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 NOT RAM
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 MST. KISHAN
 DEVI.
 TEK CHAND J.

fore, that the plaintiffs and the deceased were not members of a compact village community, nor are they cultivators by profession.

In my opinion, the Judges of the Courts below have correctly found that the plaintiff-respondent had succeeded in discharging the *onus* which lay on her to prove that a daughter was a preferential heir to the non-ancestral property of her father as against collaterals of the 8th degree. I would accordingly dismiss this appeal with costs.

SKEMP J.

SKEMP J.—I agree.

A. N. C.

Appeal dismissed.

APPELLATE CIVIL.

Before Addison and Din Mohammad JJ.

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 March 8.

BAHADUR SHAH AND ANOTHER (PLAINTIFFS)

Appellants

versus

ZULFIQAR SHAH AND OTHERS (DEFENDANTS)

Respondents.

Civil Appeal No. 1967 of 1930.

Custom — Succession — Pagwand or Chundawand — Sayads of Kotla Sayyadan, District Shahpur — Riway-i-Am.

Held, that according to custom among *Sayads* of village Kotla Sayyadan, District Shahpur, the rule of succession is *pagwand* and not *chundawand*.

Riway-i-Am of the Shahpur District, referred to.

Rattigan's Digest of Customary Law, Exception 2 to paragraph 7, not followed.

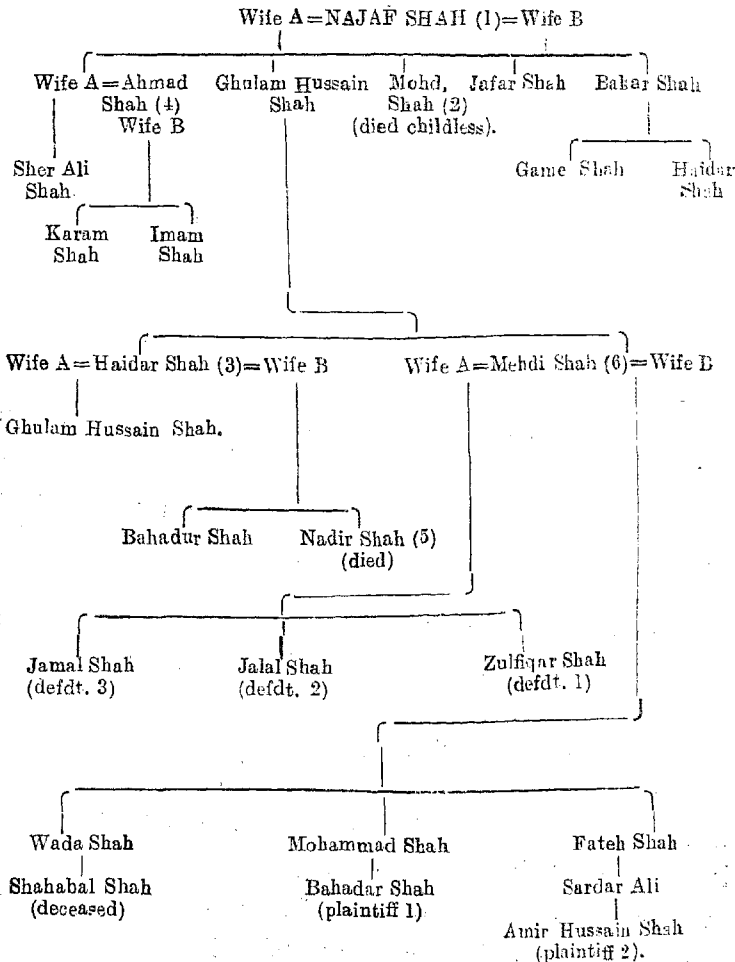
Second Appeal from the decree of Lala Devi Dayal, Dhawan, District Judge, Shahpur, at Sargodha, dated 11th August, 1930, reversing that of Mirza Zahur-ud-Din, Junior Subordinate Judge, Sargodha, dated 30th August, 1929, and dismissing the plaintiffs' suit.

GHULAM-MOHI-UD-DIN; for Appellants.

M. C. SUD, for S. L. PURI, for Respondents.

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The judgment of the Court was delivered by— **BAHADUR SHA**
ADDISON J.—The following pedigree-table is **v. ZULFIQAR**
 necessary for the purposes of this second appeal :— **SHAH.**



Mehdi Shah had two wives and three sons by each wife. On his death, his property was mutated in favour of the six sons in equal shares. Later, the descendants of one wife separated from the descendants of the other and there was a partition. Shahabal Shah, grandson of Mehdi Shah, has now died. The plaintiffs are his two cousins and are descended from

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the same wife as the deceased Shahabal Shah. Shahabal Shah's land has been mutated in equal shares between the descendants of both wives according to the *pagwand* rule. The plaintiffs claim that as the *chundawand* rule is followed in their family they, being relatives of the whole blood, are entitled to succeed to Shahabal Shah's estate to the exclusion of the descendants of the other wife. They also added that they were entitled to succeed to him on the further ground that they had been associated with him in cultivation after the partition between the descendants of the two wives had been effected. The trial Court decreed the claim. The learned District Judge reversed his decision and dismissed the suit. The plaintiffs applied to him for a certificate under section 41 (3) of the Punjab Courts Act and the District Judge granted them a certificate for the purpose of a second appeal to this Court on the question whether the rule of succession prevailing amongst the parties, who are *Sayads* by caste, is *pagwand* or *chundawand*. On this certificate, the plaintiffs instituted the appeal which is before us.

The parties are *Sayads* of village Kotla Sayyadan near Shahpur and are admittedly governed by custom. The entry in the *Riwaj-i-am* of the district, Ex. D.5, is to the effect that when property devolves on brothers after their father's death, all of them succeed in equal shares according to the *pagwand* rule. If the property is subsequently partitioned among all the brothers and one of them dies sonless, his share devolves on all the brothers according to the *pagwand* rule and not on the uterine brothers. If he was associated with a brother of the half blood, still his share shall devolve upon all the brothers. No regard shall be paid to association. This was the reply of all

Musalman. Appended to the reply is a note that two persons, Najaf Shah and Sher Ali Shah, residents of Shahpur, and one person, Alam Shah, resident of Sodhi, dissented and said that in their family the custom was that a uterine brother of the whole blood got the share of the deceased and that the *pagwand* rule was not followed. This note does not affect the parties who belong to another place and who apparently adopted the answer given by all Musalmans. Below the entry two instances are given. The first is to the effect that at village Kotla Sayyadan, Ahmad Shah, Ghulam Shah, and Mohammad Shah were three brothers from one mother and Baqar Shah and Ghulam Mohammad from the other and on Muhammad Shah's death his share devolved on Ahmad Shah and Ghulam Hussain Shah and not on Baqar Shah. The second instance is to the effect that at Shahpur, Mehdi Shah and Haidar Shah were from one mother and Amir Shah and Shah Kabir from the other, and on Mehdi Shah's death, his share was divided between the surviving brothers. This second instance relates to Shahpur, where Najaf Shah and Sher Ali Shah, referred to above, also resided. It will be apparent that the statement of custom recorded in the revenue papers is against the plaintiffs' case with the possible exception of the first instance which will be referred to later.

The plaintiffs rely on Exception 2 to paragraph 7 of Rattigan's Digest where it is stated that *Sayuds*, *Qureshis* and *Pathans* of Shahpur District follow the *chundawand* rule. The authority given in para. 19 of a Minute by the Lieutenant-Governor on some settlement report. This Minute has not been traced by anyone. As this statement in Rattigan's Digest of Customary Law, is not supported by any authority and is against the recorded statement of custom, it must be neglected.

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The plaintiffs further rely on the following instances within the family itself:—

The first case is that of Najaf Shah—see pedigree-table. At the time of the first settlement, in 1857, he was dead. The revenue papers of that year record that his descendants by one wife, namely, Jafar Shah, Game Shah and Haidar Shah held $49\frac{1}{2}$ *ghumaons* of land, while the descendants of the other wife, namely, Ahmad Shah, Mehdi Shah and Haidar Shah held $1630\frac{1}{2}$ *ghumaons*. This merely proves an unequal division among the progeny of the two wives and is at variance with both the *chundawand* and *pagwand* rules of succession. There is nothing to show whether this unequal division was made during the lifetime of Najaf Shah or after his death. It is admitted that the father has full power to divide his property in his lifetime as he wishes. This instance, therefore, does not help the plaintiffs.

The second instance relied upon by the plaintiffs is that of Mohammad Shah, son of Najaf Shah. It is said, on the authority of the first instance, given below the record of custom already referred to, that on the death of this Mohammad Shah, his real brothers, Ahmad Shah and Ghulam Hussain Shah, succeeded to his share of the estate to the exclusion of his half-brothers, Jafar Shah and Baqar Shah. This is not supported by the revenue papers as Mohammad Shah was dead before the first settlement of 1857. Whatever took place, therefore, had taken place before the revenue records commenced to be kept in this district. There is no mention of Mohammad Shah's name in these papers as being the owner of any land. The first instance recorded under the statement of custom was mentioned to the Settlement Officer in 1895 long after Mohammad Shah was dead. It is in fact not known whether Mohammad Shah died before or after his

father's death. Apart from the statement to the Settlement Officer in 1895, there is no evidence worth considering about the succession to the estate of Mohammad Shah. This instance is, therefore, most unsatisfactory and must be rejected.

The third instance relied upon by the plaintiffs is that of Haidar Shah. But it is proved by Ex. P.13 that he made a division of his property in his lifetime. The division in its result is *chundawand*, but as he possessed plenary powers of disposing of his property in his lifetime, it cannot be said that this is a case of succession according to the *chundawand* rule. As a matter of fact the defendants produced a copy of a mutation, Ex. D. 7, which shows that this Haidar Shah left some land in another village, Shahpur, at the time of his death in 1903 and mutation was effected of this land, which was not disposed of by him, in favour of all the sons equally in accordance with the *pagwand* rule. This instance, therefore, also does not help the plaintiffs' case.

The fourth instance relied upon is that of Ahmad Shah. Here again, Ex. P.13 shows that there was an unequal division amongst the sons made by the father himself in his lifetime. This also, therefore, does not help the plaintiffs' case.

The fifth instance is that of Nadir Shah. He died without issue. Bahadur Shah, his brother of the whole blood, sued Ghulam Hussain Shah, brother of the half blood, for his whole estate. But the claim was really compromised as Bahadur Shah agreed to give Ghulam Hussain Shah a considerable area of land which he was in possession of, but which was claimed by Ghulam Hussain Shah as his property. This is the most favourable case on the plaintiffs' side, but even it is not of much importance in the circumstances described.

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The sixth instance relied upon is that of Mehdi Shah, but the mutation is clearly to the effect that the six sons succeeded in equal shares. There were three sons by each wife and it cannot be said that this division was *chundawand*.

Further, the defendants have proved five instances amongst *Sayyads* of neighbouring villages where the *pagwand* rule was followed, and there is no instance proved by the plaintiffs as to the *chundawand* rule being followed. It is clear, therefore, that the rule established in the present case is that of *pagwand*. We dismiss this appeal, but make no order as to costs here, as a certificate was granted under section 41 (3) of the Punjab Courts Act.

P. S.

Appeal dismissed.

APPELLATE CIVIL.

Before Addison and Din Mohammad JJ.

NUR MOHAMMAD (PLAINTIFF) Appellant

versus

BHAWAN SHAH AND ANOTHER (DEFENDANTS)

Respondents.

Civil Appeal No. 2 of 1933.

Custom—Alienation—Gift to adopted or laipalik son—Qureshis of village Pind Sheikh Musa—District Lyallpur—Succession—by adopted son—Wajib-ul-arz.

Held, that by custom among the *Qureshis* of village Pind Sheikh Musa, in the Lyallpur District, a gift in favour of an adopted or *laipalik* son (*i.e.* one who has been taken and reared as a son) is valid.

Also, that an adopted son is entitled to succeed on the death of the person who by adoption appointed him as his heir.

Wajib-ul-arz, referred to.

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March 25.