A withdrawal of a case resulting merely in a discharge does not prevent the prosecution being recommenced on a fresh complaint. On February 11, 1954, when the fresh complaint was filed the appellant was not a public servant and therefore the court could take cognizance without a previous sanction.

It is unnecessary for us to say whether once a sanction is positively refused a fresh sanction cannot be granted, because we are satisfied, on the materials before us, that in fact, there was no positive refusal to sanction the prosecution of the appellant.

We are also satisfied that the circumstances do not establish that there had been any abuse of the process of the court and the provisions of section 561A of the Code of Criminal Procedure do not apply.

As the points urged in these appeals have failed, the appeals must, accordingly, be dismissed.

B.R.T.

APPELLATE CIVIL.

Before Chopra and Gosain, JJ.

MST. CHANAN KAUR,—*Defendant-Appellant.*

versus

MST. TARO AND OTHERS,—*Plaintiffs-Respondents.*

Regular Second Appeal No. 379 of 1950.

1957

Dec., 4th

Custom—Principle of representation—Whether recognised—Rule as to—Whether extends to the heirs of a predeceased daughter.

Held, that while the principle of representation is not recognised by Hindu Law, under custom the principle is well-recognised both in direct as well as collateral succession. In cases of direct succession, the undisputed rule is

that the share of a son who predeceased his father descends to his son, and the son of such a son. When there are male decendants who do not stand in the same degree of kindred to the deceased, and the persons through whom the more remote are descended from him are dead, each descendant takes the share which his immediate ancestor, if alive, would have taken. The onus of proving the contrary lies on the person asserting it. There is no reason why sex should create any distinction in such cases. The daughter's sons whose mother predeseased her father, are in the same position as those whose mother survived him; the right to succeed is not dependent upon their mother succeeding to her father's estate. The case would be no different where the contest is between some of the daughters of the last male-holder and sons of the others who predeceased him. The estate is to be divided into such a number of equal shares as corresponds with the number of daughters of the deceased.

Second Appeal from the decree of the Court of Shri G. C. Bahl, District Judge, Gurdaspur, dated the 1st day of April, 1950, by which the decree of Shri W. Augustine, Sub-Judge, 1st Class, Gurdaspur, dated the 28th day of October, 1949, decreeing the plaintiffs suit for joint possession of 5/6 land in suit with costs against the defendants was modified to the extent that the plaintiffs suit in respect of the land in suit, except in respect of the land of Khatas Nos. 43, 44, 46 and 47 would stand decreed and the parties were left to bear their own costs.

M. R. AGGARWAL and RAJ KUMAR, for Appellants.

S. L. PURI, for Respondents.

JUDGMENT

Chopra, J.

The judgment of the Court was delivered by—

CHOPRA, J.—The parties to this Regular Second Appeal are Jats of village Lakhowal, Tehsil Gurdaspur. Lehna Singh and Lal Singh, were the last male-holders of the property in dispute. On their death, their widows, Msts. Tabi and Man Kaur, succeeded to the shares of their respective husbands. Lal Singh had six daughters, namely, Taro, Bachno, Ruri, Guro, Udu and Chanan Kaur.

The two widows gifted the entire land in favour of Chanan Kaur, one of the daughters. Msts. Taro and Bachno, and sons of the other three predeceased daughters, brought a suit for a declaration that the gift would be ineffective as against their reversionary rights. The suit was decreed on 2nd July, 1946 and the decision was affirmed on appeal by the District Judge, Gurdaspur. The very same plaintiffs have now instituted the present suit on the death of the widows for possession of their 5/6th share in the property gifted to Chanan Kaur. The suit has been decreed by the Courts below, with the exception of certain land which was not the subject-matter of the earlier suit and was not included in the declaratory decree. This is the defendant's appeal and the only point agitated before us is that the sons of the three predeceased daugthers were not entitled to succeed in the presence of the daughters and, therefore, the suit could be decreed only to the extent of the 2/3rd share of Taro and Bachno, plaintiffs.

The objection is based on a remark in Para 23 of Sir W. H. Rattigan's Customary Law, which says—

> "A daughter's son is not recognized as an heir of his maternal grandfather, except in succession to his mother."

The correctness and general application of this remark has long been exploded. It has been repeatedly held that the most that the above observation might mean is that a daughter's son has a right to succeed to his maternal grandfather's property only when his mother has such a right, but this right cannot be made contingent upon his mother having survived

Mst. Chanan Kaur
v.
Mst. Taro and others

Chopra, J.

her father and actually inherited his property. If the daughter herself has, under custom, no right to succeed, her son is in no better position. But there is no foundation for the proposition that the daughter's sons, whose mother predeceased her father, are in a worse position than those whose mother survived him, *Tekait Ganesh Narain Sahi Deo* v. *Maharaja Pratap Udai Nath Sahi, Deo* (1), Mst *Chambeli and another* v. *Bishna* (2), *Gobinda and another* v. *Nandu, and another* (3), *Punjab National Bank Ltd. Kanu* v. *Umadatt Hans Raj and another* (4), *Sayyad Mohammad and another* v. *Mt. Azim-un-nisa and others* (5), *Ahmad* v. *Mohammad and others* (6). The principle is now well-established and is not disputed by learned counsel for the appellant.

It is, however, submitted that in all these cases the contest was between a predeceased daughter's sons on the one side and collaterals on the other and that the rule cannot be extended to a case like the present where the dispute relates to succession between a daughter and the sons of other predeceased daughters. Reliance is placed on a Division Bench decision of the Lahore High Court in *Mussammat Lorandi* v. *Mst. Nihal Devi and another* (7). In that case the parties, in the matter of succession, were governed by Hindu Law. It was conceded that under the strict Hindu Law the rule was firmly established that a son of predeceased daughter does not succeed, along with the daughters of the propositus, to his mother's father's property by the principle of representation. The learned Judges refuted the

(1) 31 I.C. 691-92.
(2) 78 I.C. 778.
(3) I.L.R. 5 Lah. 450.
(4) I.L.R. 9 Lah. 291.
(5) A.I.R. 1935 Lah. 540.
(6) A.I.R. 1936 Lah. 809.
(7) I.L.R. 6 Lah. 124.

argument that the principle of representation universally recognised in the Punjab could be extended and applied to a case where the rule of decision was Hindu Law and the same was not shown to be in any way modified by any special custom of the particular family or brotherhood. Evidently, the decision is not helpful in the present case where the rule of decision admittedly is to be the general custom prevailing amongst the agiculturists of Punjab.

While the principle of representation is not recognised by Hindu Law, under custom the principle is well-recognised both in direct as well as collateral succession. In cases of direct succession, the undisputed rule is that the share of a son who predeceased his father descends to his son, and the son of such a son. When there are male descendants who do not stand in the same degree of kindred to the deceased, and the persons through whom the more remote are descended from him are dead, each descendant takes the share which his immediate ancestor, if alive, would have taken. The onus of proving the contrary lies on the person asserting it. I see no reason, and the learned counsel has not been able to cite any authority, why sex should create any distinction in such cases. As already observed the daughter's sons whose mother predeceased her father, are in the same position as those whose mother survived him; the right to succeed is not dependent upon their mother succeeding to her father's estate. There appears to be nothing in support of the alleged distinction. The case, in my opinion, would be no different where the contest is between some of the daughters of the last male-holder and sons of the others who predeceased him. The estate is to be divided into such a number of equal shares as corresponds with the

Mst. Chanan Kaur
v.
Mst. Taro and others

Chopra, J.

number of daughters of the deceased. The share of the plaintiff's thus comes to 5/6th of the property in dispute.

There is yet another factor in support of the plaintiffs' case. In the previous litigation between the parties, the predeceased daughter's sons were also joined as plaintiffs, and they, too, obtained a decree in their favour. Chanan Kaur appellant did not challenge their *locus standi* to file the suit on the ground that they being sons of predeceased daughters had no right to succeed. The defendant, in a way, admitted their right to inherit equally with the daughters who were alive.

In the result, the appeal fails and is dismissed. In view of the facts of the case we would leave the parties to bear their own costs.

B.R.T.

APPELLATE CIVIL.

Before Falshaw and Mehar Singh, JJ.

SUNNI MAJLAS-E-WAQF OF DELHI,—*Petitioner.*

versus

CUSTODIAN OF EVACUEE PROPERTY,—*Respondents.*

Regular First Appeal No. 122-D of 1955.

1957

Dec. 5th

Administration of Evacuee Property Act (XXXI of 1950)—Section 4, Overriding effect—Whether prevails over the provisions of Delhi Muslim Wakfs Act (XIII of 1943)—Act XXXI of 1950—Sections 2(f) and 11—Jurisdiction of the Custodian to determine, whether property is or is not trust property—Whether exclusive.

Held, that section 4 of the Administration of Evacuee Property Act, 1950, gives overriding effect to the provisions of this Act over the provisions of any other law and thereby takes away, in so far as the question of evacuee property is concerned, the jurisdiction of any other court or Tribunal under any other statute which includes Delhi Muslim