

APPELLATE CIVIL.

Before Tek Chand and Skemp JJ.

BAWA SINGH AND ANOTHER (PLAINTIFFS)
Appellants.

versus

MST. PARTAB KAUR AND OTHERS (DEFENDANTS)
Respondents.

Civil Appeal No. 1477 of 1931.

Custom — Succession — Samrai Jats of Gurdaspur District who had migrated to Lyallpur District — Self-acquired property — Daughter or brother's sons — Riway-i-am.

Held, that by custom prevailing among Samrai Jats of the Gurdaspur District, the daughter of a sonless male proprietor is entitled to succeed to his self-acquired property in preference to his brother's sons.

Entries in Kennaway's *Customary Law of Gurdaspur District*, explained.

Ramzan Shah v. Sohna Shah (1); *Gurdit Singh v. Mst. Malan* (2), and Civil Appeal No. 393 of 1934, referred to.

First Appeal from the decree of Sardar Indar Singh, Senior Subordinate Judge, Lyallpur, dated 21st May, 1931, dismissing the plaintiffs' suit.

R. C. MANCHANDA and S. C. MANCHANDA, for Appellants.

JAGAN NATH AGGARWAL, J. L. KAPUR, DIN DYAL KHANNA and CHANDAR BHAN, for Respondents.

TEK CHAND J.

TEK CHAND J.—The land in dispute, which is situate in the Chenab Canal Colony, was granted by Government to *Subedar* Mangal Singh, a *Samrai Jat* of the Gurdaspur District. The *Subedar* migrated to the Colony and, after fulfilling the conditions of the grant, he acquired proprietary rights in the land. He died sonless in 1913, and on his death the land devolved

(1) 60 P. R. 1889.

(2) (1924) I. L. R. 5 Lah. 364.

on his widows, *Mussammat* Partab Kaur and *Mussammat* Basant Kaur (defendants Nos.1 and 2) on the usual life-tenure. In 1928 *Mussammat* Partab Kaur and *Mussammat* Basant Kaur gifted the land to *Mussammat* Harnam Kaur (defendant No.3), who is the daughter of Mangal Singh by *Mussammat* Partab Kaur. The donee took possession of the land and the revenue authorities sanctioned the mutation in her favour.

The plaintiffs, Bawa Singh and Desa Singh, who are the brother's sons of Mangal Singh, brought a suit in the Civil Court for a declaration that the gift was invalid and ineffectual against their reversionary rights. They admitted that the land in question was the self-acquired property of Mangal Singh, but alleged that according to the custom prevailing among the *Jats* of the Gurdaspur District, daughters were not entitled to succeed to such property. The defendants denied the plaintiffs' claim and averred that they were preferential heirs. The learned Subordinate Judge, in view of the entry in Kennaway's *Customary Law of the Gurdaspur District* compiled in 1913, placed the *onus* of the issue as to custom on the defendants. After a careful examination of the evidence produced by the parties, he held that the *onus* had been discharged. He has accordingly dismissed the suit with costs. The plaintiffs appeal. There is no doubt that the initial presumption is in favour of the correctness of the entry in the *Riwaj-i-am*. In the Answers to Questions Nos.16 and 17, as recorded in Kennaway's *Customary Law*, the general rule is stated to be that daughters are excluded by the male kindred of the deceased, however remote, and that most of the tribes, including *Jats*, recognise no distinction as to their right to inherit (1) the immov-

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able or ancestral and (2) the movable or self-acquired property of their father. It is, however, noteworthy that in the preface to the volume the compiler has remarked, that on going through the Answers he felt that many of the questions related to matters on which there really existed no custom and that people had "merely stated what the custom should be, and not what it actually is." In Appendix C, printed at the end of the volume, particulars are given of nearly 80 instances, in which daughters had inherited the property of their sonless fathers to the exclusion of collaterals among all tribes, including *Jats*, while there is not a single instance mentioned in which collaterals were preferred to daughters.

At the trial, the parties led considerable oral and documentary evidence in support of their respective contentions. Several of the instances relied upon by the respondents are not relevant, as they related to cases of sonless male-holders who had devised their acquired property by gift *inter vivos* or will to their daughters. As a male proprietor admittedly possesses unrestricted power of disposition over his self-acquisitions, cases of gifts or bequests by such a person are not of any assistance in determining the rule of succession prevailing in the tribe. I shall, therefore, leave such cases out of consideration, and shall confine myself to those instances only in which the property of the last male-holder devolved on his daughters by inheritance in preference to his collaterals, or where the widows of the last male-holders, who were holding their husbands' estates on the usual life-tenure, had made gifts to their daughters or their sons by way of "acceleration of succession." On examining the record we find that eight such instances have been clearly established on the present record.

(1) *Exhibit D.1* is a copy of a mutation relating to the death of Karm Singh, *Jat* of Gurdaspur District, who owned land in Toba Tek Singh *Tehsil*, District Lyallpur. Karm Singh owned $1\frac{1}{2}$ squares of land out of which he had disposed of one square in his life-time. The remaining $\frac{1}{2}$ square devolved on his widow *Mussammat* Mehtab Kaur for her life. In August, 1924, *Mussammat* Mehtab Kaur gifted it to her daughter by Karm Singh, named *Mussammat* Natho, and the land was duly mutated in favour of the donee, who has since been in possession. It was stated in the order of the Assistant Collector that no collateral heirs of Karm Singh were in existence. This, however, is not so, for D.W.5 Amar Singh and D.W.6 Natha Singh have deposed that a collateral of Karm Singh, named Buta Singh, was alive. It appears that Buta Singh did not contest the gift either before the revenue authorities or by civil suit. The gift was obviously in the nature of "acceleration of succession" and, therefore, this instance supports the custom as set up by the defendants.

(2) *Exhibit D.9* relates to the property of one Bag Singh, a *Kahlon Jat* of Gurdaspur District, who had settled in *mauza* Chhani Teka in the Jaranwala *Tehsil* of the Lyallpur District. On Bag Singh's death his land was mutated in the name of his widow and on her remarriage it devolved on Bag Singh's mother *Mussammat* Gulabi. In April, 1916, *Mussammat* Gulabi gifted it to *Mussammat* Taro Bibi, daughter of Bag Singh. The cousins of Bag Singh raised a dispute before the revenue authorities urging that they had a preferential right to succeed to Bag Singh's property, but after lengthy proceedings the Collector sanctioned the mutation in favour of

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Mussammat Taro Bibi, and according to the oral evidence, she has been in undisturbed possession.

(3) *Exhibit D.8* shows that by a registered deed of gift, dated the 1st of July, 1922, *Mussammat* Mohamad Bibi, widow of Sardara, *Jat* of *mauza* Kot Chandake in Toba Tek Singh *Tehsil*, Lyallpur District, who had migrated from Gurdaspur District to the Chenab Canal Colony, gifted her husband's property to her daughters. *Mussammat* Sakina Bibi and *Mussammat* Mariam Bibi. The collaterals objected to the gift before the revenue authorities, as well as by civil suit, but the gift was upheld.

(4) *Exhibit D.7* is a mutation relating to the property of Gajju, *Jat*, which, on his dying sonless, had devolved on his widow *Mussammat* Jiwani. In August, 1924, *Mussammat* Jiwani gifted it to her daughter *Mussammat* Aruri. The collaterals disputed her right to do so, claiming that they were entitled to succeed on the death of *Mussammat* Jiwani in preference to her daughter, *Mussammat* Aruri. After lengthy proceedings the Collector sanctioned the mutation in favour of *Mussammat* Aruri and the oral evidence shows that she is in possession.

(5) *Exhibit D.14* is a mutation relating to the estate of Sant Singh, a *Gil Jat* of *mauza* Babri Nangal, *Tehsil* and District Gurdaspur. Sant Singh had died sonless and his estate had devolved on his widow *Mussammat* Harkaur who by a registered deed had gifted it to her daughter *Mussammat* Guru or Gori. Mutation of the gift was duly sanctioned by the Assistant Collector, and it appears from the evidence of D.W.14 Khushal Singh, who is the husband of the donee *Mussammat* Guro, that the collaterals did not raise any dispute.

(6) *Exhibit D.13* is a mutation recording an oral gift by *Mussammat Man Kaur*, widow of *Wadhawa Singh*, a *Bal Jat* of *mauza Bal* in the *Gurdaspur District*, in favour of her daughters' sons, *Gurnam Singh* and *Kartar Singh*. The collaterals contested the right of *Mussammat Man Kaur* to gift her husband's estate to the daughters' sons alleging that they were nearer heirs to his estate in accordance with custom. Their objection was overruled and mutation duly sanctioned. Thereupon the collaterals, *Kesar Singh* and *Sadhu Singh*, brought a suit in the Civil Court for a declaration that the gift was invalid. In the trial Court both parties produced considerable oral evidence in support of their contentions and the daughters relied on a number of judicial decisions of the original and appellate Civil Courts, in which it had been found that the custom as recorded in *Kennaway's Customary Law* was not correct and that on inquiry it had been found in each case that daughters had a preferential right of succession to the non-ancestral property of a sonless *Jat* proprietor in the *Gurdaspur District*. The Senior Subordinate Judge, *Gurdaspur*, after an exhaustive review of the authorities dismissed the collaterals' suit. They preferred a first appeal to this Court (Civil Appeal No.1412 of 1931) and that appeal has been dismissed recently by this Bench.

(7) In *Exhibit D.W.19/2* the revenue authorities had, under section 21 (b) of the *Colonization of Government Lands (Punjab) Act, V of 1912*, as amended by *Act III of 1920*, to determine the rule of succession to the property of one *Bhola*, an *Arain* of *Gurdaspur District*, who had been granted land in the *Canal Colony*. *Bhola's* widow, *Mussammat Hasso*, had gifted the land to her daughter *Mussammat Mahandan*, and *Bhola's* brother had contested her

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right to do so. After lengthy proceedings the Commissioner, Multan Division, on the 6th of November, 1922, decided in favour of the daughter, declining to follow the custom as stated in the Answers to Questions 16 and 17 of Kennaway's *Customary Law*. It appears from the oral evidence produced in the case that the collaterals did not take the matter to the Civil Court and the gifted property is in possession of the daughter.

(8) *Exhibit P.W.19/1* is the judgment of Mr. Dobson, Collector, Lyallpur, dated the 14th of December, 1921, which also is a case of *Arains*, in which the question was considered in reference to section 21 (b) of Act V of 1912 (as amended in 1920) and it was held that *Mussammatt Nawab Bibi*, daughter of the original grantee Shahab Din, was entitled to succeed in preference to his near collaterals, and mutation was sanctioned accordingly.

It will be noticed that the last two instances relate to *Arains*, but the custom as recorded in Answers to Questions 16 and 17 in Kennaway's *Customary Law* is the same for *Arains* as for *Jats* and, therefore, the instances are of value for the decision of the present case.

In addition to the instances mentioned above, there are three reported cases decided by the Chief Court and this Court—all in favour of daughters. The earliest of these is *Ramzan Shah v. Sohna Shah* (1), the parties to which were *Sabzwari Sayyads* of *Shakargarh Tahsil*, and there it was found after a lengthy enquiry that daughters excluded collaterals of the 5th degree. The property in dispute in that case was ancestral *qua* the collaterals and, therefore,

this case goes very strongly in favour of the respondents.

The question was next considered by a Division Bench of this Court in *Gurdit Singh v. Mst. Malan* (1), the parties to which were *Khera Jats* of the *Batala Tahsil*. There the entry in *Kennaway's Customary Law* was considered and it was held that the "sweeping exclusion of daughters from succession to property of all sorts belonging to their father by collaterals, however, remote" was not in accordance with the actually prevailing custom.

Lastly, in Civil Appeal No.393 of 1934 *Jagat Singh v. Mussammatt Jiwan* in which the non-ancestral property of a *Lalli Jat* of *Mauza Gurala* in *Shakar-garh Tahsil* of the *Gurdaspur District*, who had migrated to the *Chenab Colony*, was in dispute, it was found after a lengthy enquiry, that not a single instance was forthcoming in support of the custom as recorded in the *Riwaj-i-am*, whereas the daughters had succeeded in proving at least 7 well-ascertained instances to the contrary.

As against all this, the plaintiffs have not been able to prove on the present record a single instance in support of their contention. The only documentary evidence, which they produced, was Exhibit P.W.1/1, which is a copy of an order of the Revenue Officer rejecting the mutation of the gift of the property of *Ratna, Lalli Jat*, to his daughter. But this gift was the subject of dispute in Civil Courts, and was ultimately decided by this Court in favour of the daughter in Civil Appeal No.393 of 1934, to which reference has been made in the preceding paragraph.

Mr. Ram Chand Manchanda has read to us the oral evidence of the witnesses produced by the

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plaintiffs, and has relied particularly on the statements of Bhan Singh (P.W.3), Bhagat Singh (P.W.4), Krishan Singh (P.W.7) and Tara Singh (P.W.9), the first three of whom are *Samrai Jats*, and the fourth a *Randhawa Jat*, all residents of Gurdaspur District. These witnesses have deposed that they were present at the preparation of the *Riwaj-i-am* in the course of the settlement of the Gurdaspur District, conducted under the supervision of Mr. Kennaway. None of these witnesses, however, was able to cite a single instance in support of the custom as recorded. This evidence, therefore, instead of supporting the case for the plaintiffs very largely detracts from the value of the entry in the *Riwaj-i-am*, as it shows that the entry was based on the mere *ipso dicta* of the persons who knew of no precedent in which the custom as stated by them had actually been followed. This lends support to the observations of the Settlement Officer referred to above, that many of these persons had stated "what the custom should be and not what it actually is."

The remaining oral evidence is vague and unsatisfactory and it is not necessary to discuss it.

I have no doubt that the learned Senior Subordinate Judge has rightly held that the defendants-respondents have succeeded in proving that, notwithstanding the entry in the *Riwaj-i-am*, the gift of *Subedar* Mangal Singh's self-acquired estate by his widows to his daughter *Mussammatt* Harnam Kaur was in the nature of acceleration of succession, and that the plaintiffs had no right to contest it.

The appeal is without force and I would dismiss it with costs.

SKEMP J.

SKEMP J.—I agree.

A. N. C.

Appeal dismissed.