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execution and to execute the decree. This appears to have been the intention of the Legislature and the too narrow interpretation of the condition set out in section 37(b) would defeat rather than further the ends of justice. Section 37 enlarges the meaning of the expression "Court which passed the decree" and does not merely provide an alternative meaning to it. In this view of the matter, I would hold that the Courts below were wrong to hold that the execution applications could not be entertained by the Sunam Court. I would, therefore, allow these appeals and setting aside the orders of the Courts below direct that the execution applications be entertained by the Sunam Court. Since there was a conflict of decisions and the point was not free from difficulty, I would direct the parties to bear their own costs throughout.

B. R. T.

APPELLATE CIVIL.

Before Bhandari, C. J.

CHANAN SINGH AND OTHERS,—*Appellants*
versus
MAGHAR SINGH AND OTHERS,—*Respondents.*

1957

Sept., 25th

Regular Second Appeal No. 691 of 1952.

Custom—Gill Jats of Moga Tahsil—Whether an adopted son is entitled to succeed to the property of his natural father—Special Custom—Tribe, whether governed by—General customs stated.

Held, that the Gill Jats of Moga Tahsil are not regulated by the genaral agricultural custom of the province but by a special custom according to which an adopted son is precluded from inheriting the property of his natural father. The general custom in regard to succession by an adopted son is that ordinarily a person appointed or adopted does not lose his right to succeed to property in his natural family, as against collaterals, but does not succeed in the presence of his natural brothers.

Case law discussed and reviewed.

Regular Second Appeal from the decree of Sh. Hans Raj Khanna, II Additional District Judge, Ferozepore, dated the 28th May of 1952, affirming that of Sh. J. M. Tandon, Sub-Judge, III Class, Moga, dated the 2nd June, 1951, granting the plaintiffs a declaratory decree against defendants Nos. 1 to 4.

MELA RAM AGGARWAL, for Appellants.

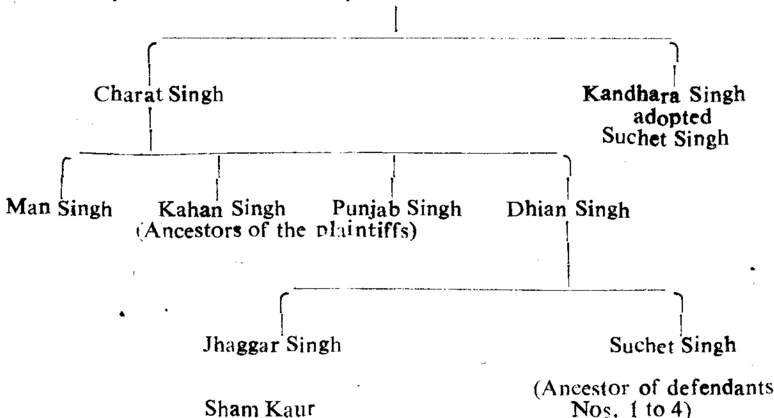
SHAMAIR CHAND, for Respondents.

JUDGMENT

Bhandari, C. J.

BHANDARI, C. J.—This appeal raises the question whether a Gill Jat of the Moga Tahsil who is taken in adoption is entitled to succeed to the property of his natural father.

The following pedigree-table shows the relationship between the parties:—



Suchet Singh, son of Dhian Singh, was taken in adoption by Kandhara Singh, brother of Charat Singh, common ancestor of plaintiffs and the defendants. Sham Kaur, widow of Jhaggar Singh, brother of Suchet Singh, died in or about the year 1948 and the land belonging to her deceased husband was mutated in the names of defendants

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Nos. 1 to 4, who are sons of Suchet Singh. The plaintiffs who are descendants of Man Singh, Kahan Singh and Punjab Singh, sons of Charat Singh, thereupon brought a suit for a declaration that they were entitled to succeed to the property left by Jhaggar Singh, in preference to the descendants who had lost all their rights in the family of Dhian Singh. The trial Court decreed their claim and the decree of the trial Court was upheld by the Additional District Judge in appeal. The descendants of Suchet Singh, defendants Nos. 1 to 4, are dissatisfied with the orders of the Courts below and have come to this Court in second appeal.

The general custom in regard to succession by an adopted son is embodied in paragaraph 48 of Rattigan's Digest of Customary Law which declares that ordinarily a person appointed or adopted does not lose his right to succeed to property in his natural family, as against collaterals, but does not succeed in the presence of his natural brothers. This general custom is supported by two judicial instances. In *Diwan Singh and three others* v. *Bhup Singh and another* (1), it was held that among Gill Jats of village Ramonwala, tahsil Moga, an appointed heir does not by custom forefeit his right to succeed as heir to property left by his brother's sons along with the sons of another brother. In *Dewa Singh and others* v. *Lehna Singh and others* (2). Division Bench of the Chief Court held that an appointed heir retains his right to succeed in his natural family as against collaterals though he does not succeed in presence of his natural brothers. These authorities do not, in my opinion, lay down good law. The decision of 1884 was given very many years ago long before the rules concerning the establishment of

(1) 45 P.R. 1884.
(2) 45 P.R. 1916.

agricultural custom had crystalised themselves. Indeed, Mr. M. M. L. Currie who was the author of the Riwaj-i-am of the Ferozepur District in the year 1914, has doubted the correctness of this decision. In a recent authority of the Lahore High Court reported as *Rahmat* v. *Tiledar and another* (1), it has been held that the succession of M to a share in his natural father's property constituted only a single instance which was opposed both to Customary Law of the District and the general custom of the Province and that it would not be desirable to find a decision on a question of custom on a single instance occurring in the same family.

But it is contended on behalf of the plaintiffs that the family is not regulated by the general agricultural custom of the province but by a special custom according to which an adopted son is precluded from inheriting the property of his natural father. According to the Riwaj-i-am of the Ferozepur District which was compiled in the year 1890 and according to the one which was prepared in the year 1914, an adopted son cannot inherit from his natural father except as far as regards such share of the property as would come to his adoptive father as a collateral. This special custom is supported by at least two instances relating to Gill Jats of the Moga Tahsil. They are supported also by two judicial instances. In *Dial Singh and others* v. *Sewa Singh and others* (2), a Division Bench of the Chief Court held that amongst Sikh Jats of Mauza Chuhar Chak in the Moga Tahsil of the Ferozepur District an adopted son who is of the same *got* as the adoptive father is entitled by custom to succeed collaterally to the family of his adoptive father. While dealing with this aspect of the case the learned Judges

(1) A.I.R. 1945 Lah. 229.
(2) 103 P.R. 1909.

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observed that the Riwaj-i-am of the Moga Tahsil shows that among the tribes that are governed by it the adopted son is transplanted into the adoptive father's family, being debarred from inheriting in the family of his natural father and that for purposes of collateral succession he occupies the same position as the natural son of the adoptive father would have occupied. They attached considerable weight to the Riwaj-i-am which was stated in *Dewa Singh and others* v. *Lehna Singh and others* (1), to have been prepared with great care and expressed the view that the entry to the effect that a son adopted into another's family cannot inherit from his natural father except in certain circumstances was fully supported by instances and had been acted upon in practice. This decision was cited with approval by Falshaw, J., in *Bur Singh* v. *Jhanda Singh* (2), decided on the 1st October, 1948, where the learned Judge held that a Jat Sikh of the Moga Tahsil who is adopted according to custom is entitled to succeed collaterally to the property of his adoptive father, as an appointment of an heir under custom has the same effect as a formal adoption under the Hindu Law. Both these authorities are based upon a large number of instances, two of which relating to Gill Jats of the Moga Tahsil are cited at page 243 of Currie's Customary Law of the Ferozepur District. Both the Courts below which had occasion to deal with this case have held, and held as it seems to me on ample evidence, that the parties to this litigation are regulated by a special custom and not by the general custom.

For these reasons I would uphold the order of the Courts below and dismiss the appeal. There will be no order as to costs.

B. R. T.

(1) 45 P.R. 1916.
(2) R.S.A. 132 of 1947.

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