APPELLATE CIVIL.

Before Dalip Singh and Agha Haidar JJ.

RAM CHANDAR AND ANOTHER (DECREE-HOLDERS) Appellants

versus

DARYAOO SINGH AND ANOTHER (OBJECTORS-JUDGMENT-DEBTORS) Respondents.

Civil Appeal No. 1338 of 1931.

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Nov. 25.

Custom—liability of son in possession of father's property—for father's debts—Jats *of* Mauza *Kawali*, Tehsil *Sonepat — District Rohtak* — Riwaj-i-am — Res-judicata—*finding that a custom was not proved in a particular case.*

Held, that both ancestral and self-acquired property in the hands of the sons of a deceased judgment-debtor, a *Jat* of *Mauza* Kawali in Sonepat *Tehsil* (now included in Rohtak District, but formerly part of the old Delhi District) is liable to attachment, and sale in execution of a decree against the deceased father, the judgment-debtor.

C. A. 2245 of 1927 (unpublished) approved of in L. P. A. No. 127 of 1928, *Lakhpat Rai* v. *Raj Mal* (1), *Dhian Shah* v. *Vir Bhan* (2), and *Chiragh Shah* v. *Ganesh Das* (3), relied upon.

Held also, that a mere decision that a certain custom is not proved in a particular case is not of any particular force in a subsequent case, and would not constitute *res judicata*.

Ram Mehr v. *Pali Ram* (4), referred to.

Miscellaneous Appeal from the order of R. S. Lala *Shibbu Mal, District Judge, Karnal, dated the 5th February, 1929, reversing that of* Mirza *Abdul Rab, Senior Subordinate Judge, Rohtak, dated the 4th August, 1928, and holding that the property under attachment is not liable to attachment and sale in execution of a decree against Jot Ram deceased and directing that it should be released from attachment.*

(1) 1931 A. I. R. (Lah.) 225.
(2) 1930 A. I. R. (Lah.) 1058.
(3) 1931 A. I. R. (Lah.) 7.
(4) (1924) I. L. R. 5 Lah. 268.

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SHAMAIR CHAND, for Appellants.

KISHAN DAYAL, for Respondents.

DALIP SINGH J.—The point for determination in this appeal is whether ancestral house property in the hands of the minor sons of a deceased judgment-debtor, a *Jat* of *Mauza* Kawali in Sonepat *Tahsil*, now included in Rohtak District but formerly part of the old Delhi District, is or is not liable to attachment and sale in execution of a decree against the deceased judgment-debtor. The trial Court held that it was so liable following an unpublished ruling of this Court No. 2245 of 1927 decided on the 18th of May 1928. That ruling turned on the interpretation of an answer in the *Riwaj-i-am*. The ruling itself referred to Muhammadan *Gujars* of the same *Tahsil*, but the answer of all tribes to question 39 of the *Riwaj-i-am*, namely :—" Is a minor, whose father is dead and who has inherited the father's estates, liable for his father's debts? " was " If the son receives by way of inheritance some property from his father, then he is liable for the debt of his father." I have given a translation of the actual entry in *Urdu*. It is slightly different from the English translation which is given at page 18 of the printed paper book, but there is no substantial difference. The ruling pointed out that the question turned on the meaning of the words " *bap ki jaidad* " whether these words referred to the self-acquired property of the father only or also included the ancestral property and came to the conclusion that it also included the ancestral property.

On appeal the learned District Judge, who had this ruling before him, refused to follow it on the ground that in a Division Bench ruling, *Ram Mehr* v.

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Pali Ram (1), referring to Nahra village of Sonepat *Tahsil*, the special custom urged was not proved. I point out here to the learned District Judge that a mere decision that a certain custom is not proved is not of any particular force in a subsequent case, for obviously one man may have proved much more than another man proved and a mere negative finding would not constitute any *res judicata*. The learned District Judge is in error in saying that 13 instances were considered insufficient by the Division Bench. As a matter of fact the Division Bench stated that there were alleged to be 13 instances but they were not proved. No reference was made to the *Riwaj-i-am*. The position, therefore, before the learned District Judge was that there was a direct ruling of this Court with reference to the interpretation of the *Riwaj-i-am* and in the light of the recent rulings this shifted the onus on to the objectors and it is not possible to contend that if the onus lay on them, they have discharged it. The learned District Judge should, therefore, have followed the High Court ruling and if he thought that it was mistaken, he could have pointed that out in suitable language.

On second appeal being taken the case has been referred by the Single Judge to a Division Bench and we have heard counsel at length on the points involved in the case. I find that the Single Bench ruling referred to was taken in Letters Patent Appeal No. 127 of 1928 and the Letters Patent appeal was dismissed in preliminary hearing on 21st December 1928. Further the said ruling was referred to with approval by Mr. Justice Jai Lal in *Lakhpat Rai* v. *Raj Mal* (2), and *Dhian Shah* v. *Vir Bhan* (3). These rulings are with

(1) (1924) I. L. R. 5 Lah. 268. (2) 1931 A. I. R. (Lah.) 225.
(3) 1930 A. I. R. (Lah.) 1058.

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reference to the Jhang District, but the words in the *Riwaj-i-am* are almost exactly the same. The ruling was also approved in *Chiragh Shah* v. *Ganesh Das* (1) by Mr. Justice Tek Chand. The learned counsel for the respondents has contended that the position of the clause in the chapter on the rights of guardianship shows that no custom at all was being laid down by it and it contained only an endeavour to direct the guardian of a minor as to his rights and powers of obligation. In the alternative he contended that the question related primarily to the extent of the minor's liability, made no discrimination between ancestral and acquired property and that in view of the general custom to the contrary the words " *bap ki jaidad* " should be held to relate to the father's self-acquired property. Lastly, he contended that the question whether property which has come into the hands of minors is attachable in execution of a decree obtained against the father is not a question of custom at all but a question of procedure. None of these arguments appear to me to have much force. The last point is settled law in the province and whatever might be the merits of the argument, it is not possible to go back on the two Full Benches *Jagdip Singh* v. *Narain Singh* (2) and *Mst. Mikor* v. *Chhajju Ram* (3), which have held that this is a question of custom. So far as the second argument is concerned, nothing new has been shown to me to make me alter the view which I expressed in my previous judgment No. 2245 of 1927. So far as the first point is concerned, the position of the clause might have lent great force to the argument of the learned counsel, but the words used are unfortunately

(1) 1931 A. I. R. (Lah.) 7. (2) 4 P. R. 1913 (F.B).
(3) 17 P. R. 1919 (F.B.).

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too clear to bear the construction that he puts upon it. There is no reference to the guardian in the question at all and the question is a direct question as to the liability of the minor. The second portion of the question clearly shows that the question was with reference to the liability of the property in the hands of the minor.

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I would, therefore, accept this appeal and dismiss the objection with costs throughout and direct the Court to proceed with the execution according to law.

AGHA HAIDAR J.—I agree.

AGHA HAIDAR J.

A. N. C.

Appeal accepted.

APPELLATE CIVIL.

Before Tek Chand and Monroe JJ.

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Nov. 28.

FAZAL HUSSAIN AND OTHERS (PLAINTIFFS) Appellants,

versus

JIWAN SHAH AND ANOTHER (DEFENDANTS) Respondents.

Civil Appeal No. 3070 of 1927.

Civil Procedure Code, Act V of 1908, Section 11: Res judicata—*Jurisdiction of Court which tried previous case to try the subsequent suit — necessary — Attestation of deed — effect of—whether attesting witness is presumed to know contents of document.*

Held, that although Section 11 of the Civil Procedure Code is not exhaustive of the law of *res judicata* and the general principles underlying that rule can be invoked in reference to matters on which the section is silent or with regard to proceedings to which it does not in terms apply; as regards matters which are specifically provided for in the Code, the Courts are bound to limit the operation of the rule in accordance with the phraseology used by the Legislature and have no power