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execution of any decree. The plaintiff is, however, entitled to give up the security and to obtain a simple money decree for the sum sued for which is not in dispute.

We accordingly accept the appeal with costs throughout and grant the plaintiff a simple money decree against the defendants for the sum of Rs.7,200-3-6.

A. N. C.

Appeal accepted.

APPELLATE CIVIL.

Before Tek Chand and Abdul Rashid JJ.

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Nov. 12.

MANGAL SINGH (DECEASED) THROUGH HIS REPRESENTATIVE AND OTHERS (DEFENDANTS) Appellants

versus

MST. INDAR KAUR (DECEASED) THROUGH HER REPRESENTATIVES, AND OTHERS (PLAINTIFFS) Respondents.

Civil Appeal No. 381 of 1930.

Custom — Succession — Bajwa Jats — *Sialkot District — Self-acquired property—daughter or near collaterals*—Riwaj-i-am.

Held, that by custom among *Bajwa Jats* of the Sialkot District a daughter is entitled to succeed to the self-acquired property of her father in preference to his near collaterals.

Said v. *Mst.Said Bibi* (1), *Khuda Dad* v. *Mst.Rabia Bibi* (2), *Budha* v. *Fatima Bibi* (3), *Shahamad* v. *Mst. Muhammad Bibi* (4), *Fateh Din* v. *Mst.Muhammad Bibi* (5), and *Manzur Ali* v. *Amir Ali Khan* (6), relied upon.

Riwaj-i-am, discussed.

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(1) (1929) I. L. R. 10 Lah. 489.
(2) 1930 A. I. R. (Lah.) 724.
(3) (1933) I. L. R. 4 Lah. 99.
(4) (1929) I. L. R. 10 Lah. 485.
(5) (1930) I. L. R. 11 Lah. 415.
(6) (1930) 10 Lah. L. T. 3.

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First Appeal from the decree of Sardar *Indar Singh, Senior Subordinate Judge, Lyallpur, dated 5th December, 1929, decreeing plaintiffs' suit.*

B. D. QURESHI and MANOHAR LAL KHERA, for Appellants.

S. C. MANCHANDA, for Respondents.

TEK CHAND J.

TEK CHAND J.—One Buta Singh, a *Bajwa Jat*, of the Sialkot district, was granted two squares of land in the Lyallpur district on *abadkari* terms. In July, 1901, he acquired occupancy rights in the land and an entry to that effect was made in the revenue records. He died soon after and the land was mutated in the name of his widow, *Mussammat* Karm Kaur, as occupancy tenant under the Government. This is clear from the entry made in the *jamabandi* on the 30th October, 1901. *Mussammat* Karm Kaur continued to be in possession till 1928, when she made an application to the Collector for permission to gift the land to her daughters, *Mussammat* Indar Kaur and *Mussammat* Gulab Kaur, by way of acceleration of of succession. The defendants-appellants, who are near collaterals of Buta Singh, objected and the Collector directed *Mussammat* Karm Kaur and the daughters to obtain a declaration from the Civil Court that under custom governing the tribe they were the next heirs of Buta Singh. Shortly after the order of the Collector, one of the daughters, *Mussammat* Gulab Kaur, died leaving three sons, Hazara Singh, Lakha Singh and Piara Singh, plaintiffs 2 to 4. Accordingly the present suit was instituted by the other daughter *Mussammat* Indar Kaur and the sons of *Mussammat* Gulab Kaur for a declaration that they were entitled to succeed to the self-acquired property of Buta Singh to the exclusion of the defendants.

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The first plea raised was that Buta Singh was not the last male-holder of the land in suit, he having left a son Wadhawa Singh who had succeeded to Buta Singh's estate but died a few months afterwards. It was accordingly contended that the last male-holder was Wadhawa Singh, and *Mussammat* Indar Kaur and *Mussammat* Gulab Kaur, being his sisters, were not in the line of heirs and therefore not entitled to succeed. *Secondly*, it was urged that even if it were found that Wadhawa Singh had predeceased Buta Singh, the plaintiffs' claim should fail as according to the custom prevailing in the tribe of the parties, daughters have no right to succeed to the self-acquired property of a sonless proprietor in preference to his nephews and grandnephews.

The learned Senior Subordinate Judge, after a careful examination of the evidence produced at the trial, found that Wadhawa Singh had predeceased Buta Singh and that according to custom Buta Singh's daughters were preferential heirs to his self-acquired property as against his collaterals. On these findings he decreed the suit.

The defendants have appealed and it has been strenuously argued before us that the evidence establishes that Wadhawa Singh did not die in the lifetime of his father Buta Singh, as held by the lower Court, but that he died about 4½ months after Buta Singh's death. No extracts from the Death-Register have been produced, nor is there any documentary evidence in support of the appellants' contention. The oral evidence relied upon is vague and discrepant and after considering it and hearing counsel at length, I have no hesitation in rejecting it as worthless. If Wadhawa Singh had been alive at the time of Buta Singh's death as is alleged by the appellants, there is

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no reason why the land should not have been mutated in his name. But we have it from the Special Qanungo, that Buta Singh's widow *Mussammat* Karm Kaur succeeded him and an entry was made in the *jamabandi* on the 30th October, 1901, recording her as the occupancy tenant. If the appellants' contention were correct Wadhawa Singh must have been alive on the 30th October, 1901, and there is no reason why the revenue authorities should have ignored him and entered his widowed mother *Mussammat* Karm Kaur, as occupancy tenant in place of Buta Singh, deceased. The probabilities, therefore, are that Wadhawa Singh had predeceased Buta Singh, and this is supported by a number of respectable witnesses who have given evidence for the plaintiffs and have deposed from personal knowledge that Wadhawa Singh had died about a month before the death of Buta Singh. One of these witnesses is *Mussammat* Jind Kaur, who was the widow of Wadhawa Singh and has since married out of the family. She has stated that Wadhawa Singh died one or two months prior to the death of Buta Singh and that she remarried about one year later. After a careful examination of the evidence I find myself in complete agreement with the conclusion of the learned Senior Subordinate Judge, that the last male-holder was Buta Singh and not Wadhawa Singh, as alleged by the defendants-appellants.

The finding of the learned Judge on the question of custom was not seriously contested before us. As already stated, Buta Singh was a *Bajwa Jat* of Sialkot district and had migrated to Chak No. 270-R. B., District Lyallpur, when he was granted the land in dispute. It is common ground between the parties, that succession is to be regulated according to

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the custom prevailing among the *Jats* of Sialkot. The appellants' learned counsel has referred us to page 30 of the *Riwaj-i-am* of that district prepared in the course of the Settlement of 1916, and has urged that a presumption of correctness attaches to the entries as recorded therein. It is beyond dispute that in accordance with the recent pronouncements of their Lordships of the Privy Council, Courts are bound to make an initial presumption that the custom is as recorded in the *Riwaj-i-am*, even though the entry be unsupported by instances, and that the *onus* lies on those who allege that the real custom is to the contrary. But what is the entry in this particular case? Question 47 and the Answer relied upon by the appellants run as follows :—

" *Q. 47.*—Under what circumstances can daughters inherit the immovable or ancestral, (2) movable or acquired, property of their father? Are they entitled to inherit to the exclusion of sons, or the widow, or the near male kindred of the deceased? If they are excluded by the near male kindred, is there any fixed limit of relationship within which such near kindred must stand towards the deceased in order to exclude his daughters?

" *A. 47.*—In the absence of male lineal descendants and of widows, unmarried daughters take possession of their father's property till marriage but not subsequently.

" Married daughters do not inherit in the presence of collaterals. This is the general rule, but under the influence of judicial decision some people assert that daughters succeed in preference to collaterals of the 5th or more remote degrees. Mughals assert that agnates of the 4th degree are excluded by daughters."

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It will be seen that the question is a highly complex one and comprises within its purview the rights of the daughter to inherit her father's property of all kinds and under every conceivable set of circumstances. It deals with succession to his (1) ancestral as well as (2) self-acquired, as also (3) immovable and (4) movable property. It includes cases (*a*) in which the deceased left him surviving a son, a widow and a daughter, (*b*) where he died sonless but left a widow and a daughter, and (*c*) where the contest was between the daughter and the father's kindred. In the last case, it also tries to ascertain the limit of relationship within which the collaterals exclude the daughters, but in this part of the question it is not made clear whether the reference is to ancestral or self-acquired property or both, and whether it covers movables also, irrespective of whether they are ancestral or self-acquired. There is no indication in the printed *Riwaj-i-am* that these various aspects of the problem were explained to the persons who were summoned to declare the custom, and their replies were given separately to each component part of this omnibus question. Most of the persons present must have been illiterate or men of little or no education and it is by no means clear that before giving the cryptic reply "that married daughters do not inherit in the presence of the collaterals" they realised the full significance and implications of this highly involved and all-embracing question, covering as it does all possible cases of daughter's succession in respect of property of every description, and as against every conceivable relation of the deceased. In addition to these considerations, it is worthy of note that the Answer, which is couched in such wide and general terms is followed by the significant remark by the Compiler that it was asserted before him that "under the influence of judicial

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decisions daughters succeed in preference to collaterals of the 5th or more remote degrees." Here, again, it is not stated, whether this qualification related to succession to ancestral property only, or whether it comprised within its purview self-acquired property of either description also. The Compiler then cites 8 instances, in which daughters actually excluded collaterals of varying degrees, without specifically stating whether in each case succession was to ancestral or self-acquired property.

It will thus be seen that the entry is highly ambiguous and it cannot be said with any degree of certainty that the distinction between succession to ancestral and self-acquired property was clearly present to the minds of the persons on whose statements the Answer was based.

This entry in the *Riwaj-i-am* has been the subject of consideration by different Benches of this Court and it appears that in every one of those cases it was found that the custom actually prevailing among the agricultural tribes of the Sialkot district was that a daughter succeeded to the self-acquired property of her deceased father in preference to near collaterals, see *Said* v. *Mst.Said Bibi* (1), *Khuda Dad* v. *Mst.Rabia Bibi* (2), *Budha* v. *Fatima Bibi* (3), *Shahamad* v. *Mst.Muhammad Bibi* (4) and *Fateh Din* v. *Mst.Muhammad Bibi* (5). The same view has been taken by Mr. Townsend, Financial Commissioner in *Manzur Ali* v. *Amir Ali Khan* (6).

On the present record also, the plaintiffs-respondents have proved at least two clear instances in which succession went in favour of the daughters

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(2) 1930 A. I. R. (Lah.) 724.
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(5) (1930) I. L. R. 11 Lah. 415.
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to the exclusion of the collaterals. The mutation entry Ex.P.W.3/1, coupled with the evidence of Arur Singh (P.W.3) shows that *Mussammat* Sant Kaur, wife of the witness, inherited the self-acquired property of her father Amrik Singh to the exclusion of his nephews. Similarly one Apar Singh died sonless and his daughters *Mussammat* Bal Kaur, *Mussammat* Diyal Kaur and *Mussammat* Jiwan succeeded to his self-acquired property in preference to his collaterals, see mutation, Ex.P.W.4/1, and the oral evidence of Kesar Singh (P.W.4), who is a nephew of Apar Singh and was deprived of the inheritance by the daughters.

Against all this, the defendants-appellants have not been able to prove a single instance in which collaterals had excluded daughters from inheritance to the self-acquired property of their father.

For the foregoing reasons I hold that the learned Judge of the Court below had come to a correct conclusion on the question of custom.

No other point was urged before us. The appeal fails and I would dismiss it with costs.

ABDUL RASHID J.

ABDUL RASHID J.—I agree.

A. N. C.

Appeal dismissed.