LETTERS PATENT APPEAL.

Before Addison and Din Mohammad JJ.

MOHAMMAD NAWAZ SHAH AND OTHERS (JUDGMENT-DEBTORS) Appellants

versus

RAM DAYAL-KARAM CHAND (DECREE-HOLDER) Respondent.

1935

April 24.

Letters Patent Appeal No. 137 of 1934.

Custom — Khaggas of Montgomery Tahsil (whose village was subsequently transferred to the Lyallpur District) — Ancestral land in the hands of minor son — whether liable for the debt of his deceased father — Civil Procedure Code, Act V of 1908, section 53 — whether applies to persons who follow custom.

Held, that the right of a reversionary heir under custom is a right in property, the enjoyment of which is deferred until the present holder has died. The reversioner does not inherit from the last owner but from the common ancestor from whom his interest is derived and he succeeds, whether he is a son or not, by virtue of his connection with the common ancestor.

Jagdip Singh v. *Bawa Narain Singh* (1), and *Mussammat Mikor* v. *Chhaju Ram* (2), followed.

Ram Chandar v. *Daryaoo Singh* (3), distinguished.

It is a matter of custom to be established by the person asserting it that the person in possession of ancestral property, which it is sought to attach, is the legal representative of the deceased debtor and that the property is deemed to be the property of the said debtor, *i.e.*, that the successor of the debtor inherits the property from the debtor and is his legal representative as that term is usually understood and that the property can, therefore, be attached to satisfy a decree against the last holder thereof.

Held, that in this case the decree-holder, on whom the *onus* rested, had failed to prove that the ancestral land in the hands of the minor sons, belonging to the *Khaggas* tribe of

(1) 4 P. R. 1913 (F. B.). (2) 17 P. R. 1919 (F. B.).
(3) (1933) I. L. R. 14 Lah. 365.

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the Montgomery *Tahsil* of the Montgomery District (whose village subsequently became a part of the newly formed Lyallpur District) is liable to be attached in order to satisfy the decree passed against the estate of their deceased father.

Riwaj-i-am of 1872 of Montgomery *Tahsil*, referred to.

Held further, that the provisions of section 53 of the Civil Procedure Code, were specially enacted to meet a case like the present as regards sons and other descendants of a deceased ancestor under *Hindu Law*, but there is no similar provision in any enactment for persons who follow custom. The question, therefore, has always to be decided afresh in each case when custom is the rule of decision.

Letters Patent Appeal from the judgment of Currie J., passed in Civil Appeal No.562 of 1934, on 10th October, 1934, modifying that of Lala *Baij Nath, Subordinate Judge, 1st Class, Lyallpur, dated 3rd January, 1934, by holding that though the land is ancestral, it is liable to attachment in execution of the decree.*

M. C. MANCHANDA and RATTAN LAL CHAWLA, for MEHR CHAND MAHAJAN, for Appellants.

KISHEN DAYAL, for Respondent.

ADDISON J.

ADDISON J.—The firm Ram Dayal-Karam Chand obtained a decree against the representatives of Mohammad Shah, deceased. In execution two landed estates, one belonging to his minor sons and the other to his widow, were attached. The judgment-debtors objected on the ground that the land was ancestral, that *Khaggas* to which tribe they belonged were governed by custom and that ancestral land in the hands of the sons was not, therefore, liable to attachment in execution of a decree passed against them as the representatives of their deceased father. It was

also pleaded that the widow *Mst.* Akhtari Begum had a lien on the estate on account of her dower and finally, that it should be held that there was a charge of Rs.4,000 on account of a mortgage which had been redeemed by Sir Zafar Ali for the benefit of the minor sons of the deceased, their mother being his daughter. The executing Court decided the issues in favour of the objectors and the land was released from attachment. A Judge of this Court on appeal held that the land was ancestral but that it was liable, under custom, in the hands of the sons to be attached in execution of the decree against their father's estate. He, however, held that the widow had a dower charge amounting to Rs.10,000 on the property and that the sum of Rs.4,000 paid by Sir Zafar Ali to redeem a mortgage for the benefit of his minor grandsons must also be held to be a charge on the property. Subject to these limitations it was held that though the land was ancestral it was liable to attachment in execution of the decree. Against this decision this Letters Patent Appeal has been preferred.

The *kabin-nama* or dower-deed is quite clear and it shows that 931 *kanals* 4 *marlas* of land were given to the wife as part of her dower. In addition, the sum of Rs.20,000 was fixed as dower. The sum of Rs.10,000 mentioned by the appellate Court appears to be a mistake. The 931 *kanals* 4 *marlas* of land are already entered in the name of the widow and this area of land must be excluded in any circumstances from attachment while the remaining land must be held to be subject to charges of Rs.24,000, if it can be attached. This question is important only if we hold that the land can be attached in the hands of the minor sons under custom.

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The Courts below have held that the land is ancestral and we are in agreement with that finding. The only question, therefore, left to be determined is whether it can be attached in the hands of the minor sons in order to satisfy the decree passed against the estate of their deceased father.

There are two Full Bench decisions of the Punjab Chief Court on this subject, namely, *Jagdip Singh* v. *Bawa Narain Singh* (1) and *Mussammat Mikor* v. *Chhaju Ram* (2). These lay down that the right of a reversionary heir under custom is a right in property, the enjoyment of which is deferred until the present holder has died. A reversioner does not inherit from the last owner but from the common ancestor from whom his interest is derived. In fact, the agnatic theory is the basis and foundation of all custom in the Punjab and the reversioner, whether he is a son or not, is always looked upon as succeeding to ancestral land by reason of his descent from the common ancestor and not as inheriting it from the last holder. This fundamental conception is frequently lost sight of. As it was expressed in *Mussammat Mikor* v. *Chhaju Ram* (2), it is open to a litigant to plead a custom that the person in possession of ancestral property which it is sought to attach, is the legal representative of the deceased debtor and that the property is deemed to be the property of the said debtor, that is, that the successor of the debtor inherits the property from the debtor and is his legal representative as that term is usually understood. The idea of a reversioner succeeding to ancestral property as the legal representative of a deceased person is ordinarily foreign to the foundation on which all custom rests.

(1) 4 P. R. 1913 (F. B.). (2) 17 P. R. 1919 (F. B.).

He succeeds by virtue of his connection with the common ancestor. It is a matter of custom to be established by the person asserting it that ancestral land coming to a reversioner is liable to be attached to satisfy a decree against the last holder thereof. This was recognised also in *Ram Chandar* v. *Daryaoo Singh* (1).

The ground being thus cleared it is possible to consider and determine the question involved in this appeal. In 1872 when the village of the parties was in the Montgomery *Tahsil* of the Montgomery District, a *Riwaj-i-am* was drawn up. There were only twenty-two questions and answers in this statement of custom, and the custom of *Khaggas* was definitely recorded in it. It follows necessarily that *Khaggas* are governed by custom, and this was so held by the Courts below. Before the executing Court no reference was made to a Customary Law prepared in 1925 of two other *Tahsils* of the Montgomery District, namely, Pakpattan and Dipalpur. Apart from the *Riwaj-i-am* of 1872 no Customary Law has ever been prepared for the Montgomery *Tahsil*, in which the village of the parties was once situated. When canal irrigation was brought into the wastes of the Montgomery *Tahsil*, the new District of Lyallpur was formed and the village of the parties is now in the Lyallpur District, where also no statement of custom has ever been drawn up. It follows that the Customary Law prepared for the Pakpattan and Dipalpur *Tahsils* in 1925 cannot be considered as containing a statement of the custom of these *Khaggas* who were never resident in those *Tahsils*. For this reason alone this appeal must be accepted on the ground that no custom has been made

(1) (1933) I. L. R. 14 Lah. 365, 368 (bottom).

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out by which ancestral land in the hands of minor sons is liable to be attached to meet a decree against their father's estate. There is no other evidence on this question worthy consideration. In any case, the Judge of this Court who heard the appeal, if he considered this Customary Law of the other *Tahsils* prepared in 1925 relevant, should have given the opposite party an opportunity to rebut it, as it was not relied upon (and rightly so) or even mentioned in the Court of first instance.

The provisions of section 53 of the Civil Procedure Code were specially enacted to meet a case like the present as regards sons and other descendants of a deceased ancestor under *Hindu* Law, but there is no similar provision in any enactment for persons who follow custom. The question, therefore, has always to be decided afresh in each case when custom is the rule of decision.

Even if the answer to question 32 in the 1925 compilation regarding Pakpattan and Dipalpur *Tahsils* of the Montgomery District be held to apply, I do not consider that it lays down that ancestral land can be attached by the Courts in the hands of minor sons to meet their father's debt. The reply is that a "minor whose father is dead and who has inherited his father's estate, is liable for the payment of his father's debts. The property of the minor cannot be alienated to a third party during his minority till some arrangement has been made for the payment of such debts. A minor is liable for his father's debts only to the extent of the property he receives from him." As already pointed out, under custom a son does not inherit from his father but takes the estate by virtue of his connection with the common ancestor. This question

was framed in reality in order to show what power a guardian has to sell ancestral land in the hands of a minor. The answer does not imply that the minor succeeds his father as his legal representative. Although for the most part in the Punjab ancestral land is not liable under custom to be attached for the debts of the last holder, it is frequently the case that these debts are met by the sons selling such land, though they cannot be compelled to do so, and custom recognises this act as being for necessity. The answer to the question means that the guardian has the same power in this respect as the son when he attains majority.

Further, in the statement of custom relied upon, it is nowhere said that a major son or a distant reversioner, who succeeds to ancestral land, is liable to pay the debts of the last holder. There is thus no foundation for the proposition that ancestral land in their hands can be attached. It would be a ridiculous state of affairs to hold that ancestral land in the hands of a minor son can be attached to pay the debts of the last holder but that such land in the hands of a major son or distant reversioner cannot be so attached. This shows most convincingly that the reply relied upon is merely one enabling guardians to sell ancestral land in the hands of minors, just as the minors can do, if they so care, when they attain majority. It does not mean that the minor inherits the land from his father as his legal representative or that the land is liable to be attached in execution of a decree against his father's estate.

I am aware that a different view has been taken by a Division Bench of this Court in *Ram Chandar* v. *Daryaoo Singh* (1) with regard to the custom of Rohtak

(1) (1933) I. L. R. 14 Lah. 365.

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District, but that decision can have no effect on this case, the question of custom having to be decided each time as it arises.

For the reasons given, I would accept this Letters Patent Appeal with costs, set aside the decision of the Single Judge and restore the decision of the executing Court releasing the land from attachment.

DIN MOHAMMAD J.

DIN MOHAMMAD J.—I agree.

P. S.

Appeal accepted.

PRIVY COUNCIL.

Before Lord Alness, Sir John Wallis and Sir George Rankin.

1936

Jan. 22

HEM SINGH AND OTHERS—Appellants

versus

MAHANT BASANT DAS AND OTHERS—Respondents.

SHIROMANI GURDWARA PARBANDHAK COMMITTEE—Appellant

versus

RAM PARSHAD AND OTHERS—Respondents.

SAME—Appellant

versus

FAUJU RAM AND OTHERS—Respondents

On Appeal from the High Court at Lahore.

P. C. Appeals Nos. 10, 108 and 109 of 1932.

High Court Appeals Nos. 559 of 1923 (1) and 1921 of 1928, etc. (2).

Appeal — Right of appeal to Privy Council — Sikh Gurdwaras Act, VIII of 1925, sections 34, 37 — Jurisdiction of High Court — whether special.

The provision in the Sikh Gurdwaras Act that appeals from the Tribunal constituted under the Act are to be heard by a Division Bench of the High Court and not by a Single Judge does not indicate that the High Court in dealing with

(1) See (1926) I. L. R. 7 Lah. 275. (2) See (1931) I. L. R. 12 Lah. 497.