LETTERS PATENT APPEAL.

Before Addison and Ram Lal JJ.

GURBACHAN SINGH AND OTHERS (PLAINTIFFS) Appellants,

versus

ARJUN SINGH *alias* SADHU SINGH AND OTHERS (DEFENDANTS) Respondents.

1939

April 25.

Letters Patent Appeal No. 25 of 1939.

Custom — Jat agriculturists — property purchased by son from his father by means of genuine sale deeds — Whether self-acquired in the hands of the son.

Where, as in the present case, the son, a Jat governed by customary law, purchased the property from his father by means of genuine sale deeds, the consideration for which was paid before the Sub-Registrar:—

Held, that the property must be looked at as self-acquired and he had full power to will it away.

Held also, that the property ceases to be ancestral when it comes into the hands of an owner, otherwise than by descent or by reason merely of his connection with the common ancestor.

Sri Ram v. *Ramjidas* (1), followed.

Gurdit Singh v. *Mst. Ishar Kaur* (2), *Saif-ul-Rahman* v. *Muhammad Ali Khan* (3), *Nagina Singh* v. *Jiwan Singh* (4) and *Ghania* v. *Phuman Singh* (5), relied upon.

Letters Patent Appeal from the judgment of Skemp J., dated 1st December, 1938, setting aside that of Sheikh *Abdul Majid, Additional District Judge, Karnal, dated 9th February, 1938, and restoring that of Mr. A. S. Gilani, Additional Subordinate Judge, 4th Class, Karnal, dated 25th May, 1937, dismissing the plaintiffs' suit.*

(1) 59 P. R. 1909.
(2) I. L. R. (1922) 3 Lah. 257.
(3) I. L. R. (1928) 9 Lah. 95.
(4) 1925 A. I. R. (Lah.) 87.
(5) 1925 A. I. R. (Lah.) 245.

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ASA RAM AGGARWAL, for Appellants.

SHAMAIR CHAND and TEK CHAND, for Respondents.

The judgment of the Court was delivered by—

ADDISON J.—Gurbax Singh, son of Bir Singh, made a will on the 22nd July, 1909, leaving his property first to his mother, *Mussammat* Jiwan Kaur, and after her death to the plaintiffs and to the father of defendants 5 and 6. *Mussammat* Jiwan Kaur retained possession of the property in suit till her death on the 19th April, 1930. It then came into the possession of defendants 1 to 4, 7 and 8, who are collaterals of Gurbax Singh. The plaintiffs have sued for possession of the suit property as beneficiaries under the will. Their suit was dismissed by the trial Court on the ground that the property was ancestral, having been held by the common ancestor Dal Singh; but it was decreed by the lower appellate Court. There was then a second appeal to this Court which was heard by a learned Judge who accepted the appeal and restored the decree of the trial Judge, dismissing the suit. He, however, granted a certificate under the Letters Patent to the effect that this was a fit case for further appeal. The appeal under the Letters Patent was admitted to a hearing and has been heard by us.

The lower appellate Court found that the suit property had been in the possession of the common ancestor Dal Singh and by reason of that fact came into the hands of Bir Singh. Bir Singh then sold the suit property to his only son Gurbax Singh by two deeds, dated the 20th February, 1899, and the 1st December, 1901. The consideration for both sales was paid before the Sub-Registrar and it has been held by the lower appellate Court that the sales were genuine.

It is admitted that, if the property must be looked at as self-acquired in the hands of Gurbax Singh, he had power to will it away, but that, if it was ancestral property, he had not this power. The parties are Jats following Customary Law. The principal case on the subject is '*Sri Ram* v. *Ramjidas*' (1). It was there held that land ceases to be ancestral when it comes into the hands of an owner otherwise than by descent or by reason merely of his connection with the common ancestor. Apparently this ruling covers the present case. It was pointed out in it that one Bir Singh had acquired land not because he was a member of the family of Jhanda, the common ancestor, but because he had paid money for it and purchased it just in the same manner that a total stranger might have bought it. The land in that case, just as in the present case, had come from the common ancestor but it had not come into the hands of Bir Singh of that case by reason of succession but because he had purchased it. Similarly, in the present case the land did not come into the hands of Gurbax Singh as successor of his father, but because he purchased it from his father. It was open to the reversioners of his father to impeach this transaction either on the ground that it was a fictitious one or on the usual ground of want of necessity and consideration. They did not do so and the time for doing so has long passed. Further, the land has been held in the present case to have been genuinely sold by the father to the son. That means that it came to the son by a genuine purchase and was thus his self-acquired property. If the son had succeeded the father, the reversioners could then have controlled his bequest thereof; but as he had purchased it and the sales were not set aside on the ground of

(1) 59 P.R. 1909.

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want of necessity and consideration, it became his self-acquired property.

The same view was taken in "*Gurdit Singh* v. *Mussammat Ishar Kaur*" (1). In that case a cousin had purchased the land of another cousin. This land had been held by the common ancestor, but it was held to be self-acquired in the purchaser's hands. In "*Saif-ul-Rahman* v. *Muhammad Ali Khan*" (2) land which had been held by the common ancestor was gifted to a collateral in the fourth degree who would not have otherwise inherited it. It was held that the land was not ancestral because the ordinary course of inheritance was diverted by the gift. Of course in this case also if there had been a suit in time, the nearer reversioners might have been able to get the transaction set aside. Authorities which are to a similar effect are "*Nagina Singh* v. *Jiwan Singh*" (3) and "*Ghania* v. *Phuman Singh*" (4).

The other cases are not in point. Self-acquired property is property acquired by a person through his own act and not by succession. Obviously a gift, which is merely an acceleration of succession, would not cause the gifted land to become self-acquired property, but, as has been already pointed out, a gift to a more distant collateral than the proper heir would render the land gifted self-acquired unless the alienation was set aside within time.

There is no difference between this case and the cases referred to, which are all based on the ordinary rule of self-acquisition. Here there were genuine sales by the father in favour of the son who paid full consideration to his father. These sales were not

(1) I. L. R. (1922) 3 Lah. 57.
(2) I. L. R. (1928) 9 Lah. 95
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challenged within time and the property obviously became the self-acquired property of the purchaser.

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For the reasons given we accept this appeal, set aside the decree of the learned Single Judge of this Court, and restore the decree of the lower appellate Court decreeing the plaintiffs' suit. Parties will bear their own costs throughout.

A. K. C.

Appeal accepted.

APPELLATE CIVIL.

Before Dalip Singh J.

RADHA KISHAN-RUP LAL (JUDGMENT-DEBTOR) Appellant,

versus

THE BOMBAY COMPANY, LIMITED, AMRITSAR (DECREE-HOLDER) Respondent.

1939

Feb. 3.

Execution First Appeal No. 369 of 1938.

Civil Procedure Code (Act V of 1908), SS. 39 (2), 42 — Transfer of decree based on award — District Judge whether can assign it for execution to Subordinate Judge — Expression — "competent jurisdiction" in S. 39 (2) — meaning of — Indian Arbitration Act (IX of 1899), S. 4.

The Sindh Judicial Commissioner's Court forwarded an award to the District Judge, Amritsar, for execution. The District Judge assigned it to the Subordinate Judge, First Class, for execution. It was contended that the Subordinate Judge had no jurisdiction to entertain the execution.

Held (overruling the contention) that under s. 42 of the Civil Procedure Code, the District Judge had the same powers as the Court of the Sindh Judicial Commissioner and under s. 39 (2) he could of his own motion transfer it to a Court of competent jurisdiction subordinate to himself.

That the words "competent jurisdiction" in s. 39 (2) refer to territorial and pecuniary jurisdiction to deal with the decree and do not mean competency to try the original suit.