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 KRISHAN LAL  
 RAM LAL  
 v.  
 ABDUL GHAFUR  
 KHAN:  
 BHIDE J.

For the reasons stated above, I would dismiss the appeal, but in view of the nature of the law points involved, would leave the parties to bear their costs in this Court.

DALIP SINGH J.—I agree.

P. S.

*Appeal dismissed.*

### APPELLATE CIVIL.

*Before Tek Chand and Skemp JJ.*

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April 29.

BARYAM SINGH (DEFENDANT) Appellant.

*versus*

MST. VIDYAWATI (PLAINTIFF) AND OTHERS  
 (DEFENDANTS) Respondents.

**Civil Appeal No. 1280 of 1932.**

*Custom — Succession — Ancestral property — Jats of Mauza Mohra — Tahsil Ambala — Collaterals of sixth degree — whether exclude daughters — Riwaj-i-am.*

*Held*, that according to custom among Jats of Ambala District, collaterals of the sixth degree do not exclude daughters from succession to the ancestral property of the deceased male holder.

*Ganga Ram v. Mst. Indi* (1), and *Bholi v. Man Singh* (2), followed.

Riwaj-i-ams, referred to.

*Second Appeal from the decree of R. S. Lala Ghanshyam Dass, District Judge, Ambala, dated 19th May, 1932, affirming that of K. S. Sheikh Mohammad Hasan, Subordinate Judge, 1st Class, Ambala, dated 20th December, 1931, awarding the plaintiff possession of the land in suit, conditional on payment of Rs.1,000 to defendants Baryam Singh and others who redeemed the mortgage.*

BODH RAJ SAWHNEY, for Appellant.

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J. G. SETHI and M. L. SETHI, for Respondents. BARYAM SINGH

TEK CHAND J.—On the death of *Mussammatt* Bassi, the widow of Nandu, *Jat* of *Mauza Mohra, Tahsil* Ambala, a dispute arose as to succession to his land. The revenue authorities sanctioned the mutation in favour of the defendants who have been proved to be collaterals of Nandu in the sixth degree. The plaintiff *Mussammatt* Vidya Wati, who is the daughter of Nandu, has instituted this suit for possession, alleging that she was the next heir and that the mutation has been wrongly sanctioned in the name of the defendants. The trial Court held the land to be non-ancestral *qua* the defendants, and on the question of custom also it found in favour of the plaintiff. It accordingly decreed the plaintiff's suit. On appeal by the defendants, the learned District Judge disagreed with the finding of the trial Court as to the nature of the property and held that it had been proved to be ancestral. On the other question, he held that according to the custom prevailing in the tribe, collaterals of the sixth degree could not exclude daughters from succession to ancestral property. On this finding he dismissed the appeal.

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Baryam Singh, who is one of the six defendants in the suit has preferred a second appeal to this Court after having obtained a certificate from the learned District Judge. On the appeal coming for hearing before us, Mr. Sethi, on behalf of the respondents, challenged the finding of the learned District Judge as to the nature of the land and contended that there was no evidence on the record to show that the land was ancestral. After hearing him and examining the evidence, I am of opinion that this contention is without force. There is legal evidence on the record,

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on which the learned District Judge could have found the property to be ancestral and, therefore, his finding being one of fact cannot be re-opened on second appeal.

On the question of custom, the evidence produced by the parties is very meagre. No instance, supported by documentary or oral evidence, has been proved by either party and the learned District Judge has decided the case upon the entries in Whitehead's *Customary Law of the Ambala District* published in 1921. These entries are word for word the same as in Kensington's *Customary Law of the Ambala District* published in 1893. In answer to Question 28 which relates to the order of succession, it is stated that "though the replies vary in details, the general sense is that land devolves upon—

- (a) male lineal descendants;
- (b) the widow for her lifetime;
- (c) own brothers;
- (d) male collaterals, reckoned downwards from the *great-great-grandfather*;
- (e) failing collaterals, on the daughters."

In answer to Question 40 it is stated that "the replies should be read with the replies under Question 28. Different tribes say that collaterals traced variously for from four to ten generations will exclude the daughter, but the distinctions drawn depend more upon variations in the method of counting generations than on any real difference of custom. The commonly received custom for all tribes except *Syeds* and some *Arains* is to exclude the daughter wherever collaterals can be traced up to the *great-great-grandfather*. *Jats* and *Gujjars* are strongly inclined to go still further and to say that daughters never succeed, the land going to the proprietors of the *patti* rather than the

daughter, but this is doubtful as an actual custom, though correct as to the feeling of the people.”

These entries have been considered by a Division Bench of this Court in *Ganga Ram v. Mst. Indi* (1), as meaning that collaterals beyond the fifth degree were not entitled to exclude the daughter from succession to ancestral property. That was a case of *Jats* of *Ambala Tahsil*. In *Bholi v. Man Singh* (2), which was a case among *Hindu Rajputs* of *Naraingarh Tahsil*, to whom also the entries in the *Customary Law* above cited refer equally with the *Jats*, it was held that no custom had been established by which daughters were excluded from succession to ancestral property by male collaterals related in the sixth degree. It was further held that the burden of proof as to whether remote collaterals, such as of the 6th degree, excluded daughters, rested on the party who asserted its existence.

Following those authorities, I hold that the defendants, on whom the *onus* of this issue lay, have failed to discharge it. I would accordingly affirm the judgment and decree of the learned District Judge and dismiss this appeal with costs.

SKEMP J.—I agree.

P. S.

*Appeal dismissed.*

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(1) (1925) I. L. R. 6 Lah. 193. (2) 80 P. R. 1903