Relying on these cases I am of the opinion that this sum of money received by the assessee was not received by him as professional income but was received on behalf of a trust and not in his capacity as an individual. I would answer the question accordingly. As the Commissioner of Income-tax has failed, he will pay the costs of the assessee. Counsel's fee Rs. 250.

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FALSHAW, J.—I agree.

Falshaw, J.

LETTERS PATENT APPEAL

Before Bhandari, C.J., and Khosla, J.

TEJU alias TEJA SINGH and OTHERS,—*Defendants-Appellants*

versus

KESAR SINGH and OTHERS,—*Respondents.*

Letters Patent Appeal No. 97 of 1951

1953

August 3rd.

Custom (Punjab)—Adoption—Jats of Amritsar District—Whether the adopted son succeeds collaterally in his adoptive family—Grant's Customary Law, Questions and Answers XV, XVII and XVIII and Craik's Customary Law, Questions and Answers 87, 90 and 91, considered.

Held, that among Jats of the Amritsar District adoption has in almost all cases the ingredients of adoption under Hindu Law. An adopted son does not succeed to the property in his natural family, he acquires the position of a natural son in his adoptive family, and succeeds collaterally in his adoptive family.

Letters Patent Appeal under clause 10 from the decree of the Court of Mr. Justice Kapur of Punjab High Court at Simla, dated the 18th day of July 1951, affirming that of Shri Mani Ram Khanna, Additional District Judge, Amritsar, dated the 6th October 1948. who reversed the decree of Shri Jagdish Narain Kapur, Sub-Judge, 1st Class, Amritsar, dated the 7th January 1948, and granting the plaintiff a decree for joint possession of 1/4th share of the land in suit against the defendants leaving the parties to bear their own costs throughout.

F. C. MITAL, for Appellants.

A. R. KAPUR, and P. C. JAIN, for Respondents.

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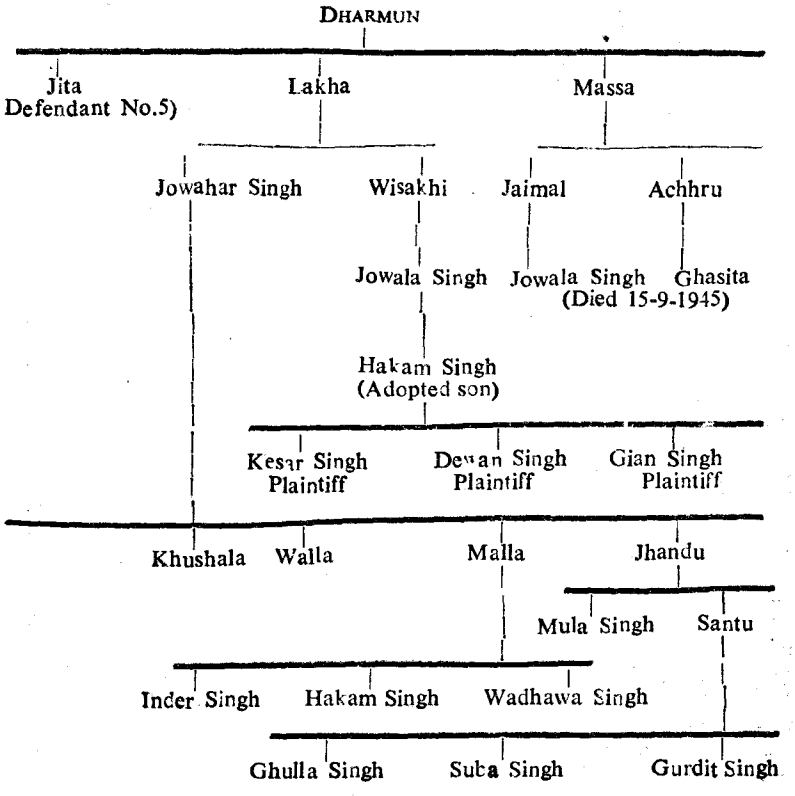
JUDGMENT

KHOSLA, J. The only point for decision in this appeal is whether the adopted son succeeds collaterally in his adoptive family.

The facts briefly are that Jowala Singh adopted his collateral Hakam Singh while the latter was an infant of about 12 days. The dispute now relates to the property of Jowala Singh, son of Jaimal, whose pedigree-table is given below :—



The dispute is between the plaintiffs who are sons of Hakam Singh, the adopted son, and the defendants who represent the line of Jowahar Singh. The descendants of Jita are also parties to

the litigation but they do not oppose the plaintiffs' claim. On the death of Jowala Singh, son of Jaimal, the plaintiffs claimed that they were entitled to one-fourth as they were entitled to succeed collaterally through their father Hakam Singh. This claim was resisted by the defendants who pleaded that an adopted son does not succeed collaterally in his adoptive family and that, therefore, neither Hakam Singh nor his sons are entitled to claim any share in the property of Jowala Singh, son of Jaimal. It follows that the plaintiffs can claim 1/24th share as the grandsons of Malla who represents Lakha's line. In other words Hakam Singh could succeed collaterally in his natural family but not in his adoptive family.

The trial Court upheld the plea of the defendants and dismissed the suit, holding that no adoption under Hindu Law had been proved and there was no complete transplantation of Hakam Singh from his natural family into his adoptive family and so Hakam Singh could not succeed collaterally. The Additional District Judge allowed the appeal and decreed the suit on the ground that in this case an adoption, as complete as a Jat adoption could be, had taken place. A second appeal was brought to this Court and Kapur, J., dismissed the appeal holding that Hakam Singh had been completely adopted into Jowala Singh's family and that this was a case in which adoption under custom was equivalent to the form of adoption under Hindu law. He pointed out that Hakam Singh had not succeeded collaterally in his natural family and this was an indication of the fact that he had given up his rights in his natural family and has been completely transplanted to his adoptive family. Against the decision of Kapur, J., the present appeal under Clause 10 of the Letters Patent has been filed.

A reference to the Customary Law of the Amritsar District shows that among the Jats of that district adoption has in almost all cases the

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ingredients of adoption under Hindu Law. The earliest compilation of Customary Law was made by Grant in 1893. The questions and answers on pages 14 and 15 relating to the subject of adoption show that an adopted son does not succeed to the property in his natural family and that he acquires the position of a natural son in his adoptive family. "A man once admitted into the family of his adoptive father ceases to have any claim on the property of his natural father. To this custom there is no exception " (Answer XV). "An adopted son cannot succeed to the property of his natural father. The collaterals exclude him" (Answer XVII). The answer to question XVIII refers to ceremonies which are usually performed at the time of adoption. "The brotherhood are summoned, the deed of adoption is written and executed and the necessary religious observances carried out. The writing of a deed is, however, not essential." The Customary Law prepared in 1914 by Craik is even more explicit on these points. The answer to question 91 is to the effect that an adopted son succeeds collaterally in the family of his adoptive father. Here under question 87 again it is stated that no formalities are necessary. The position had not changed in 1940 when the Customary Law was again compiled by Mac Farquhar. The Question and Answer 90 are :—

> "*Question 90.* Can an adopted son succeed collaterally in the family of his adoptive father ?
>
> *Answer.* Yes."

The statement of custom by which the Jats of Amritsar District are governed in the matter of adoption as set out in these three Customary Laws is, therefore, quite clear. An adopted son succeeds collaterally in his adoptive family. These compilations do not quote instances but it is significant that in the vernacular copy placed on the file there is a reference to judicial instances in Appendix I and to mutations in Appendix II. Unfortunately the vernacular copy of the complete Riwaj-i-Am is

not available and the English copy does not give any Appendices at all. Therefore, if there were any instances to support this custom they are not forthcoming. There are two or three instances which appear to lay down the contrary rule, but we have examined these cases and we find that they are all distinguishable. The instances are *Jowala Singh* v. *Mt. Lachmi and others* (1), *Mangal Singh* v. *Tilok Singh* (2) and *Chetu* v. *Jawand Singh and others* (3). In all these cases it was held that a proper and complete adoption had not been proved, and that these were mere cases of an appointment of an heir. The true position is that the ordinary rule in the Amritsar District is complete adoption similar to the adoption under Hindu Law. But in any given instance the intention of the adoptive father may have been merely to appoint an heir and not to treat the adopted son as a member of his family in every particular, and these three instances are instances of that type. In the case under consideration we find that the adopted son was a collateral of Jowala Singh, the adoptive father. He adopted him when he was only 12 days old. He announced his intention in unequivocal terms. He declared that he was going to treat Hakam Singh as his own son and Hakam Singh would inherit his proptery along with any other sons which may be born to him. At that time Jowala Singh was a youngman of 22 and he expected to beget more children. This is not a case in which an aged man finding himself without heirs chooses someone who has rendered him service or one of his favourite nephews and appoints him an heir. In a case of that type it might well be said that the adoption amounted to nothing more than the appointment of an heir. In the case before us Hakam Singh appears to have been completely adopted in the sense that Jowala Singh took him into his own family with the intention of treating him in every respect as his son and that being so Hakam Singh must be considered as having been transplanted from his natural family to the family of Jowala Singh.

(1) 14 P.R. 1884
(2) 61 P.R. 1894
(3) 107 P.R. 1913

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This is supported by the fact that Hakam Singh did not succeed collaterally in his natural family. When his natural uncle Walla died his property devolved upon his widow, but after the death of his widow Hakam Singh did not get any share of Walla's property. Had he not been completely transplanted to the family of his adoptive father he would most certainly have obtained a share of Walla's property.

It is, therefore, clear that the adoption of Hakam Singh in this case was of the type described in the three Customary Laws of the Amritsar District. Hakam Singh, therefore, must be treated as Jowala Singh's son in every respect and as such he is entitled to succeed collaterally to the property of Jowala Singh, son of Jaimal. That being so, this appeal must fail and I would dismiss it with costs. The costs will not be recovered from the defendants who represent Jita's line for they did not oppose the claim and are unaffected by the decision.

BHANDARI, C. J.—I agree.

APPELLATE CIVIL

Before Kapur, J.

THE UNION OF INDIA,—*Appellant*

versus

F. GIAN CHAND-KASTURI LAL,—*Respondents.*

Regular Second Appeal No. 560 of 1951

1953

August 4th.

Central Excises and Salt Act (I of 1944), Sections 3, 5, 6, 8, 30, 37 and 38—Rules 8 and 11 (framed under section 37)—Notification refunding duty paid on salt on stocks held after 1st April 1947—Notification not in accordance with statute or rules made thereunder—Suit for refund on its basis, whether lies—Practice—Question of law—When can be allowed to be raised for the first time in Second Appeal.

Salt imported or manufactured in India was exempted from duty with effect from 1st April 1947. By a notification, dated 28th February 1947, duty paid on stocks held or in transit on 1st April 1947 were made refundable under certain conditions. Plaintiffs applied for refund and the applications were rejected. Then the plaintiffs filed suit for refund of the duty paid on stocks held. Government resisted that suit on the ground that such a suit is incompetent.