

the complaint unless he was of the opinion that the case should be adjourned to another date. A person charged with a summons case offence is entitled to be acquitted if the complainant is absent (*Venkatarama Iyer v. Sundaram Pillai and others* (1), and he cannot be deprived of this right by reason only of the fact that the Magistrate has chosen to adopt a particular procedure.

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For these reasons I am of the opinion that this petition must be dismissed. I would order accordingly.

B.R.T.

APPELLATE CIVIL.

Before Chopra and Gosain, JJ.

MST. AJMERO AND OTHERS.—*Defendants-Appellants.*

versus

MST. GURDEVI *alias* JANTO,—*Plaintiff-Respondent.*

Regular Second Appeal No. 335 of 1950.

Custom—Female heir—Whether succeeds to a life-estate—Right of representation—Whether recognised—Riwaj-i-Am of Ambala, Tehsil and District—Question 42—Whether relates to - ancestral property alone—Daughter succeeding to self-acquired property—Whether has an un-restricted right of alienation.

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Dec., 6th

Held, that the general rule of Customary Law is that a female inheriting landed estate (whether ancestral or self-acquired) from a male-holder holds the property on a life-tenure.

Held, that the principle of representation is well recognised in cases of direct as well as collateral succession under custom.

Held, that in the absence of a clear statement or indication to the contrary, the presumption is that the question and answers recorded in the Riwaj-i-Ams relates to ancestral property; and Question No. 42 in the Riwaj-i-Am of

(1) A.I.R. 1923 Mad. 439.

Ambala District and Tehsil is no exception. Moreover the answer leaves no doubt that it did not relate to self-acquired property.

Held also, that according to the special custom of the Ambala District, collaterals even up to a remote degree are preferred to daughters in the matter of succession to ancestral property. In the rare cases, where she succeeds, she is given a free right to alienate because there is no one to interfere. This is, however, not true with respect to self-acquired property to which she succeeds even in preference to the nearest collaterals. There is no special custom amongst the Jats of Ambala District which allows a daughter succeeding to the self-acquired property of her father an unrestricted right of disposition.

Sunder Devi and another v. Mian Tegh Singh and another (1), relied upon; *Mst. Sardar Begam v. Mst. Niaz Bibi and another* (2), and *Arjan Singh v. Mst. Kirpa Devi* (3), distinguished and held not applicable.

Second Appeal from the decree of the Court of Shri Maharaj Kishore, Additional District Judge, Ambala, dated the 18th day of February, 1950, affirming that of Jawala Dass, Sub-Judge, 1st Class, Ambala, dated the 9th February, 1949, recreeing the plaintiff's and leaving tht parties to bear their own costs. The Lower Appellate Court allowed costs to the plaintiff-respondent in his Court.

GANGA PARSHAD JAIN, for Appellant.

H. L. SIBBAL, for Respondent.

JUDGMENT

The judgment of the Court was delivered by :

Chopra, J.

CHOPRA, J.—This regular Second Appeal arises out of a suit for declaration that a gift of the suit property (land and a house) made by Mst. Sahib Kaur, daughter of Rulia, in favour of two of her daughters Amero and Dialo, would not affect the reversionary rights of the plaintiff, the third daughter of Sahib Kaur. The suit was contested on the sole ground that Mst. Sahib Kaur was the absolute owner of the property, having

(1) A.I.R. 1935 Lah. 830.

(2) A.I.R. 1935 Lah. 644.

(3) A.I.R. 1935 Lah. 920.

an unrestricted right of disposition, and consequently the plaintiff had no *locus standi* to challenge the gift. The Courts below have found against the defendants and decreed the suit. The defendants have now come in further appeal to this Court.

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The parties are Jats of village Mohra, Tehsil Ambala. The last male-holder of the property was Dallu, first cousin of Sahib Kaur's father, Rulia. On Dallu's death Sahib Kaur succeeded to one-fourth of his land, the remaining three-fourth having been gifted by him to one Hazara Singh. Sahib Kaur disputed the gift effected by Dallu and by a compromise with Hazara Singh she got another one-fourth of the entire holding. She thus became owner of one-half of Dallu's estate, subject-matter of the present litigation.

Mr. Ganga Parshad, learned counsel for the appellants, admits that under the general custom of Punjab Sahib Kaur would have only a life-interest in the property to which she had collaterally succeeded. Principle of representation is well-recognised in cases of direct as well as collateral-succession under custom. Sahib Kaur inherited the property of Dallu as the daughter of his first cousin: that makes the general rule of Customary Law applicable to her case. The general rule is that a female inheriting landed estate (whether ancestral or self-acquired) from a male-holder, holds the property on a life-tenure. No distinction is being made as regards the portion acquired by her in compromise with Hazara Singh. That, too, she acquired on the strength of her being a daughter of Rulia and hence an heir to Dallu. Reliance is, however, placed on a special custom of Ambala District according to which, it is alleged, a daughter has an unrestricted right of alienation over the property inherited by

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her from her father. Oral evidence on the point was rejected by the Courts below and the same has not been referred to before us. An extract from the vernacular Riwaj-i-Am of Ambala Tehsil, prepared at the time of Settlement, relating to Question No. 42 has been placed on the record as Exhibit D-4. The question was: In cases of succession by daughters, how far do their rights of alienation by way of sale, gift or mortgage extend? The answer on behalf of the Hindu Jats says:—"They have every right, like other proprietors." Our attention has also been drawn to the answer to Question No. 42 as recorded in Customary Law of the Ambala District compiled by R. B. Whitehead. The question related to the nature of the daughter's interest in the property she inherits and the answer recorded says:—

"The almost universal reply is that as a daughter can only succeed in the rare cases of absence of all collaterals up to a remote degree, there is none to interfere with her and she can alienate without restriction."

It cannot be disputed that the question, and so the answer, relate to ancestral property. In the absence of a clear statement or indication to the contrary, the presumption is that the questions and answers recorded in the Riwaj-i-Ams relate to ancestral property; the particular questions seem to be no exception. On the other hand, the answer leaves no doubt that it did not relate to self-acquired property inherited by a daughter. According to special custom of the District, collaterals even up to a remote degree are preferred to daughters in the matter of succession to ancestral property. In the rare case where she succeeds, she is given a free right to alienate, because there is no one to interfere. This would not be

true with respect to self-acquired property, where the daughter succeeds even in preference to the nearest collaterals. The above answer alone cannot, therefore, be regarded as sufficient to prove the alleged custom that amongst Jats of Ambála District a daughter succeeding to the self-acquired property of her father acquires an unrestricted right of disposition. Unless proved otherwise the property has to be regarded as non-ancestral. It is not even alleged that the property was ancestral in the hands of Dallu.

The point is fully covered by the decision of a Division Bench of the Lahore High Court in *Sunder Devi and another v. Mian Tegh Singh and another* (1). The parties to this case were Rajputs of Ambala District and one of the questions before the Division Bench related to the nature of the estate acquired by a daughter succeeding to non-ancestral property of her father. The above answer to Question No. 42 in the *Riwaj-i-Am* of Ambala District was held to have no application to non-ancestral property, obviously because it was based upon the supposition that the daughter succeeds only when no near collaterals are alive.

In the two Single Bench decisions relied upon by Mr. Ganga Parshad *Mst. Sardar Begam v. Mst. Niaz Bibi and another* (2), and *Arjan Singh v. Mst. Kirpa Devi* (3), the *Riwaj-i-Am* of some other districts was under consideration. In neither of them, the distinction as to the nature of property to which the questions and answers related was pointed out or discussed.

No other point is urged. The appeal, therefore, fails and is dismissed with costs:

K.S.K.

(1) A.I.R. 1935 Lah. 830.

(2) A.I.R. 1935 L. 644.

(3) A.I.R. 1935 L. 920.

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