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COLDSTREAM J.

But the fact or allegation that the statement has been reduced to writing will not preclude evidence of its having been made (subject of course to the provisions of the Evidence Act), for section 91 of the Evidence Act does not apply. To prove that the statement was made it would be necessary to call the Police Officer who heard it. If the accused has succeeded in having the original record of the statement produced, notwithstanding objections raised under sections 123, 124 or 125 of the Evidence Act, and the Police Officer has referred to it to refresh his memory under section 159, the provision of section 145 of that Act will apply.

The District Magistrate was not bound to give copies of the statements. There is, therefore, no reason for this Court to interfere.

A. N. C.

Recommendation refused.

APPELLATE CIVIL.

Before Addison and Abdul Rashid JJ.

MUSSAMMAT BEGUM BIBI AND ANOTHER (PLAINTIFFS) Appellants

versus

RAJA AND ANOTHER (DEFENDANTS) Respondents.

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Nov. 4.

Civil Appeal No. 101 of 1932.

Custom — Succession — Self-acquired property — Ranjhas *of village Midh Ranjha*, Tahsil *Bhalwal, District Shahpur—Married daughters or Collaterals of third degree*— Riwaj-i-am.

Held, that the married daughters of the last male holder, on whom the *onus* rested in face of the entries in the *Riwaj-i-am*, had failed to establish that among *Ranjhas* of village Midh Ranjha, *Tahsil* Bhalwal, District Shahpur, the married daughters were entitled to succeed to the self-acquired property of their father in preference to his collaterals in the third degree.

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Ghulam Mohammad v. Gauhar Bibi (1), not followed.

First Appeal from the decree of Sheikh *Ata Ilahi, Subordinate Judge, 1st Class, Sargodha, dated 15th October, 1931, dismissing the plaintiffs' suit.*

KHURSHID ZAMAN, for Appellants.

S. R. SAWHNEY and INDER DEVA, for Respondents.

The judgment of the Court was delivered by—

ABDUL RASHID J.—The facts of the case, which have given rise to the present appeal, have been given in great detail in the remand order of this Court, dated the 13th November, 1934, and it is unnecessary to repeat them here. The parties are *Ranjhas* by caste and belong to village Midh Ranjha, *Tahsil* Bhalwal in the Shahpur district. The only question for determination in this appeal is, whether, according to the custom prevailing among the parties, the appellants, who are the married daughters of Ziada, deceased, are entitled to succeed to his self-acquired property to the exclusion of his collaterals in the third degree?

The Customary Law of the Shahpur district prepared by Sir James Wilson in 1896, contains the following provisions regarding the rights of daughters and their issue.

"*Question*—Under what circumstances are daughters entitled to inherit? Are they excluded by the sons or by the widow, or by 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?

* * * * * *

"*Answer*—All *Mussalmans*.

(1) (1920) I. L. R. 1 Lah. 284.

A married daughter *in no case* inherits her father's estate or any share in it. An unmarried daughter succeeds to no share in presence of agnate descendants of the deceased, or of her own mother; but if there be no agnate descendants and no sonless widow, the unmarried daughters succeed in equal shares to the whole of their father's property, movable and immovable, till their marriage, when it reverts to the agnate heirs."

In view of the entries in the *Riwaj-i-am* it was for the appellants to establish that they were entitled to succeed to the property in dispute to the exclusion of the respondents who are collaterals of the last male holder in the third degree. Reliance was placed by the learned counsel for the appellants on four instances which may be examined in detail :—

(1) *Exhibit P.7—Mussammat* Sahiban, a daughter of Mohammad Hayat, caste *Jaurah*, of Ghazni, *Tahsil* Shahpur, was given a decree by *Sheikh* Rukn-ud-Din, Subordinate Judge, 1st Class on the 31st May, 1921, to the effect that she was entitled to succeed to the self-acquired property of her father in preference to the collaterals. The case was decided in favour of the daughter on the ground that, according to Article 23 of Rattigan's Digest of Customary Law, the general custom in the province was that a daughter was preferred to the collaterals as regards the self-acquired property of her father. Reliance was also placed on *Mussammat Jainan v. Nur Muhammad* (1), wherein it was held that by custom a daughter was generally preferred to collaterals in succession to " self-acquired " property of her father. This ruling was also based on Article 23 of Rattigan's Digest of Customary

(1) (1920) I. L. R. 1 Lah. 365.

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Law. The provisions of the *Riwaj-i-am* were not considered by the learned Subordinate Judge nor was any attention paid to the observations of their Lordships of the Privy Council in *Beg v. Allah Ditta* (1) to the effect that the entries in the *Riwaj-i-am* were a strong piece of evidence, and it was for the party alleging a custom contrary to that contained in the *Riwaj-i-am* to prove such custom.

(2) *Exhibit P.8*—This is a copy of an extract from the register of mutations relating to *Mauza* Sad Rahman in *Tahsil* Shahpur. It shows that a son-in-law of Amir Ali Shah was allowed by the collaterals to retain possession of the property of Amir Ali Shah on the ground that he was a near relative of the collaterals and the deceased, and had been placed in possession of the property during the lifetime of *Mussammat* Ghulam Fatima, the widow of the last male holder. In the present case it has not been alleged or established that the plaintiffs have been married to near relatives, or that any collaterals have consented that they should retain possession of their father's property.

(3) *Exhibit P.4*—In this case also the daughter of the last male holder was married to a first cousin of hers and her husband was, therefore, allowed an extra share, and the collaterals do not seem to have raised any objection to this arrangement.

(4) It was held in *Ghulam Mohammad v. Gauhar Bibi* (2) that amongst the *Sipras* of Miana Hazaro, *Tahsil* Bhera, District Shahpur, a daughter was entitled to succeed to the self-acquired property of her father in preference to collaterals of the third degree. The decision was, however, based on paragraph 23

(1) 45 P. R. 1917 (P. C.). (2) (1920) I. L. R. 1 Lah. 284.

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of Rattigan's Digest of Customary Law and it was stated that the general custom of the province was that daughters were preferred to collaterals. This decision is not of much assistance to the appellants, as it is well settled now that a party cannot rely on the existence of an alleged general custom to discharge the *onus* cast upon it in view of the entries in the *Riwaj-i-am*.

The above-mentioned four instances were the only instances relied upon by the learned counsel for the appellants. We, therefore, hold that the appellants, the married daughters of the last male holder, have failed to establish that they are entitled to succeed to the self-acquired property of their father in preference to the respondents. We, therefore, dismiss their appeal. Parties will bear their own costs in this Court.

A. N. C.

Appeal dismissed.

APPELLATE CIVIL.

Before Addison and Abdul Rashid JJ.

1935

Nov. 14.

KANTI CHANDRA MUKERJI, OFFICIAL RECEIVER AND ANOTHER (DEFENDANTS) Appellants

versus

BADRI DAS (PLAINTIFF)
MADHO RAM-BUDH SINGH AND OTHERS (DEFENDANTS) } Respondents.

Civil Appeal No. 215 of 1935.

Indian Limitation Act, IX of 1908, Articles 59, 60: Deposit by a customer with a firm of bankers — repayable on demand — Suit for its recovery — Limitation.

The plaintiff deposited his savings from time to time with the defendant-firm which carried on business under the