiwanas* which came within the exception, and which were outside the general rule, which obviously means that amongst all Mussalman tribes, including *Tiwanas*, unmarried sisters succeed in the circumstances mentioned.

Besides the evidence afforded by the Customary Law of the district four instances have been proved in which unmarried sisters have excluded collaterals: two amongst *Tiwanas* and two amongst other tribes. There is one instance to the contrary also proved.

Nor can it be said that the *igrar nama malikan* (Exhibit P. 3), included in an early *wajib-ul-arz* of

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the district, is in favour of the plaintiffs. That refers only to gifts to a daughter, etc. during the lifetime of the father and not to succession.

On the evidence I have no doubt that the plaintiffs' claim was properly dismissed and I would dismiss this appeal with costs.

BHIDE J.

BHIDE J.—I agree.

A. N. C.

Appeal dismissed.