

clear that the *Jats* have since then modified their custom and there are no particular reasons why the *Sayads* who live in the same locality should not have made a similar modification. Anyhow, I am of opinion, that the defendant on whom the *onus* lay failed to prove that his adoption was valid by custom. There was no other point argued before us. I would, therefore, dismiss both the appeals with costs.

MONROE J.—I agree.

A. N. C.

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 KHAIIR ALI
 SHAH
 C.
 IMAM SHAH.
 RANGI LAL J.

MONROE J.

Appeal dismissed.

APPELLATE CIVIL.

Before Addison and Din Mohammad JJ.

NARAIN SINGH AND OTHERS (DECREE-HOLDERS)

Appellants

versus

AHMAD YAR KHAN (JUDGMENT-DEBTOR)

Respondent.

Civil Appeal No. 24 of 1935.

Custom — Tiwanas of Shahpur District — Ancestral land — in hands of son — whether liable for the debts of his father — Riway-i-am of District Shahpur, Answer to Question 10, section IV.

J. S. obtained a money decree against M. K., a *Tiwana* of the Shahpur district. Both decree-holder and judgment-debtor died. The legal representatives of the decree-holder took out execution against the son of the judgment-debtor and attached a certain area of ancestral land in the possession of the son. The latter objected and his objection was successful in the lower Court and the land was released from attachment. The decree-holder appealed to the High Court and pleaded that where a male owner enjoyed unrestricted power of alienation of ancestral property, as in this case, such property is liable in the hands of the son for the debts of his father even

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if no charge had been created on it in the lifetime of his father.

Held, that on the present record the decree-holder on whom the *onus* rested had failed to prove that among the *Tiwanas* of the Shahpur district, a male owner has by custom an unrestricted right to alienate his ancestral land.

Held further, that assuming that such a custom exists, this does not necessarily take the case outside the principle laid down in the Full Bench rulings, *Jagdip Singh v. Barwa Narain Singh* (1), and *Mussamat Mikor v. Chhaju Ram* (2). A reversioner does not inherit ancestral property from the last owner, but from the common ancestor from whom his interest is derived, even if he is the son of the last owner, and it would, therefore, be for the decree-holder to prove that the son of the debtor inherited the property from the debtor and is his legal representative as that term is usually understood—and this he had failed to do.

It was contended on behalf of the decree-holder that the son in this case might be looked upon as the legal representative of his father by reason of the answer to question 10 in section IV of the General Code of Tribal Custom in the Shahpur District which states that "a minor who has inherited his father's estate is liable for his father's debts" and that "previous to his coming of age the guardian may arrange for their payment."

Held (repelling the contention) that the answer simply means that the guardian of a minor can, just as the minor can when he attains majority, pay his father's debts and sell the ancestral land which came to him through his father in order to do so. It does not mean that he succeeds his father as his legal representative and can be *compelled* to meet the debts by selling the ancestral land.

Nowhere is it said that a reversioner or even a major son is liable to pay the debts of the last holder out of the ancestral land which came to him through the common ancestor and that such land can be attached and sold in their hands to meet those debts.

(1) 4 P. R. 1913 (F. B.).

(2) 17 P. R. 1919 (F. B.).

Miscellaneous First appeal from the order of K. S. Agha Mohammad Sultan Mirza, Senior Subordinate Judge, Shahpur at Sargodha, dated 7th November, 1934, holding that the existence of the special custom is not proved and releasing from attachment the ancestral land mentioned in the objection-petition of the judgment-debtor.

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R. C. SONI and ACHHRU RAM, for Appellants.

GHULAM MOHY-UD-DIN and NIAZ ALI, for Respondent.

ADDISON J.—Jaimal Singh obtained a money decree against *Khan Bahadur Muzaffar Khan*. Both the decree-holder and judgment-debtor are dead. The legal representatives of the decree-holder took out execution against the son of *Khan Bahadur Muzaffar Khan*, namely, *Malik Ahmad Yar Khan* and attached a certain area of ancestral land. It was objected by *Malik Ahmad Yar Khan* that this ancestral property could not be attached in view of the Full Bench decisions in *Jagdip Singh v. Bawa Narain Singh* (1) and *Mussammat Mikor v. Chhaju Ram* (2). His objection has succeeded and the land has been released from attachment. Against this decision the representatives of the decree-holder have appealed.

ADDISON J.

It is admitted that the judgment-debtor and his family are *Tiwanas*, who are governed by custom. Only in one respect it is contended that the custom which governs them is at variance with the custom of the majority of tribes in the Punjab. This exception is said to be as regards their right to alienate land without restriction. This contention is based on a decision of this Court reported as *Sher Muhammad Khan v. Dost Muhammad Khan* (3). A decision on

(1) 4 P. R. 1913 (F. B.).

(2) 17 P. R. 1919 (F. B.).

(3) (1924) 78 I. C. 451.

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custom, however, is not a final decision. It only becomes a relevant instance under section 13 of the Evidence Act that such a right has been asserted and recognised. It is always necessary to assert and prove what the custom is; and there is not sufficient evidence on the present record to establish the unrestricted right of *Tiwanas* to alienate their ancestral land. It is doubtful, therefore, whether it can be said that such a custom does exist.

Assuming, however, that it does, it does not seem to me that this necessarily takes the case outside the principle laid down in the two Full Bench judgments referred to. The right of the reversionary heir under custom is a right in property the enjoyment of which is deferred, and it is vested in interest though only in the sense that the person in whom it inheres has a present fixed right to its future enjoyment. A reversioner does not inherit from the last owner but from the common ancestor from whom his interest is derived. Amongst *Tiwanas*, who do not follow Muhammadan Law but custom, widows only succeed for their lives and other females take under special conditions. They do not take an absolute interest, but they defer the enjoyment of the estate by a reversioner. Everywhere under custom there is a right of alienation; in some cases that right is greater than in others but the agnati theory is the basis and foundation of all custom, and the reversioner, whether he is a son or not, is always looked upon as inheriting through the common ancestor and not from the last owner. As it was expressed in *Mussamat Mikor v. Chhaju Ram* (1) 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, *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. 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 in the Punjab rests: he succeeds by virtue of his connection through the common ancestor.

It was further contended, however, that the son in this case might be looked upon as the legal representative of his father by reason of the answer given to question 10 in section IV of the General Code of Tribal Custom in the Shahpur District compiled in 1896. In my judgment this is not so. This section deals merely with the relationship between guardians and wards and the powers under custom of the *de facto* guardian. The question is as follows:—

“ Is a minor whose father is dead, and who has inherited the father’s estate, liable for his father’s debts? ”

“ If such debts are not payable till the minor comes of age, can the property inherited be alienated in the interval? ”

The answer is as follows:—

“ All tribes except *Khokhars*:—

A minor who has inherited his father’s estate is liable for his father’s debts. Previous to his coming of age the guardian may arrange for their payment.”

The reply of *Khokhars* was the same, except that it was added that the guardian cannot sell the minor’s land to pay the father’s debts.

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It seems to me that what this answer means is that the guardian of a minor can, just as the minor can, when he attains majority, pay his father's debts and sell the ancestral land which came to him through his father in order to do so. It does not mean that he succeeds his father as his legal representative. Although for the most part in the Punjab ancestral land is not liable under custom 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. The answer to the question means that the guardian has the same power in this respect as the son has when he attains majority.

It seems to me that it is impossible to carry the answer in question further than I have done. Nowhere is it said that a reversioner or even a major son is liable to pay the debts of the last holder out of the ancestral land which came to him through the common ancestor and that such land can be attached and sold in their hands to meet those debts. Surely a distant reversioner and major son ought to be liable if a minor son is. In the present case, the son is a major. This shows in a convincing way that the reply relied upon is merely a reply stating the power of guardians and not showing that ancestral land is liable to attachment and sale to pay the debts of the last holder thereof.

I am clear that it has not been established that the son succeeded as the legal representative of his father and I hold that the ancestral land is, therefore, not liable to be attached in execution of a decree against the father. I would, therefore, dismiss this appeal with costs.

DIN MOHAMMAD J.—I agree.

P. S.

DIN
MOHAMMAD J.

Appeal dismissed.