APPELLATE CIVIL.

Before Addison and Abdul Rashid JJ.

1935

Nov. 28.

KARTAR SINGH AND OTHERS (PLAINTIFFS) Appellants

versus

MST. PREETO AND ANOTHER (DEFENDANTS) Respondents.

Civil Appeal No. 847 of 1935.

Custom — Succession — Self-acquired property — Aulak Jats *of Amritsar District — Daughters or collaterals of third degree* — Riwaj-i-am.

Held, that daughters, on whom the *onus* rested, had failed to prove that among *Aulak Jats* of Amritsar District, the daughters are entitled to succeed to the self-acquired property of their father to the exclusion of collaterals in the third degree.

Labh Singh v. *Mst. Mango* (1) followed and endorsed, and other case-law and *Riwaj-i-am* of Amritsar District, answers to questions 60 and 61, referred to and discussed.

First appeal from the decree of Lala *Ram Rattan, Subordinate Judge, 1st Class, Lyallpur, dated 27th February, 1935, dismissing the plaintiffs' suit.*

MEHR CHAND MAHAJAN, J. L. KAPUR and YASHPAL GANDHI, for Appellants.

SHAMAIR CHAND and S. D. JHINGAN, for Respondents.

ADDISON J. ADDISON J.—The plaintiffs are collaterals in the third degree of Sohan Singh. *Mussammat* Banto, defendant No.1, is the widow of Sohan Singh, while defendants Nos.2 and 3 are her two daughters. Admittedly they follow custom. They belonged to the district of Amritsar, Sohan Singh acquired a square of land in Lyallpur District which was once a desolate tract, but was colonized when canal water

(1) (1927) I. L. R. 8 Lah. 281.

1935

KARTAR SINGH
v.
MST. PREETO

ADDISON J.

was made available for that locality. *Mussammat* Banto, Sohan Singh's widow, has gifted this square to her two daughters, and the collaterals have brought this suit for a declaration that this gift would not affect their reversionary rights after the death of *Mussammat* Banto, who undoubtedly is entitled to a life estate therein. The suit was resisted by the defendants on the plea that as the square of land was the self-acquired property of Sohan Singh, his daughters were under custom entitled to succeed upon the death of the widow and that the gift thus only accelerated their succession to the property. It was claimed on this account that the suit should be dismissed. The trial Judge has dismissed the suit on the ground that it has been established that the daughters are entitled to succeed to the self-acquired land of their father upon the death of their mother, this being the custom of *Aulak Jats* of the Amritsar District. Against this decision the plaintiffs have appealed.

Question No.60 of the Customary Law of the Amritsar District runs as follows:—

"Under what circumstances are daughters entitled to inherit? Are they excluded by the sons or the widows, 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? If so, how is the limit ascertained? If it depends on descent from a common ancestor, state within how many generations relatively to the deceased such common ancestor must come?"

The answer is that nearly all tribes say that agnates, however remote, exclude daughters. Four

1935

KARTAR SINGH v. MST. PREETO.

ADDISON J.

exceptions are given, namely, three small Muhammadan tribes, while *Khatris* and *Brahmans* of Ajnala *Tahsil* stated that they followed Hindu Law. Below this reply is a note by the compiler of the Manual, which was prepared by the Settlement Officer of Amritsar in 1914. It is to the effect that the exclusion of a daughter is so strict that even in those cases where there is no agnate at all she is deprived of succession by members of the village community who may have no relationship with the deceased. The real fact was that daughters after their marriage often went to reside far from their father's village and amongst families with whom her father's brotherhood had no sympathy. The result was that on her father's death she failed to get possession of his property and could not get any support from the people of the village, even if she had the courage to lodge a suit in the Courts.

After this note it is added that the feeling against daughters was so strong amongst certain castes that agnates, however remote, were said not to allow unmarried daughters to keep possession till their marriage or death. All other tribes, however, allowed such possession to unmarried daughters, if no son or widow were alive. It may be said here that it is commonly the custom that an unmarried daughter succeeds to a limited estate upon the death of the widow until she dies or marries.

Question 61 runs as follows :—

" Is there any distinction as to the rights of daughters to inherit (1) the immoveable or ancestral, (2) the moveable or acquired, property of their father?

The answer was that no distinction was made, and the answers to question 60 were applicable. Then follows a short sentence, which is not in the Vernacular

1935

KARTAR SINGH v. MST. PREETO.

ADDISON J.

Riwaj-i-am, but has been inserted by the Settlement Officer in the Manual of Customary Law and must be taken to be a statement of his own opinion. This sentence is " But in reality daughters have a right to exclude agnates with respect to non-ancestral property, though the right is seldom asserted for the reasons given under answer 60," *i.e.*, in the note which I have reproduced above. This sentence must, therefore, be taken not to be part of the custom stated by the people, but the opinion of the Settlement Officer, and it is obvious that this opinion must be based, not upon conditions prevailing in Amritsar, but upon the custom followed in other places; for the Settlement Officer has himself brought out very clearly in the answers to question 60 and question 61 that daughters seldom assert their rights either to ancestral or non-ancestral property. This being so, it must be taken that his opinion was based on the custom of other places and other tribes.

In fact it had become customary even in the Courts to look upon custom as a thing generally followed and to place the burden of proof upon any person who asserted that his custom was not the same as the so-called general custom of the Province. If this person succeeded in proving the custom he alleged, the name " special custom " was given to it. This obviously was an attempt to legislate and there is no doubt that it resulted in many tribes being deprived of the customs they followed, because they were not in accordance with this so-called general custom which came to be wrongly looked upon as the law in the Punjab. This is obvious also from Rattigan's Customary Law where much is made of general custom and where all customs not in accordance with it are designated " special customs." That eminent Judge, Sir Meredyth

1935.

KARTAR SINGH v. MST. PREETO.

ADDISON J.

Plowden, so far back as 1893 in *Ralla* v. *Budha* (1) pointed out that there is strictly speaking no such thing as a general custom of the Punjab applicable to persons throughout the Province like the English Common Law, while Sir Charles Roe in his Tribal Law said that he was unwilling to say of any single principle of custom that it was absolutely true of the whole of the Punjab. In spite of that, the Chief Court of the Punjab continued to recognise this so-called general custom as the law prevalent throughout the Punjab and to place the burden on any one who said that that was not his custom or law. A Full Bench of the Chief Court again pointed out in *Mussammat Bissi* v. *Hira Singh* (2) that it found itself unable to give any answer to the question referred to it for the simple reason that custom varied from tribe to tribe and from one locality to another. If it were to answer the question put to it either one way or the other, its ruling would be quoted as applicable to all persons in the Punjab governed by custom whatever their tribe or residence. The answer might be correct as regards some tribes and some localities and quite incorrect as regards others. Their Lordships of the Privy Council in *Abdul Hussein Khan* v. *Sona Dero* (3) pointed out that it was incumbent on the appellant to allege and prove the custom on which he relied. In *Mussammat Samon* v. *Shahu* (4) a Bench of this Court, consisting of the Chief Justice and Rangi Lal J., again laid down that there is no such thing as general customary law and that according to section 5 of the Punjab Laws Act, 1872, the party who relies on custom must prove in the first instance that custom furnishes the rule of decision, and secondly what that

(1) 50 P. R. 1893 (F.B.).
(2) 75 P. R. 1917, p. 300 (F.B.).
(3) (1918) I. L. R. 45 Cal. 450 (P.C.).
(4) (1936) I. L. R. 17 Lah. 10.

custom is. Another Bench in *Kesar Singh* v. *Achhar Singh* (1) pointed out that the term "General Custom of the Province" was a misnomer. This Bench also went on to hold that an entry in the *Riwaj-i-am* about the existence of a custom was a strong piece of evidence in support of that custom which cannot be subtracted from by general considerations, such as, that daughters succeed in this Province amongst the majority of tribes to the self-acquired property of their father.

The last-mentioned decision is based on *Beg* v. *Allah Ditta* (2). It was held by the Privy Council in that case that an entry in the *Riwaj-i-am* in favour of the succession of a daughter's son whose father was a *khanadamad* in preference to collaterals was a strong piece of evidence in support of such custom which it lay upon the plaintiffs collaterals to rebut, even assuming that there was a general custom of agnatic or collateral succession, in default of male issue to the exclusion of female heirs, among the agricultural tribes of the Punjab, about which the decisions of the Punjab Chief Court were by no means uniform, especially in the case of Muhammadan tribes who are endogamous. It is clear from paragraph 2 at page 172 of the report that the *Riwaj-i-am* was not followed by the Courts in India on the ground that statements recorded therein required to be proved by instances before any value could be attached to them. In spite of this decision, there have been later decisions of the Punjab Chief Court and the Lahore High Court to the effect that a *Riwaj-i-am* is of little evidentiary value unless supported by instances. Some of these were reviewed in *Labh Singh* v. *Mst. Mango* (3) by Fforde and Campbell JJ. That was a case amongst *Handal Jats*

(1) (1936) I. L. R. 17 Lah. 101. (2) 45 P. R. 1917 (P.C.).
(3) (1927) I. L. R. 8 Lah. 281.

1935

KARTAR SINGH v. MST. PREETO.

ADDISON J.

of the Amritsar District. It was held in it that a custom exists in that district amongst those *Jats*, prohibiting the succession of daughters to the inheritance of their father, whether that inheritance consists of moveable or immoveable property or property acquired or ancestral. It was said that after the decision of the Judicial Committee in *Beg* v. *Allah Ditta* (1) it could no longer be affirmed to be an established rule that a statement in a *Riwaj-i-am* opposed to so-called general custom and unsupported by instances possessed little evidentiary value. It was further held in it that it had not been shown that the *Riwaj-i-am* of 1865 or the new edition of 1914 had been in any way imperfectly compiled or was inaccurate (see pages 292 and 293 of the report). It may here be stated that the *Riwaj-i-am* of 1865 is also not in favour of daughters—a matter which has been brought out in *Labh Singh* v. *Mst. Mango* (2).

An attempt to discredit the *Riwaj-i-am* of 1865 had been made by the learned Judges who decided *Gurdit Singh* v. *Mst. Ishar Kaur* (3) but at page 304 of *Labh Singh* v. *Mst. Mango* (2) it has been made clear that in that respect *Gurdit Singh* v. *Mst. Ishar Kaur* (3) did not contain a correct exposition of the facts. This authority, therefore, is a strong piece of evidence as a judicial instance where daughters were excluded from self-acquired property by collaterals amongst *Handal Jats* of the Amritsar District.

It makes no difference that in the present case the dispute is among *Aulak Jats*. The main tribe is the same and it is only the sub-tribe that is different. In the Customary Law of the Amritsar District prepared in 1914 the sub-divisions of *Jats* who were consulted are given at page v of the preface. There were

(1) 45 P. R. 1917 (P.C.). (2) (1927) I. L. R. 8 Lah. 281, 304.
(3) (1922) I. L. R. 3 Lah. 257.

1935

KARTAR SINGH
v.
MST. PREETO.

ADDISON J.

26 sub-divisions of *Jats* including *Aulak Jats* and the other tribes consulted are also given there. The reply of all tribes was the same with the limited exceptions already mentioned, which may be neglected.

The second judicial instance in favour of the appellants and against the daughters is reported in *Santa Singh* v. *Mst. Santi* (1) where it was held that daughters or their sons are not entitled to inherit even the self-acquired property of the father or grandfather amongst *Jats* of Amritsar District.

The third judicial instance in favour of the appellants is given in *Nadhan Singh* v. *Mst. Rajo* (2). This again is a decision of a Division Bench which held that by the custom prevailing among *Sandhu Jats* of the Amritsar District daughters are ousted by collaterals of the last male owner in the matter of succession to self-acquired property.

Thakar Singh v. *Mst. Dhan Kaur* (3) was relied upon by the respondents as it was held in it that no custom was proved to exist among *Khaira Jats* of the Amritsar District whereby daughters were excluded by collaterals of the husband. It, therefore, went on to hold that they were governed by the general custom of the Punjab whereby daughters were given preference. In this case the *Riwaj-i-am* was rejected for the reason that the sub-division of *Khaira Jats* was excluded from representation and was not questioned regarding its customs when the *Riwaj-i-am* of 1914 was prepared. This is not a correct statement of what happened in 1914. The *Khaira Jats* are not mentioned amongst the 26 sub-divisions of *Jats* who were consulted as given at page v of the preface. That does not mean that they were not present and were excluded.

(1) 1933 A. I. R. (Lah.) 898. (2) 1925 A. I. R. (Lah.) 556.
(3) 1935 A. I. R. (Lah.) 408.

1935

KARTAR SINGH v. MST. PREETO.

ADDISON J.

They may have been a particularly small tribe and special mention of them was, therefore, not made. This decision, therefore, is not a good instance for two reasons; the first being that the *Riwaj-i-am* was deliberately rejected, though it purports to contain the statements of all tribes, while the second is that the Judges then proceeded to fall back upon the so-called general custom of the Punjab instead of allowing the parties to establish their own custom. It is unnecessary to go back to the authorities already mentioned beginning with *Ralla* v. *Budha* (1) to the effect that there is no such thing as general custom of the Punjab. In fact such an expression is a contradiction in terms. I would, therefore, reject this judicial instance, holding it of little or no probative value.

The next four instances are amongst *Kambohs*, a tribe which gave the same reply as the *Jats*. It was held in *Mussammat Naraini* v. *Jowahir Singh* (2) that the *Riwaj-i-am* is a public record prepared by a public officer in the discharge of his duties and is clearly admissible in evidence to prove the fact therein entered and the statements contained in the *Riwaj-i-am* form a strong piece of evidence in support of the custom. It was further held that amongst *Kambohs* of the Amritsar District daughters did not succeed in preference to collaterals to self-acquired property. A similar view was taken in *Wasakha Singh* v. *Mst. Gutti* (3), in *Mussammat Karmon* v. *Jowand Singh* (4) and *Mussammat Har Devi* v. *Mohan Singh* (5). As the custom prevailing in the Amritsar District is obviously local and not tribal, these four judicial instances are good evidence that daughters are excluded from suc-

(1) 50 P. R. 1893 (F.B.).
(2) 1926 A. I. R. (Lah.) 142.
(3) 1928 A. I. R. (Lah.) 762.
(4) 1931 A. I. R. (Lah.) 320.
(5) 1933 A. I. R. (Lah.) 379.

ceeding to the self-acquired property of their father by collaterals. There are thus seven judicial instances in favour of the exclusion of daughters amongst agricultural tribes in this locality.

In favour of the daughters the first judicial instance referred to was *Gurdit Singh* v. *Mst. Ishar Kaur* (1) where it was held that as regards self-acquired property the general custom of the Province is that a daughter excludes collaterals in succession to self-acquired property and the entry in the *Riwaj-i-am* of 1865 was not sufficient to prove a custom to the contrary having regard to the remarks as to the value of this *Riwaj-i-am* made in *Dial Singh* v. *Dewa Singh* (2). This judgment has been dealt with in great detail in *Labh Singh* v. *Mst. Mango* (3), where it is pointed out that the criticism as to the *Riwaj-i-am* of 1865 was not warranted. Again, this decision turns on the so-called general custom of the Province being a universal rule of law to rebut which was the duty of any person alleging a custom to the contrary. I have already dealt with this subject in sufficient detail and it is quite clear that the basis of the decision is wrong. This instance, therefore, may be rejected as being based on incorrect principles.

Next, it was contended that *Narain Singh* v. *Mst. Basant Kaur* (4) was in favour of the daughters, the decision there being that amongst *Sarai Jats* of the Amritsar District daughters exclude collaterals from the succession to the self-acquired property of their father. This decision appears to have been based largely upon the opinion expressed by the Settlement Officer in the 1914 Manual, doubting the truth of the

(1) (1922) I. L. R. 3 Lah. 257.
(2) 5 P. R. 1885.
(3) (1927) I. L. R. 8 Lah. 281.
(4) 1935 A. I. R. (Lah.) 419.

1935

JRTAR SINGH
v.
ST. PREETO.

ADDISON J.

custom stated in the *Riwaj-i-am* and it was said that this was entitled to weight and lessened the burden on those seeking to prove that the statement of custom by the tribe was not correct. Here again *Dial Singh* v. *Dewa Singh* (1) was relied upon, but what was said in *Labh Singh* v. *Mst. Mango* (2) appears to have been lost sight of. All that has ever been held heretofore is that it is the statements recorded in the *Riwaj-i-am* which are of value, and with all respect I am not prepared to endorse the view of this Bench to the effect that the opinion of an individual Settlement Officer is entitled to weight in discrediting those statements. It might be different if this opinion was based on instances, but none were quoted. I have already pointed out that the Settlement Officer himself recorded that opinion against daughters was very strong and that daughters rarely set up any right as against collaterals. His opinion, therefore, seems to have been based on the so-called general Customary Law of the Punjab which has no existence. This is a doubtful judicial instance.

Pir Bakhsh v. *Mst. Ghulam Bibi* (3) is again based on the view that the general rule of custom is that in succession to self-acquired land daughters exclude collaterals, paragraph 23 of Rattigan's Digest of Customary Law being relied upon in this respect. There is no discussion of the Customary Law of the Amritsar District except that it was remarked that the general trend of opinion was that daughters succeeded to non-ancestral property to the exclusion of agnates in that district. On what this remark is based is not stated. I would reject this as a judicial instance of little or no value.

(1) 5 P. R. 1885. (2) (1927) I. L. R. 8 Lah. 281.
(3) (1928) I. L. R. 9 Lah. 352.

The only other judicial instance relied upon is the decision in Civil Appeal No.1854 of 1934 where *Narain Singh* v. *Mst. Basant Kaur* (1) was followed. It was remarked in the judgment that certain of the cases relied upon were open to the criticism that they were decided without giving due weight to the entries in the *Riwaj-i-am*; but it was added that the last two cases were decided after contest. That may be so, but as I have already shown, they were influenced by considerations which were not of much evidentiary value.

There are thus two judicial instances at most in favour of daughters and their value is in my judgment not equal to the decisions reported in *Labh Singh v. Mst. Mango* (2) to the contrary. This means that there are seven good judicial instances against daughters and two of less value in their favour.

It is curious that in this case most of the instances relied upon are those of the colonists from Amritsar in the Lyallpur District.

I come now to the non-judicial instances. Ex. D.12 is a mutation in favour of her daughters by *Mussammat* Santi, a widow, of her husband's self-acquired property in the Lyallpur District. The Revenue Officer, who sanctioned the mutation, stated that the property was self-acquired, that the reversioners lived far away in the Ferozepore District and that they could seek their remedy in the civil Courts. A civil suit was brought by them, but it was ultimately withdrawn and the terms on which it was withdrawn have not been stated. This is not, therefore, a very important instance.

(1) 1935 A. I. R. (Lah.) 419. (2) (1927) I. L. R. 8 Lah. 281.

1935

BARTAR SINGH
v.
MST. PREETO.

ADDISON J.

Mutation No.100 is the next instance relied upon in favour of daughters. Chanda Singh who came to Lyallpur from Amritsar was an *Aulak Jat*. He was succeeded by his two widows, one of whom gifted her land, which was self-acquired of her husband, to her daughters. In this case it is clearly proved that the collaterals consented to the gift. It, therefore, cannot be said to be an instance establishing very much. It is always open to the collaterals to give up what they are entitled to.

The next instance relied upon is mutation No.102 according to which *Mussammat* Jawandi made a gift of some land to her daughter *Mussammat* Ram Kaur. It is clear, however, from the statement of Indar Singh (D.W.4), that proprietary rights in this land were acquired by the mother *Mussammat* Jawandi. According to all the decisions of this Court, it was the self-acquired land of the widow and this is not an instance of daughters succeeding to their father's self-acquired property.

The fourth instance relied upon is mutation No.357. This is the same instance as is reported in *Narain Singh* v. *Mst. Basant Kaur* (1) already referred to.

The next instance relied upon by the lower Court is mutation No.89. This is the same instance as *Thakar Singh* v. *Mst. Dhan Kaur* (2), the instance of *Khaira Jats* where the *Riwaj-i-am* was not looked at and the general custom of the Province followed. This instance I have already rejected.

The next instance is a judgment of the Senior Subordinate Judge, Lyallpur, dated the 16th October, 1928. The main decision in that case was that

(1) 1935 A. I. R. (Lah.) 419. (2) 1935 A. I. R. (Lah.) 408.

1935

KARTAR SINGH v. MST. PUTLIBO.

ADDISON J.

Sher Singh, the father of the plaintiffs, consented to the gift and that, therefore, his sons could not dispute it. This obviously, therefore, is not an instance in favour of the daughters.

As regards mutation No.110, there was a suit in Court and the issue framed was: "Are the daughters not entitled to succeed to the self-acquired property of their father in the presence of collaterals?" The decision of the Senior Subordinate Judge, again, purports to follow the so-called General Customary Law of the Punjab as given in paragraph 23 of Rattigan's Digest of Customary Law. This is a case decided on the wrong view of the *onus* and is of little or no value.

Mutation No.108 is in favour of a daughter, but this is a case where there is no evidence that there were any collaterals in existence. None appeared before the Revenue Officer and the witness who supported this instance, Hakam Singh (D.W.13), did not mention the existence of collaterals.

Another instance is mutation No.81. This is another case where no mention is made by any one of the existence of any collaterals.

The last instance relied upon by the Judge is mutation No. 92. Here the mutation itself mentions that no collaterals were in existence and that Gehl Singh had no heir.

Most of the instances relied upon, therefore, are not instances in favour of daughters, while the few, which are, have been decided on a wrong view of the *onus*.

A good instance against daughters is Ex. P-16, a mutation which was not sanctioned by the Revenue

1935

ARTAR SINGH
v.
1ST. PREETO.

ADDISON J.

authorities. Bishen Singh, a *Handal Jat*, who had migrated from Amritsar District to Lyallpur, gifted his self-acquired land to his daughter. The collaterals objected and the revenue authorities refused to mutate the gift in favour of the daughters.

Another good instance against daughters is Ex. P-9. This is a case amongst *Kambohs* where the District Judge of Amritsar held on the 6th October, 1917, that the daughter had failed to prove her right to succession in preference to collaterals to the self-acquired property of her father.

Another instance against daughters amongst *Kambohs* is a mutation decided by the Collector, Sir Geoffrey de Montmorency, on the 2nd July, 1918 (Exh. P-8). He held that daughters were not entitled to succeed to the self-acquired property of their father in preference to collaterals.

The *Riwaj-i-am*, therefore, is strongly in favour of the collaterals appellants. Nothing has been shown to discredit the *Riwaj-i-am* of the Amritsar District; while the instances are, on the whole, either inconclusive or in favour of the collaterals, though there are a few instances in favour of the daughters. The instances in favour of the daughters have usually been decided on a wrong view of the *onus* of proof and are not thus important.

In my judgment the presumption arising from the *Riwaj-i-am* entry has not been rebutted, and I would accept the appeal with costs throughout and decree the plaintiffs' suit.

ABDUL RASHID J.

ABDUL RASHID J.—I agree.

A. N. C.

Appeal accepted.