APPELLATE CIVIL.

Before Addison and Agha Haidar JJ.

MOHAMMAD ALAM AND OTHERS (PLAINTIFFS) Appellants

versus

MST. HAFIZAN AND OTHERS (DEFENDANTS), IBRAHIM AND ANOTHER (PLAINTIFFS) } Respondents.

1934

Feb. 5.

Civil Appeal No. 848 of 1926.

Custom — Succession — Jats of tahsil *Kharian — district Gujrat — Self-acquired property — Unmarried sister or collaterals of fourth degree*—Riwaj-i-am—*whether applies to self-acquired property.*

On a dispute as to the succession to the property of a sonless *Jat* of *tahsil* Kharian, district Gujrat, between his unmarried sister and his collaterals of the fourth degree, the District Judge found that the property had not been proved to be ancestral.

Held, that entries in the Customary Law of a district must be taken as referring only to ancestral property, when no mention of self-acquired property is made.

Rahmat Ali Khan v. *Mst. Sadiq-ul-nisa* (1), relied upon.

Held also, that it had been proved that among *Jats* of *tahsil* Kharian, district Gujrat, sisters are entitled as against collaterals to succeed to the non-ancestral property of their deceased brothers, for their life or till their marriage.

Ahmed Khan v. *Mst. Channi Bibi* (2), relied upon.

Second Appeal from the decree of Mian *Ahsan-ul-Haq, District Judge, Jhelum, dated 9th December, 1925, reversing that of* Sheikh *Muhammad Akbar, Subordinate Judge, 2nd Class, Gujrat, dated 10th February, 1925, and dismissing the plaintiffs' suit.*

SHUJA-UD-DIN, for Appellants.

(1) (1932) I.L.R. 13 Lah. 404. (2) (1925) I.L.R. 6 Lah. 502 (P.C.).

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MUHAMMAD MONIER and S. K. AHMAD, for Defendants-Respondents.

ADDISON J.—Jahan Dad, a *Jat* of *tahsil* Kharian, district Gujrat, died sonless in 1920. His land was mutated, 2/3rds in favour of his widow as she had to support an unmarried daughter, and 1/3rd in favour of his unmarried sister *Mussammat* Hafizan Bibi. Jahan Dad's daughter first died and then his widow *Mussammat* Sultan Begum died towards the end of April, 1921. Thereupon the whole of Jahan Dad's land was mutated in favour of *Mussammat* Hafizan Bibi, his unmarried sister, by order of the revenue authorities. On the 16th October, 1924, certain reversioners, entitled to 7/12ths of the property left by Jahan Dad, sued for possession of their share on the ground that as they were Jahan Dad's reversioners in the fourth degree, they had a superior right to the sister to the property left by him. The reversioners entitled to 5/12ths of the property were impleaded as defendants and stated before the trial Court that *Mussammat* Hafizan Bibi was entitled to remain in possession for her life or till her marriage. The trial Judge found that the plaintiffs were collaterals in the fourth degree of Jahan Dad, that the property was ancestral, and that *Mussammat* Hafizan Bibi had no right to succeed her brother even though she was unmarried. He, therefore, decreed the suit. *Mussammat* Hafizan Bibi appealed to the District Judge. Three of the plaintiffs entitled to 3/12ths of the property of Jahan Dad stated before the appellate Court that *Mussammat* Hafizan Bibi was entitled to remain in possession for her life or till her marriage. This means that the persons left

who contest *Mussammat* Hafizan Bibi's claim are only entitled to 4/12ths or 1/3rd of Jahan Dad's land.

The learned District Judge held that the property had not been proved to be ancestral and that it had been established by the custom of the tribe that an unmarried sister was entitled to succeed to property not ancestral for her life or till her marriage. He, therefore, accepted the appeal and dismissed the suit. The reversioners entitled to 1/3rd of the land obtained a certificate from the District Judge and have preferred this second appeal.

In the first place, it was contended by the learned counsel appearing for the appellants that the finding of the District Judge that the property was not ancestral *qua* the plaintiffs was wrong. This is a finding of fact which can only be attacked in second appeal on certain limited grounds. There was evidence before the learned District Judge from which he could legitimately draw the conclusion he did and he did not misdirect himself on any question of law in coming to that finding. In these circumstances the finding being one of fact must stand.

In the second place, it was argued that the finding of the learned District Judge that the unmarried sister was entitled to succeed to the self-acquired property of her brother was wrong. As held in *Rahmat Ali* v. *Mussammat Sadiq-ul-Nisa* (1), entries in the Customary Law of a District must be taken as referring only to ancestral property when no mention of self-acquired property is made. As regards self-acquired property, the same considerations do not

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apply as in the case of ancestral property. Custom on the whole is concerned with the conservation of ancestral holdings, though of course in some cases there is a customary rule placing self-acquired property in a similar category to ancestral property; but mainly Customary Law looks to ancestral property. That is the reason why it has always been held that entries in *Riwaj-i-ams* and Customary Laws of districts refer only to ancestral property unless there is specific mention of self-acquired property, and the reason is obvious.

There is a mass of oral evidence in favour of the custom that unmarried sisters succeed for their life or till their marriage to land held by their brother which is not ancestral *qua* the agnates. Fourteen *lambardars* gave evidence to this effect, five of them being Jats, four Rajputs, four Mughals and one Awan. They stated that the custom of Jats, Rajputs, Mughals and Awans was the same in that locality as regards this question. About thirty-six other witnesses gave similar evidence of whom more than twenty were Jats, five were Rajputs, four were Gujars and three Mughals. As against these fifty witnesses, two witnesses were produced on behalf of the plaintiffs, one of whom confessed judgment in favour of *Mussammat* Hafizan Bibi. It was held by their Lordships of the Privy Council in *Ahmad Khan* v. *Mussammat Channi Bibi* (1), that custom could properly be proved by general evidence given by members of the family or tribe without proof of specific instances. In the present case, there is overwhelming oral testimony that in this locality

(1) (1925) I. L. R. 6 Lah. 502 (P. C.).

amongst Jats unmarried sisters succeed for life or till their marriage to the land of their deceased brother which is not ancestral *qua reversioners*. It is a most important consideration that no less than fourteen *lambardars* have deposed to this custom. There are also two judicial instances from this *tahsil*. The first exhibit D. 5 is a judgment given on the 18th April, 1905. That was a case of Rajputs. A married sister *Mussammat* Bua Bani had succeeded her brother Mohammad Amir Khan about 25 years before the suit was instituted. The reversioners brought the suit admitting her right to succeed to her brother, but stating that they were now entitled to the land as she had married. It was held that they had failed to prove her marriage and the suit was dismissed. The second judgment, exhibit D. 7, was given on the 25th November, 1907. It was between Gujars of *tahsil* Kharian. The reversioners sued for possession of land left by Nur Alam and Sher Alam which had been mutated in the name of their sister *Mussammat* Fateh Bibi. The suit was dismissed on the ground that she was entitled to the land for her life or till her marriage. There are also three instances furnished by mutations in this *tahsil*. Exhibit D. 4, decided on the 27th August, 1918, does not give the caste of the parties. Exhibit D. 9, decided on the 4th January, 1920, is a case where a sister succeeded amongst Gujars in this *tahsil* and exhibit D. 3 is a similar instance amongst Jats in 1924.

In my judgment, this evidence is ample to establish that amongst Jats of *tahsil* Kharian, district Gujrat, sisters are entitled as against collaterals to succeed to the property of their deceased brothers,

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which is not ancestral, for their life or till their marriage. I would dismiss the appeal with costs.

AGHA HAIDAR J.—I agree.

P. S.

Appeal dismissed.

APPELLATE CIVIL.

Before Coldstream and Bhide JJ.

HIRA AND OTHERS (DEFENDANTS) Appellants

versus

MST. BUNDO, DECEASED, THROUGH HER REPRESENTATIVES (PLAINTIFF) Respondent.

1934

Feb. 6.

Civil Appeal No. 2794 of 1927.

Custom—Succession — Agriculturist — Kangra district— whether loses his civil rights on becoming a gosain.

Held, that although the general custom in this province follows the rule of Hindu Law, that by abandoning worldly affairs and entering a strictly religious or ascetic order, a person becomes civilly dead and forfeits his rights of inheritance, a clear distinction must be drawn as regards the powers of inheriting property between the members of a religious order who have, and those who have not, entirely renounced the world. The latter class are not disqualified from succession in their natural families.

Rattigan's Digest of Customary Law, para. 30, referred to.

Sadhu v. *Misri* (1), relied upon.

Held also, that there is no presumption that by becoming a *gosain* a Kangra agriculturist becomes civilly dead.

Badhawa Singh v. *Anaukha* (2), relied upon.

Maclagan's Census Report 1891, Vol. I, page 125, referred to.

Rattigan's Digest of Customary Law, para. 87, discussed.

Second appeal from the decree of Sardar *Sewaram Singh, District Judge, Hoshiarpur, dated 6th*

(1) 93 P. R. 1898. (2) 7 P. R. 1892.

August, 1927, reversing that of Mirza *Abdul Rab, Senior Subordinate Judge, Kangra, at Dharmsala, dated 30th November, 1926, and dismissing the suit of the collaterals and decreeing that of* Mussammat *Bundo.*

JAGAN NATH AGGARWAL and GULLU RAM, for Appellants.

N. C. MEHRA, SAUNDERS, M. L. BATRA and JALAL-UD-DIN, for Plaintiffs, and MUHAMMAD FAZAL AHMAD, for Defendants-Respondents.

COLDSTREAM J.—This judgment will dispose of the two appeals Nos. 2794 and 2795 of 1927. COLDSTREAM J.

One Sukh Ram, a Rathi of Palampur *tahsil* in the Kangra district, died in 1895, leaving a married son Sohnu, a widow Sundro and a daughter Bundo. His land, which he had himself acquired, was recorded by mutation in the revenue papers as the property of his son who had left his parent's house some years before. In 1906 Sohnu returned home, shaved and dressed like a *gosain* and calling himself Durga Nand Brahmchari, resided in the same house as his mother, sister and wife. Shortly after his return he sold some of the land which had been mortgaged by his mother. He died in 1910 and the land was recorded as having passed in equal shares to his widow Qubjo and his mother Sundro. Qubjo died in 1911 and mutation of the whole property was recorded in favour of Sundro. Sundro gifted the land to one Tulsi Ram who sold part of it. Sukh Ram's reversioners, however, succeeded in getting this gift declared invalid. Sundro died in 1924 and her death led to the suits from which the present appeals arise,

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one instituted by Bundo, the other by Sukh Ram's reversioners (in the fourth degree) for possession of the land. The suits were tried together by the Senior Subordinate Judge, Kangra. Bundo's case was that Sohnu by joining an order of ascetics had abandoned his civil rights during his father's lifetime and that she was therefore entitled to succeed as Sukh Ram's daughter. The reversioners contended that there had been no such relinquishment of his rights by Sohnu who was the last male owner, as recorded in the revenue records, and that they as his reversioners were entitled to succeed to his property in preference to his sister. Tulsi Ram, Sundro's donee, was impleaded in the litigation. The Subordinate Judge held that although Sohnu had become a *gosain* when he left home, the evidence showed that he had not relinquished his rights but remained in possession of his father's property, remarking that the *gosains* of the district were *gharbari gosains* whose widows succeeded to their property. He also decided that according to custom Sohnu's collaterals excluded his sister from the succession. There were other points in issue between the parties but there is no dispute upon them now. The Subordinate Judge decreed the reversioners' suit and dismissed Bundo's.

These decisions were reversed on appeal by the District Judge of Hoshiarpur who held that Sohnu had become a *Brahmchari gosain* and not a *gharbari gosain*, and abandoned worldly affairs when he left his home in his father's lifetime, and that his civil rights could not have been resuscitated. He accordingly accepted Bundo's appeals, dismissing the reversioners' suit and granting Bundo a decree for possession of the property.

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Against this judgment the reversioners have preferred the present appeals.

For the appellants Mr. Jagan Nath, who does not dispute the proposition that a religious order once adopted cannot be renounced so as to revive civil rights that have been extinguished, argues firstly that there is no direct evidence that Sohnu ever became a *gosain* and secondly that if he did, there is no proof at all that by becoming a *gosain* he abandoned his worldly rights.

There is no evidence that Sohnu was initiated into any order of ascetics but it is clearly manifest that from the beginning it has never been disputed that he had become a *gosain*, changing his name and habits. (In this connection it is significant that at one time Durga Nand's identity with Sohnu was denied by Bundo). The learned District Judge's order is definite on this point for he has recorded that before him there was no contention with regard to the fact that Sohnu became a *gosain*. But this fact does not conclude the matter. No doubt the general custom in this province follows the rule of Hindu Law that "by abandoning worldly affairs and entering a strictly religious or ascetic order a person becomes civilly dead and forfeits his right of inheritance" (Rattigan's Digest, para. 30), but, as pointed out in the Division Bench judgment of this Chief Court in *Sadhu* v. *Misri* (1) a clear distinction is to be drawn as regards the power of inheriting property between members of a religious order who have and those who have not entirely renounced the world. The latter class are not disqualified from succession

(1) 93 P. R. 1898.

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in their natural families. The true issue in such cases is: 'Did the man on becoming a *faqir* renounce the world' *Badhawa Singh* v. *Anaukha* (1). According to Maclagan's Census Report the *gosains* in Kangra were once an important trading community—they are found as land-holders in Kulu and some of them have acquired land and settled in the Plach *tahsil*. "These although they have intermarried with the people around are still a distinct though not a religious caste." (Census Report, 1891, Vol. 1, p. 125). No authority has been cited for the view that, by becoming a *gosain*, a Kangra agriculturist must be presumed to become civilly dead. Para. 87 of Rattigan's Digest of Customary Law no doubt states that by entering into a religious fraternity a person presumably ceases to be qualified to perform worldly acts and loses all rights of inheritance in his natural family, but this paragraph relates to religious institutions such as temples, *gurdwaras* and *khankas*. The question for decision in this case is one which ought to have been, but was not, put clearly in issue and the decisions of both the trial and the appellate Courts are vitiated by the fact that they are not based on any representation or evidence put forward by either of the parties on the point.

The case could not be disposed of without the decision of this question. I would accordingly accept the appeals, set aside the lower appellate Court's order and remand the cases to the trial Court for decision on the issue whether Sohnu by leaving his home and becoming a *gosain* abandoned worldly affairs. The trial Court will allow both parties to lead evidence on the issue and record that evidence

(1) 7 P. R. 1892.

and his opinion and send it to the District Judge who will also record his opinion and forward the report to this Court within three months. Costs will abide the event.

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P. S.

BHIDE J.—I agree.

BHIDE J.

Appeal accepted:
Case remanded.

LETTERS PATENT APPEAL.

Before Tek Chand and Coldstream JJ.

GULAB SINGH-BHAGWAN SINGH (AUCTION-PURCHASER) Appellant

versus

KISHEN SINGH-MAN SINGH (DECREE-HOLDER)
PRABH DAYAL-KISHEN CHAND (JUDGMENT-DEBTOR) } Respondents.

1934

Feb. 8.

Letters Patent Appeal No. 74 of 1929.

Execution of Decree—Civil Procedure Code, Act V of 1908, Order XXI, rule 92, and Order XLIII, rule 1 (j)—Application by auction-purchaser for confirmation of sale—rejected by Court as the decree had been satisfied—whether rejection amounts to an order setting aside the sale and is appealable—Proceedings for confirmation of sale—whether proceedings in execution.

In execution of a decree, the house of the judgment-debtor was put up to sale and purchased by the auction-purchaser who paid the full purchase money on 27th July, 1927. On 11th August, 1927, the judgment-debtor applied to have the sale set aside under Order XXI, rule 92, Code of Civil Procedure, but before this application could be decided the judgment-debtor and decree-holder informed the Court, on 1st September, 1927, that they had come to a settlement, and the Court, without issuing notice to the auction-purchaser, ordered the execution proceedings to be consigned to the