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that, where attachment and sale have taken place, the only objections of the reversioners are those open to them in an ordinary suit against a private alienation of the last holder of the property in addition, of course, to the objections which can be raised under the Civil Procedure Code.

For the reasons given we accept these appeals, set aside the decisions of the Single Judge and confirm the sales *in toto*. The decree-holders will have their costs throughout against the grandsons.

P. S.

Appeals accepted.

APPELLATE CIVIL.

Before Addison and Abdul Rashid JJ.

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April 7.

DEWAN SINGH AND OTHERS (PLAINTIFFS) Appellants

versus

MST. SANTI AND OTHERS (DEFENDANTS) Respondents.

Civil Appeal No. 1074 of 1935.

Custom—Succession—Self-acquired property—Johar Jats of tahsil Phillaur, District Jullundur—Daughters—whether succeed in preference to second degree collaterals—Indian Evidence Act, I of 1872, section 13—"Recognised"—meaning of—Judicial decisions—value of—Riwaj-i-am.

Held, that according to custom amongst Johar Jats of tahsil Phillaur in Jullundur District, daughters do not succeed to the self-acquired land of their father in preference to second degree collaterals.

Customary Law, Jullundur District, 1918, Answers to Questions 45 A and B, referred to.

Sajjan Singh v. Mst. Dhanti (1), and Civil Appeal No. 613 of 1933, followed.

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Narain Singh v. Mst. Chand Kaur (1), and Civil Appea No.2279 of 1934, not followed.

Mussammat Naraini v. Bhag Singh (2), *Ibrahim v. Mst. Zainab* (3), *Ghulam Muhammad v. Mst. Ralli* (4), and *Mussammat Santi v. Dharm Singh* (5), referred to.

Held further, that it is doubtful if the word "recognised" in section 13 of the Indian Evidence Act means 'recognised by Courts,' but that, assuming that a judicial decision is relevant under section 13 of the Indian Evidence Act, it has not the same importance as a clear cut instance of custom recognised by the parties themselves.

Second appeal from the decree of Sardar *Kartar Singh, Additional District Judge, Lyallpur, dated 28th March, 1935, affirming that of* Sheikh *Abdul Haque, Subordinate Judge, 3rd Class, Lyallpur, dated 31st August, 1934, dismissing the plaintiff's suit.*

BADRI DAS, for Appellants.

ACHHRU RAM and INDER DEV, for Respondents.

ADDISON J.

ADDISON J.—The parties are Johar Jats of Tahsil Phillaur of the Jullundur District, but the land is situated in the Lyallpur District. Lyallpur was colonised in the nineties by persons coming from all over the Punjab who carried their respective customs with them. The question is whether the appellants, who are collaterals in the second degree, are entitled to exclude daughters from succeeding to the self-acquired property of their father. The Customary Law of the Jullundur District was compiled in 1918 and is a voluminous document. According to the answers to questions 45 A and B of that Code, collaterals up to the fifth degree exclude daughters as regards ancestral or self-acquired property in the three tahsils—Jullundur, Nakodar and Phillaur, while collaterals up to the

(1) 1935 A. I. R. (Lah.) 607.
(2) (1934) I. L. R. 15 Lah. 586.
(3) 1935 A. I. R. (Lah.) 613.
(4) (1931) I. L. R. 12 Lah. 412.
(5) 1935 A. I. R. (Lah.) 834.

seventh degree in the Nawanshar tahsil exclude daughters with respect to both properties. In accordance with the decision of their Lordships of the Privy Council in *Beg v. Allah Ditta* (1), this entry is a strong piece of evidence in favour of the collaterals-appellants in support of the custom alleged by them, and as I have remarked in various other judgments this statement of their Lordships cannot be whittled away by general remarks that daughters are not usually consulted when an enquiry is made into the customs of the people or that the custom generally followed in the Punjab is to the contrary. Similarly, there is little use in attempting to reason *a priori* that the document of custom was not carefully prepared, for all that it purports to be or should be is a compilation of the statements of custom as given by the people.

The burden was thus heavy on the respondents and it remains to see how this burden has been discharged. The first instance against the daughters is Ex. P-11, a decision of a Subordinate Judge, dated 24th August, 1931 in which it was held that collaterals of the third degree excluded daughters from succeeding to self-acquired property amongst Jats in Tahsil Phillaur. There was an appeal to the District Judge against this decision where the matter was partly compromised. The widow had gifted the self-acquired property of her husband to her daughter and the collaterals had sued to have this gift set aside and were successful, as already stated, in the trial Court. The daughters appealed on the ground that they were entitled to succeed and the gift was, therefore, only an acceleration of succession. By the compromise the decree was maintained, cancelling the gift and the widow took back the

(1) 45 P. R. 1917 (P. C.).

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land from her daughter, a rider being added that the question of succession would be taken as not having been decided and could be re-opened on the death of the widow. This is certainly relevant under section 13 of the Evidence Act, though it may not have the same value as some of the other instances. Section 13 of the Evidence Act runs as follows:—

"Where the question is as to the existence of any right or custom, the following facts are relevant:—

(*a*) any transaction by which the right or custom in question was created, claimed, modified, recognised, asserted or denied, or which was inconsistent with its existence:

(*b*) Particular instances in which the right or custom was claimed, recognised or exercised or in which its exercise was disputed, asserted or departed from."

The question arises whether a judgment recognising a custom is relevant under this section. It will be seen that the word "recognised" in clauses (*a*) and (*b*) of the section comes between "claimed" and "exercised" in clause (*b*) and between "claimed" and "asserted or denied" in clause (*a*). There is no question that the claim, assertion, denial, or exercising must be an act of the parties and it is difficult to see how the word "recognised," which comes between these terms means recognition by Courts. However, there are a number of cases which treat judicial recognition of a custom as relevant under section 13 of the Evidence Act, though it seems to me that this is a doubtful matter. Certainly in my judgment a judicial decision is far from having the same importance as a clear cut instance of custom recognised by the parties themselves. In judicial decisions instances of

the alleged custom are accepted or rejected for different reasons in different cases, while, if there is a clear instance where the parties have themselves recognised the custom, there is no such confusion.

The second instance against the daughters is a very clear-cut one. It is embodied in the document Ex. P-12. The parties were Jats of Phillaur tahsil and the collaterals of the fifth degree were found entitled to exclude daughters from succeeding to their father's self-acquired property. This case actually came to this Court where it was held in *Sajjan Singh v. Mst. Dhanti* (1), that the revenue authorities acted quite correctly.

The third instance is another clear case against daughters succeeding to the self-acquired property of their father in the presence of second degree collaterals. It is Ex. P-13. This is a mutation dated 3rd May, 1932, in which the married daughter was examined on interrogatories and recognised the custom.

The fourth instance (Ex. P-14) is equally good. There again collaterals of the second degree excluded daughters from succeeding to the self-acquired property of their father. The married daughter appeared before the Revenue Officer and admitted and recognised the custom as being such.

Ex. P-17 is another mutation sanctioned on the 25th October, 1926, by which it was held that second degree collaterals were entitled to exclude three married daughters. This land has also been proved to be self-acquired.

The sixth transaction is Ex. P-18, another mutation amongst Jats from Jullundur District. Here

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again the second degree collaterals by order dated the 27th July, 1929 were held entitled to exclude the daughter from succeeding to her father. The husband of the daughter appeared and admitted that his wife was not entitled to succeed. In this case it has not been proved that the land was self-acquired, but it was land in Lyallpur and in all probability was self-acquired for reasons given at the commencement of this judgment. In any case, the custom being stated to be the same as regards ancestral and self-acquired property, this instance is not without value.

The seventh instance is Ex. P-19, another case from Phillaur tahsil, in which second degree collaterals were held on the 10th February, 1930 to exclude daughters from succeeding to the property of their father. This land has been proved to be self-acquired by the evidence of P.W.10, Dalip Singh. All these seven instances are valuable, and five of them are of very great value under the provisions of section 13 of the Indian Evidence Act and they are in accordance with the statement of custom given in the *riwaj-i-am* which in itself is a strong piece of evidence against the daughters.

The custom of other agricultural tribes in Jullundur according to the *riwaj-i-am* is the same. Instances therefore amongst other tribes are of some value, the custom followed being apparently more local than tribal.

Instance No. 8, Ex. P-21, is an instance amongst Kambohs of Phillaur tahsil where mutation was refused on the 18th December, 1926 as regards a gift by a widow in favour of her daughters of the self-acquired property of her husband.

The 9th instance, which is also amongst Kambohs of Nakodar Tahsil of the Jullundur District, is set out

in *Hussammat Naraini v. Bhag Singh* (1). This also was self-acquired property.

The 10th instance is a decision of this Court in Civil Appeal No. 613 of 1933, decided on 2nd October, 1934 amongst Jats of the Nakodar tahsil of the Jullundur District as regards self-acquired land. This is the 8th instance amongst Jats, though it is the 10th instance relied upon by the appellants.

On behalf of the daughters reliance was placed on the following instances.

Ex. D-5 is a mutation sanctioned on the 10th August, 1927, where a gift by a widow of her husband's self-acquired land was sanctioned in favour of the daughter, though the collaterals objected. As this was a gift of self-acquired land by a widow, it was contended that the collaterals need not sue till 12 years after the widow's death, but the instance is not without value as an instance in favour of daughters.

Ex. D-9, a judgment of the District Judge of Jullundur, is the second case relied upon in favour of daughters. The land was partly ancestral and partly self-acquired and it was conceded by counsel before the trial Judge that the collaterals could not contest the gift with respect to such portion of the land as was found to be self-acquired. It was attempted to raise this point before the District Judge on appeal but he refused to hear arguments on it, as it had been conceded in the trial Court. The point was not thus argued, the *riwaj-i-am* was not even mentioned or relied upon, and in my judgment this case must be rejected.

Ex. D-11 must also be rejected. There the widow gifted to her daughter her husband's self-acquired

(1) (1934) I. L. R. 15 Lah. 586.

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property with the consent of her husband's brother, the next heir. The distant collaterals objected, which obviously they had no right to do, apart altogether from the question of custom, for the husband's brother could do with the land as he liked, as he was the next heir and, on his succeeding to it, it would have been self-acquired property in his hands.

The next instance relied upon in favour of daughters is Ex. D-16—a decision of this Court reported as *Narain Singh v. Mst. Chand Kaur* (1). This was a case of Jats of Phillaur tahsil, decided about the same time as Civil Appeal No. 613 of 1933, where the opposite view was taken as already mentioned. This is the second instance in favour of daughters.

The third instance in favour of daughters is a decision of this Court in Civil Appeal No.2279 of 1934, a case amongst Jats of Jullundur tahsil.

There are also two Division Bench authorities of this Court amongst Arains, reported as *Ibrahim v. Mst. Zainab* (2), and *Ghulam Muhammad v. Mst. Ralli* (3), while there is another decision of this Court amongst Sainis reported in *Mussammat Santi v. Dharm Singh* (4). There are thus in favour of daughters three cases amongst Jats, and three cases amongst other tribes. These are the established instances on the record.

It is for the party alleging custom to prove what the custom is but, even if there had been no *riwaj-i-am*, in my judgment the evidence would establish that daughters do not succeed. With the *riwaj-i-am* in favour of the appellants, however, and eight instances amongst Jats and two amongst Kambohs established

(1) 1935 A. I. R. (Lah.) 607.
(2) 1935 A. I. R. (Lah.) 613.
(3) (1931) I. L. R. 12 Lah. 412.
(4) 1935 A. I. R. (Lah.) 834.

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in favour of the appellants and only three amongst Jats and three amongst other tribes against the appellants, there can be no question but that it has been established on the record that daughters do not succeed to the self-acquired land of their father amongst Jats of Phillaur tahsil of the Jullundur district in preference to second degree collaterals.

For the reasons given I would accept the appeal and decree the plaintiff-appellants' claim with costs of this Court, parties bearing their own costs in the trial Court, and in the lower appellate Court.

ABDUL RASHID J.

ABDUL RASHID J.—I agree.

P. S.

Appeal accepted.

REVISIONAL CIVIL.

Before Addison and Abdul Rashid JJ.

1936

April 15.

HARI CHAND AND ANOTHER (PLAINTIFFS) Petitioners

versus

DINA NATH (DEFENDANT), Respondent.

Civil Revision No. 758 of 1935.

Civil Procedure Code, Act V of 1908, Order XXII, rules 3, 4 — Whether applicable to mortgage suit — where plaintiff dies after preliminary decree, but before final decree—Abatement.

Held, that the provisions of rules 3 and 4 of Order XXII of the Code of Civil Procedure have no applicability to a case where the plaintiff in a mortgage suit dies after securing a preliminary decree, but before the passing of the final decree.

Lachmi Narain Marwari v. Balmukand Marwari (1), relied upon.

Other case-law, discussed.

(1) (1924) I. L. R. 4 Pat. 61 (P. C.).