

In the result I would accept the appeal and set aside the order of the District Judge as I hold that this is a case in which the proviso to sub-section (ii) of section 30 applies. I would remand the case to the District Judge, directing him to frame an issue in respect of the claim of the village proprietary body, and then to forward the record to the Tribunal, etc. etc., as already stated. The appellants will get their costs in this Court. Costs in the Court of the District Judge will abide the event.

CURRIE J.—I agree.

A. N. C.

Appeal accepted;

Case remanded.

APPELLATE CIVIL.

Before Dalip Singh J.

MUSSAMMAT BHAG BHARI AND ANOTHER

(DEFENDANTS) Appellants

versus

MOHAMMAD AND OTHERS

(PLAINTIFFS) AND BUTI, DECEASED,
(THRO. HIS REPRESENTATIVES)

AND OTHERS (DEFENDANTS)

} Respondents.

Civil Appeal No. 2533 of 1926.

Custom—Succession—Self-acquired property—Awans of Mauza Mardwal, Tahsil Khushab, District Shahpur—Daughters or Collaterals of 5th degree—Riwaj-i-am.

Held [following *Khan Beg v. Mst. Fateh Khatun* (1)], that by custom among *Awans* of *Tahsil Khushab, District Shahpur*, daughters succeed to their father's self-acquired property in preference to collaterals of the 5th degree and that the presumption of the *Riwaj-i-am* has been rebutted.

1933

BISHNA

v.

COMMITTEE OF

GURDWARA

SUDHAL.

ADDISON J.

CURRIE J.

1933

Oct. 10.

1933

MUSSAMMAT
BHAG BHARI
v.
MOHAMMAD.

Second Appeal from the decree of Lala Jaswant Rai, Taneja, District Judge, Shahpur at Sargodha, dated the 22nd July, 1926, reversing that of Sheikh Bashir Ahmad, Subordinate Judge, 4th Class, Shahpur, dated the 17th February, 1926, and granting the plaintiffs the declaration prayed for.

V. N. SETHI, for R. C. MANCHANDA, for Appellants.

GHULAM MOHY-UD-DIN, for (Plaintiffs) Respondents.

DALIP SINGH J.

DALIP SINGH J.—The question really is whether a daughter would be a preferential heir to her father as against 5th degree collaterals to self-acquired property. In *Khan Beg v. Mst. Fateh Khatun* (1), after full enquiry it was held by a Division Bench of this Court that in this tribe and *tahsil* the daughters had rebutted the *onus* placed on them by the *riwaj-i-am* and excluded 6th degree collaterals. On examining that judgment the 20 instances relied on in that case would equally apply to 5th degree collaterals as to 6th degree collaterals, and of the three instances against, only one would help the present plaintiffs. In the circumstances, following the usual practice of this Court and without going into the question whether the instances collected in that decision are relevant evidence in this case, a point on which neither counsel has addressed me though invited to do so, I hold that the daughters exclude 5th degree collaterals in succession to their father's self-acquired property and the presumption of the *riwaj-i-am* has been rebutted. Hence I accept the appeal and dismiss the plaintiffs' suit. In the circumstances as defendants did not

produce all the evidence they might have done, I leave the parties to bear their own costs throughout.

A. N. C.

Appeal accepted.

1933

MUSSAMMAT
BHAG BHARI .
v.
MOHAMMAD.

DALIP SINGH J.

APPELLATE CIVIL.

Before Tek Chand and Agha Haidar JJ.

ABDUL HAQ (PLAINTIFF) Appellant

versus

SHANKAR DAS AND ANOTHER (DEFENDANTS)

Respondents.

1933

Oct. 12.

Civil Appeal No. 604 of 1930.

Civil Procedure Code, Act V of 1908, Section 47: Suit for declaration that a decree is not capable of execution as it has been satisfied—Maintainability of.

Held, that a suit for a declaration that a decree is not capable of execution as it has been satisfied, and for a perpetual injunction to the decree-holder directing him not to execute the said decree, is barred by section 47 of the Civil Procedure Code.

Ram Labhaya v. Mukanda Mal-Kapur Chand (1), followed.

Bishen Singh v. Mahindar Singh (2), disapproved.

Other cases referred to.

First Appeal from the decree of R. S. Lala Ganga Ram, Wadhwa, Senior Subordinate Judge, Gurdaspur, dated the 29th November, 1929, rejecting the plaint.

MOHSIN SHAH, for Appellant.

FAKIR CHAND, CHARANJIVA LAL and CHANDRA GUPTA, for Respondents.