APPELLATE CIVIL

Before Kapur, J.

SAWAI SINGH AND OTHERS,—*Plaintiffs-Appellants.*

versus

UDE SINGH AND OTHERS,—*Defendants-Respondents.*

1951

June 25th

Regular Second Appeal No. 540 of 1948.

Custom (Punjab)—Succession—Non-ancestral Property —Sister's sons,—Whether excluded by Seventh degree collaterals in the Ambala District.

Held, that sister's sons are better heirs to non-ancestral property than the collaterals of the seventh degree in the Ambala District particularly when a sister and a sister's son exclude collaterals beyond the fifth degree even with regard to ancestral property.

Second appeal from the decree of Shri M. R. Bhatia, District Judge, Ambala, dated the 9th April 1948, reversing that of Shri Jasmer Singh, Additional Sub-Judge, 1st Class, Rupar, dated the 25th April 1947, and dismissing the plaintiffs' suit and leaving the parties to bear their own costs throughout.

TEK CHAND, for Appellants.

SHAMAIR CHAND, for Respondents.

JUDGMENT

KAPUR, J. The sole point in this plaintiffs' second appeal is whether in the Ambala District collaterals of the seventh degree are preferential heirs than sisters' sons in regard to non-ancestral property.

According to the *Riwaj-i-am* of Ambala District the common custom is that a daughter is excluded by the collaterals descending from a common great great-grandfather (shakarbaba) and sisters will succeed in the absence of a daughter or daughter's son, the rule with regard to sons of sisters being the same. Mr Tek Chand has submitted that the *Riwaj-i-am* of Ambala District must be taken to refer, as indeed do other *Riwaj-i-ams*, to ancestral property and therefore whatever be the right of the sisters or their sons in regard to ancestral property, non-ancestral property must be governed according to the general custom of the Punjab which is contained in paragraph 24 of Rattigan's Digest, and he relies on a judgment of the Lahore High Court in *Kirpa* v. *Bakhshish Singh*, (1), where collaterals of the fourth degree were preferred to sister's son and the question was decided solely on the basis of paragraph 24 of Rattigan's Digest. This judgment has been followed in two judgments of this Court in *Santi* v. *Surjit Singh*, (2), and *Banti* v. *Harnam Singh* (3). In all these cases the rights were decided in accordance with paragraph 24 Rattigan's Digest which was held to lay down the general custom of the Punjab and unless it was rebutted it governed the parties.

In reply Mr Shamair Chand relied on several judgments—

(i) *Gurdit Singh* v. *Baru and others* (4). That was a case from Rupar Tahsil and it was held that sisters were entitled to inherit in the absence of fifth degree collaterals. Although the question has not been discussed at great length, it is a good instance

(1) 50 P. L. R. 220.
(2) L. P. A. 3 of 1948.
(3) L. P. A. 15 of 1949.
(4) A. I. R. 1933 Lah. 1005.

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showing the preference of sisters over collaterals of the fifth degree.

(ii) *Munshi* v. *Naranjan Singh* (1). It is a Division Bench case where again it was held that in the absence of fifth degree collaterals a sister or sister's sons would succeed in preference to collaterals of a more remote degree or of a daughter or daughter's sons. Property in this case was non-ancestral. Reference was made to questions 28 and 47. This is another instance where sisters were held to be entitled to non-ancestral property.

(iii) *Jagat Singh* v. *Puran Singh* (2). In this case collaterals of the third degree were the disputants and the case was from the Rupar Tahsil of Ambala District. Mahajan, J., doubted the correctness of paragraph 24 as given in Rattigan's Digest.

(iv) *Maulu* v. *Ishro* (3). In this case parties were Jats of Pipli area which was once in Ambala Tahsil but is now in Tahsil Thanesar of Karnal District. There Soni, J., and myself had an occasion to consider this very *Riwaj-i-am* of the Ambala District, and even though the property was non-ancestral, we held that sisters were better heirs than collaterals more remote than the fifth degree in the absence of daughters or daughters' sons.

(v) *Sukhwant Kaur* v. *S. Balwant Singh and others* (4). The parties in this case were twelfth degree collaterals and sisters. The case was from Amritsar District. Sitting with Weston, C. J., I had an occasion to refer to the history of the rule laid down in paragraph 24 of Rattigan's Digest and paragraph 24 was not found to be a correct statement of custom and it was also held that the exclusion of sisters from inheritance to self-acquired property had not received that notoriety as to be taken judicial notice of at

(1) 39 P. L. R. 579.
(2) 49 P. L. R. 366.
(3) 52 P. L. R. 263.
(4) A. I. R. 1951, Simla 242.

least not where the property is non-ancestral. Certain propositions were laid down at p. 251 of the report :—

> " The authorities show that (a) the rule of succession under the Punjab Laws Act, s. 5, is Personal Law unless the person who relies on custom proves that the parties are governed by Custom and what that particular custom is ; (b) and Personal Law now favours sisters which is not without effect on customs of Hindu tribes or tribes of Hindu origin. See *Mt. Rajo* v. *Karam Bakhsh*, (1) ; (c) custom has to be proved by evidence adduced in the case or may be proved by the production of the *Riwaj-i-am* which will raise a presumption in favour of the entry if the property in dispute is ancestral unless the statement covers non-ancestral property ; (d) custom varies from tribe to tribe and from place to place but some customs have by frequent proof in the Courts in all parts of the province become so notorious that judicial notice can be taken of them ; (e) but the exclusion of sisters from inheritance to self-acquired property has not received that notoriety and has to be taken judicial notice of at least not where the property is non-ancestral ; (f) the rights of females have not received that protection which they deserved and at the time of compilation of *Riwaj-i-am* they have not been consulted and therefore the onus of proving their rights to succeed is a light one, which may be discharged by a few instances or by general evidence given by members of the family or tribe without proof of special instances. See *Ahmed Khan* v. *Channi Bibi*, (2),..... "

(1) 11 P. R. 1905 at p. 78.
(2) I.L.R. 6 Lah. 502.

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What Mr Tek Chand wishes me to hold is that although in regard to ancestral property a sister or sister's son would exclude a collateral beyond the fifth degree, she would be excluded in the matter of non-ancestral property. The proposition appears to be rather incongruous. The right of an agnate to succeed is because of his connection with the common ancestor who held the land and it appears to me that it does not stand to reason that such an agnate should not be able to succeed to ancestral property, but in regard to non-ancestral property he will be able to succeed. Before the rule was laid down by Harries, C.J., in *Kirpa* v. *Bakhshish Singh,* (1) it had not been shown that this distinction was ever drawn against the females that they should be able to inherit ancestral property but not non-ancestral. Besides the attention of the learned Chief Justice deciding *Kirpa* v. *Bakhshish Singh's* case (1) was not drawn to the previous judgments of the Lahore High Court in *Gurdit Singh* v. *Baru and others* (2), and *Munshi* v. *Niranjan Singh,* (3). The two Letters Patent Appeals which were decided by Weston, C. J., and Falshaw, J., *Santi* v. *Surjit Singh* (4) & *Banti* v. *Harnam Singh* (5), merely followed the judgment of Chief Justice Harries.

Personal law of the parties to the dispute is Hindu Law under which now a sister has a very high place. If there is no custom established in regard to the sisters, the question has to be decided in accordance with Hindu Law and this principle was recognised by their Lordships of the Privy Council in *Abdul Hussain Khan* v. *Som Dero* (6).

Even if the onus was on the sisters, the onus is a very light one and the cases that I have cited above

(1) 50 P. L. R. 220.
(2) A. I. R. 1933 Lah. 1005.
(3) 39 P. L. R. 579.
(4) L. P. A. 3 of 1948.
(5) L. P. A. 15 of 1949.
(6) I. L. R. (1918) 45 Cal. 450.

are good instances and are sufficient to discharge the onus. I am, therefore, of the opinion that the Courts below have rightly come to the conclusion that sisters' sons are better heirs than the collaterals.

Kapur J.

I, therefore, dismiss this appeal but leave the parties to bear their own costs throughout.