

APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Parsons.

RUKHÁB, (ORIGINAL PLAINTIFF No. 2), APPELLANT, *v.* CHUNILÁL
AMBUSHET, (ORIGINAL PLAINTIFF No. 1), RESPONDENT.*

1891.
July 28.

Hindu law—Custom—Jains—Ordinary law applicable to Jains in the absence of special customs—Adoption—Posthumous son.

In the absence of a special custom, the ordinary Hindu law applies to the Jains.

An adopted son is entitled to one-fourth of the estate of the adoptive father if a natural son is born after the adoption.

SECOND appeal from the decision of J. B. Alcock, Acting District Judge of Khándesh, in Appeal No. 251 of 1889 of the District File.

A decree was obtained by Chhnilál, the adopted son, and by Rukháb, the posthumous son, of one Ambushet, who was a Jain by caste.

Chunilál applied for execution of the decree.

The Subordinate Judge held that, as adopted son, Chunilál was entitled to one-fifth of the estate of his adoptive father, and allowed him to execute the decree to that extent.

In appeal, the District Judge held that, according to the custom prevalent among the Jains, an adopted son took an equal share with a subsequently born natural son. He, therefore, allowed Chunilál to execute half of the decree.

Against this order, Rukháb, the posthumous son, appealed to the High Court.

Mahádev Chinnálji Apte for appellant:—There is no proof in this case of any special custom among the Jains regarding the rights of the adopted son. In the absence of such a custom the ordinary Hindu law applies to the Jains—*Chotay Láll v. Chunno Láll*⁽¹⁾. According to the Hindu law the adopted son is entitled to one-fourth of the estate.

* Second Appeal, No. 397 of 1891.

(1) L. R., 6 I. A., 15.

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RUKHÁB
v.
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AMBUSHET.

Dáji Abáji Khare for respondent:—The Jains, in common with many other castes, have a special custom by which the adopted son takes a moiety of the estate: see Steele's Hindu Law and Custom, pages 386 and 387. This authority is conclusive on the question of custom.

JARDINE, J.:—The only point relied on by Mr. Apte, who appears for the appellant, is that, in the absence of proof of special custom among Jains, the ordinary Hindu law prevailing in this Presidency must be applied to determine the respective shares of a lawfully adopted son and a natural son born after the adoption. The Subordinate Judge gave the former one-fifth share of the property, while the District Judge, relying on the statements in Steele's Hindu Law and Custom at pages 386 and 387, awarded one-half. The texts quoted by West and Bühler at pages 388, 773, 935 and 1187 show that under the Mitákshara law the adopted son is usually entitled to one-fourth of the estate. "It is now settled law that the ordinary Hindu law of inheritance is to be applied to Jains in the absence of custom and usage varying that law." This is a proposition which was affirmed by the Privy Council in *Chotay Láll v. Chunno Láll*⁽¹⁾. Their Lordships say: "The customs of the Jains, where they are relied upon, must be proved by evidence, as other special customs and usages varying the general law should be proved, and, in the absence of proof, the ordinary law must prevail." See also *Bachebi v. Makhán Láll*⁽²⁾.

In the present case there is no satisfactory proof of any special custom. For this reason we amend the decree of the District Court by substituting one-fourth for one-half as the extent of the decree which the respondent Chunilál may execute. Costs of both appeals on Chunilál.

Decree amended.

(1) L. R., 6 I. A., 15.

(2) I. L. R., 3 All., 55.