of a transfer made under the Act and are not attracted to one made before and without reference to the Act. Section 10 of the Act, therefore, which provides for resumption and forfeiture only in the case of transfers made under section 3 of the Act must be held to be inapplicable to the present case. In this view of the matter, the action taken by respondents Nos. 2 and 3 in their orders contained in Annexures "J," "L" and "M" cannot be justified in law.

(12) In view of the conclusion just arrived at, we do not consider it necessary to go into the question of the *vires* of section 10 of the Act.

(13) In the result, the petition is allowed and the impugned orders contained in Annexures "J", "L" and "M" are quashed as being unwarranted and unenforceable in law. We may make it clear, however, that it will be open to the respondents to take such action in the matter as they legally can in view of the conditions covering the allotment and contained in allotment letter Annexure "A".

(14) The parties shall bear their own costs.

D. K. MAHAJAN, J.—I agree.

N. K. S.

APPELLATE CIVIL

Before Prem Chand Pandit and C. G. Suri, JJ.

JANGIR SINGH AND OTHERS,—*Appellants.*

Versus

SUCHA SINGH AND OTHERS,—*Respondents.*

Regular Second Appeal No. 1264 of 1963

November 7, 1969

Custom (Nabha)—Succession to non-ancestral lands—Sisters or sisters' sons of the last male owner—Whether have preference over 7th degree collaterals—General Custom in small princely States in Punjab—Whether derived from the adjoining territories—Hindu Law of Inheritance (Amendment) Act (II of 1929)—Section 1(2)—Non-applicability of the Act to Nabha—Whether had any effect on the right of succession of females there.

Held, that according to the general custom prevalent in the erstwhile princely State of Nabha in Pepsu, the sisters or sister's son of the last male owner had preference over collaterals of 7th degree in the matter of succession to non-ancestral land.

Held, that the general custom applicable in small princely States in Punjab was derived from the adjoining territories and the said adjoining territories and princely States were looking to each other for lead or guidance in matters of following customs on disputed points. There was no separate rule of general custom in the erstwhile States of Pepsu and what was stated as a rule of succession in Rattigan's Digest of Customary Law was also applicable to the ethonological Punjab and not merely to a geographical entity of that part of the territory of Punjab which was known as British India. The customary law as recognised in Rattigan's Digest had been invariably applied to the erstwhile State of Patiala and East Punjab States Union. Custom is always in a fluid or flexible state and it keeps changing to keep abreast of the social and cultural ideas of the community and does not recognise any territorial limits and can diffuse across the borders of States. Frequent recognition of a particular custom in a neighbouring territory can be taken advantage of by Communities governed by similar custom and the change in customs, whatever may be the reason for the change, can follow the same trends in two neighbouring territories which have for ages past been looking to each other for a lead or guidance in such matters.

(Para 8)

Held, that in view of the tendencies in the past it is not wrong to say that Hindu Law of Inheritance (Amendment) Act only gave statutory recognition to the forces of reforms that had already set in many years earlier and which could not be denied recognition because of the momentum that they had gained over the years. Section 1(2) of the Act said that these amendments in Hindu Law were to extend to the whole of British India and some other territories, (not including the princely States). This was only because the Central Legislature of British India that passed the Act had no jurisdiction to legislate for the princely States. It would be wrong to conclude from section 1(2) of the Act that the intention of the Central Legislature was to exclude the females in the princely States from the benefits of the forces of reform that had already set in many years earlier and the omission was due more to the helplessness of the Central Legislature than to any lack of good intentions on their part towards the rights of females in the princely States. If there was no corresponding legislation in these princely States it was only because the legislative machinery in these States was not quite as streamlined or well oiled to remain abreast of the winds of social and cultural reforms that had been blowing for more than three decades and if the statutory recognition of these tendencies at social reforms in a neighbouring area could give a fillip to the trends and have the effect of promoting and accelerating the process of social reform in the customary law, the benefit was not intended to be denied to female heirs in the neighbouring princely States.

(Para 11)

Case referred by the Hon'ble Mr. Justice D. K. Mahajan on 27th September, 1968 to a Division Bench for decision of an important question of law involved in the case. The case was finally decided by a Division Bench consisting of the Hon'ble Mr. Justice P. C. Pandit and the Hon'ble Mr. Justice V. G. Suri, on 7th November, 1969.

Regular Second Appeal from the decree of the Court of Shri Murari Lal Puri. District Judge, Patiala, dated 7th August, 1963, reversing that of Shri Rajinder Lal Garg, Sub-Judge 1st Class, Nabha, dated the 29th October, 1962, and dismissing the plaintiffs' suit with costs.

TAHL SINGH MANGAT, ADVOCATE, for the appellants.

J. N. KAUSHAL, ADVOCATE WITH ASHOK BHAN AND NAGINDER SINGH, ADVOCATES, for the respondents.

JUDGMENT

C. G. SURI, J.—This second appeal involving the question whether, under custom, sisters or sisters' sons would be better heirs than collaterals of the 7th degree in respect of non-ancestral lands, situated in Nabha Tehsil of Patiala district, came up before D. K. Mahajan, J., and it was felt that certain decisions with regard to the applicability of the Hindu Law of Inheritance (Amendment) Act, No. II of 1929, to the areas constituting the erstwhile Union of Patiala and East Punjab States required further consideration and that the matter should be examined and decided by a Division Bench. If it had been brought to the notice of the Hon'ble Judge that some of the decisions needing reconsideration were of Division Benches of the Punjab and PEPSU High Courts, the reference could have been to a still bigger Bench. This may however be one of the last few cases where custom is to be the rule of decision in matters of succession or inheritance to property because after the coming into force of the Hindu Succession Act, 1956, such disputes would be decided according to the provisions of that Act. The reason that we are called upon to decide this dispute according to customary law of the parties so many years after the coming into force of the Hindu Succession Act, 1956, may appear to be that the mutation of succession was entered and verified four or five years after Bishani's death and the present proceedings have been pending for the last seven or eight years. This second appeal has been pending in this Court since 1963. The question in dispute is not likely to come up for decision in many more cases. This case can moreover be disposed of on the basis of a Full Bench decision of this Court in *Smt. Sukhi* v. *Waryam Singh* (1) and the Supreme Court decision in *Ujjagar Singh* v. *Smt. Jeo* (2).

(1) A.I.R. 1959 Pb. 339.

(2) A.I.R. 1959 S.C. 1041.

(2) The last male-holder and his collaterals are Chhatra jats of village Mandor in Tehsil Nabha of district Patiala and the agricultural land in dispute measuring 130 bighas and 5 marlas in area is situated in the said village. Nabha was one of the princely States which covenanted or integrated into the Union of Patiala and East Punjab States in 1948.

(3) It is the common ground of the parties in their pleadings that they were governed by customary law in matters of succession and inheritance etc. The succession last opened out on the death of Mst. Bishni, widow of Kalu in 1955. She had inherited the land in dispute on the death of her son Dasondhi who had died without leaving any widow or children. Dasondhi had succeeded to this land on the death of his father Kalu.

(4) The mutation of succession on the death of Mst. Bishni had been sanctioned in favour of the defendants who are collaterals of the 7th degree of the last male-holder, Dasondhi and the plaintiffs who are the sisters' sons of Dasondhi have filed this suit for possession of the land against those collaterals. Parties are Chhatra Jats, which is a predominantly agricultural community in this area and the plaintiffs had alleged in paragraph 6 of the plaint that they were governed by agricultural custom in matters of succession and alienations to property etc. There was no denial of this averment in the written statement filed by the collaterals and they had, in fact, set up a special custom whereby collaterals of the 7th degree were said to exclude sisters or sisters' sons from inheritance. This setting up of a special custom was an implied admission that custom was to be the rule of decision between the parties. It was for this reason that there is no issue with regard to the general custom of the parties and the collaterals have, on the other hand been called upon to prove the special custom pleaded by them and the onus of proving Issue No. 9 was placed on them. These issues have been reproduced in the judgments of the two Courts below. The trial Court decreed the suit of the sisters' sons on 29th December, 1962 and found that the special custom set up by the collaterals had not been proved and that there was no evidence on record in the shape of any instances or records of customs like Riwaj-i-am etc. On the basis of the general customary law of Punjab, however, the sisters' sons were held to exclude remote collaterals from succession to non-ancestral property. In coming to this decision, the trial Court had relied on *Swami Singh and others*

v. *Ude Singh and others* (3) and *Mst. Sukhwant Kaur* v. *Balwant Singh and others* (4).

(5) The collaterals filed an appeal and the District Judge, Patiala, distinguished the rulings relied upon by the trial Court on the ground that these cases had been decided under the personal law of the parties while it was the common case of the parties that custom was to be the rule of decision. The lower appellate Court then relied mainly on Paragraph 24 of Rattigan's Digest of Customary Law and some old and archaic rulings in order to come to the finding that collaterals, however remote, would exclude a sister or sister's sons from succeeding to property whether ancestral or non-ancestral. The recent decisions of the Punjab and Pepsu High Courts were not referred to and the omission may imply that the learned District Judge had not been able to find any recent cases in support of the proposition of law adopted by him while accepting the appeal of the collaterals. He had ignored the observations of the Hon'ble Judges in a number of cases that Paragraph 24 of Rattigan's Digest of Customary Law had been too broadly and vaguely stated and could not be taken to be laying down the correct law under all circumstances. It was also not considered by the learned District Judge that references in records of customs were to be taken to relate to ancestral property and that the case of female heirs generally goes by default as such females are not consulted at the time of the settlement when records of customs are compiled. The effect of the Hindu Law of Inheritance (Amendment) Act No. II of 1929, was not considered and the learned District Judge was, in fact, hard put to negative the argument that parties could be allowed to fall back upon their personal law.

(6) Some of the sister's sons of Dasondhi are now the appellants before us. Shri Kaushal, learned counsel for the respondents argued, by reference to the copy Exhibit P. 1 of the pedigree table or *Shajranasab*, that his clients were 6th degree collaterals of the last male holder. This would be so if the degree of relationship were to be counted from Dasondhi's father Kalu. In that case it would be only fair to the appellants that they should be treated as daughter's sons of Kalu. The collaterals cannot relegate the appellants to the inferior position in the table of heirs as sister's sons of

(3) A.I.R. 1952 Pb. 79.
(4) A.I.R. 1951 Simla 242.

Dasondhi and at the same time count their own degree of relationship not from Dasondhi but from his father Kalu. Moreover, the copy Exhibit P. 1 of the *Shajranasab* does not connect Sondhi with the common ancestor and some links are missing in the line of descent upto Sondhi. There is no line connecting the ancestor Raju to Sondhi's grandfather Nihala. In this connection the observations of Soni, J. in a Division Bench ruling *Mst. Jeo* v. *Ujjagar Singh* (5) in paragraph 13 may appear pertinent. The collaterals are of a degree so remote that it is doubtful whether the pedigree table on which they rely can be said to be quite authentic or that the records of settlement which were started in 1852 could really trace out the genealogy for seven generations. Most of this evidence with regard to relationship of the collaterals would naturally be based on hearsay. Anyhow, the relationship of the defendant-respondents with the last male holder is not a matter in issue and we proceed to decide the case on the assumption that the defendant respondents are collaterals of the 7th degree of the last male holder.

(7) It was then argued by Shri Kaushal that the custom relied upon by the plaintiffs had not been proved in the present case by any instances or any compilations of records of customs and that on the basis of section 113 of the PEPSU Ordinance No. X of 2005 B.K. which corresponds to section 5 of the Punjab Laws Act, we have to fall back upon the personal law of the parties. The argument is that the Hindu Law of Inheritance (Amendment) Act, No. II of 1929, which recognised daughters and sisters and their children as better heirs than the remote collaterals, had not been extended to the covenanting princely States which had integrated into PEPSU in 1948 and that the sisters' sons would not rank as heirs under Hindu Law, un-amended as it was by Act No. II of 1929. This argument ignores that there is such a thing as general custom and that Courts can take judicial notice of a custom which had received widespread notoriety by being followed frequently over the years all over the country. When the parties have all along been so definite that they are governed by custom and the collaterals have pleaded a special custom which they have failed to prove, we have every reason to rely on the general custom which has of recent years been recognizing sisters' sons as better heirs than collaterals of a degree more remote than the 5th degree in respect of non-ancestral property. Shri Kaushal's argument is that this

(5) A.I.R. 1953 Pb. 177.

trend in the customary law in favour of the female heirs or their issue in Punjab was due to Act No. II of 1929 and that since this Act was not made applicable in covenanting States like Nabha etc., the sisters' sons of Dasondhi cannot get the benefit of this veering round of customary law in favour of the female heirs or their progeny. To deal properly with this argument, it would be necessary to have some idea as to the sources from which custom was derived or its existence proved in territories of the covenating princely States before these States were integrated into a Union in 1948.

(8) It may appear that some of these covenanting princely States were smaller in area than an average sized district in the joint Punjab. There is nothing to indicate that proper records of customs were being maintained or prepared in these small princely States or that the cases decided by the Courts of such princely States were being reported or published in any law journals so as to be easily available to the lawyers or litigants as instances in proof of a custom. It would not be wrong to say that the general custom applicable in such small princely states was derived from the adjoining territories or that the said adjoining territories and princely states were looking to each other for lead or guidance in matters of following customs on disputed points. In *Mst. Giano* v. *Duli Chand* (6), it was observed by Shamsher Bahadur J. that there was no separate rule of general custom in the erstwhile states of Pepsu and what was stated as a rule of succession in Rattigan's Digest of Customary Law was also applicable to the ethonological Punjab and not merely to a geographical entity of that part of the territory of Punjab which was known as British India. The customary law as recognised in Rattigan's Digest had been invariably applied so far as the general custom was concerned to the erstwhile State of Patiala and East Punjab States Union. Reference was made to a Full Bench decision of the Pepsu High Court in *Chajja Singh* v. *Pritam Singh* (7), and it was observed that Courts in Pepsu were drawing freely on customs as prevailing in Punjab while deciding cases. The contention that the rules of customs which had been digested by Rattigan's could not be made applicable to the Pepsu territories was repelled. The abrogation of the rule envisaged in paragraph 24 was, therefore, applied to territories of the erstwhile Pepsu and collaterals of the 6th degree were excluded as against a sister from succession to non-ancestral property. Reference was also

(6) 1963 P.L.R. 968.

(7) A.I.R. 1950 Pepsu 59.

made to a Full Bench decision in *Smt. Sukhi* v. *Waryam Singh* (1), wherein it had been observed that paragraph 24 of Rattigan's Digest of Customary Law was too broadly worded and could not be safely applied to ancestral or self-acquired property. It has also been observed in a number of ruligs that custom is always in fluid or flexible state and that it keeps changing to keep abreast of the social and cultural ideas of the community and would not recognize any territorial limits and could diffuse across the borders of States. Frequent recognition of a particular custom in a neighbouring territory could be taken advantage of by Communities governed by similar custom and the change in custom, whatever may be the reason for the change, could follow the same trends in two neighbouring territories which have for ages past been looking to each other for a lead or guidance in such matters. If certain trends in customary law in favour of the female heirs or their progeny had set in a few decades earlier in two neighbouring territories than the promulgation of a piece of legislation like the Central Act No. II of 1929 in one of these territories would not necessarily arrest the progress of the trends that had set in decades earlier in the other territory independently of that piece of legislation in the neighbouring territory. These trends could advance or make progress independently of the piece of legislation by the mere force of the momentum that they had gained over the decades. In fact, there were never any attempts at codifying the customary law on such points and a piece of legislation affecting the personal law of the parties may leave unchanged the trends that had set in the customary law of two neighbouring territories. The very idea that customary law on such matters could be codified or legislated upon may appear repugnant to us and Act No. II of 1929 which governed succession under the Hindu Law could not affect the trends in customary law that had set in many years before this Act was brought on the statute book.

(9) With the turn of the present century the social and ethical ideas in Punjab were veering round to the emancipation of women and for giving them better rights of inheriting property. Such ideas were not confined only to urban societies and even rural communities governed by customary law were being given the benefit of these changes. In spite of some decisions that customary law or customs of any community were not matters of logical deductions or inferences, Courts had started interpreting the records of customs in a manner so as to favour the female heirs or their children. It was

observed by Soni, J. in *Mst. Jeo* v. *Ujaggar Singh* (5), that custom was always in a fluid state and was varying round to giving females greater rights than they were supposed to possess when the exponents of customary law basing their deductions on Sir Henry Mayne's work, laid down the law in the sixtees or eightees of the last century. Paragraph 24 of Rattigan's Digest of Customary Law which categorically stated that sisters or their issues do not succeed under any circumstances was the first to come in for attack by the Courts. As early as in 1904, it was observed in *Hasan* v. *Jahana* (8), that Punjab custom was fluid and was capable of adapting itself to varying conditions and that the decisions for the last 10 years had uniformly doubted the correctness of Paragraph 24 of Rattigan's Digest. A similar view was taken in a Full Bench decision in *Daya Ram* v. *Sohel Singh* (9), where it was observed that custom like other law is a branch of sociology and must be in a fluid state and take cognizance of progress of ethical and legal notions in the community in which it is in force. Another manner in which an interpretation favourable to the female heirs was being taken by Courts was that such records of custom or Riwaj-i-arms were taken to relate only to ancestral property and not to self-acquired or non-ancestral property. It was also being recognized that the absence of females at the time of consultation for the preparation of records of such customs should not be allowed to prejudice by mere default the case of these females.

(10) *Bholi* v. *Kahna* (10), *Mst. Bhar* v. *Khanun* (11), *Fatima Bibi* v. *Shah Nawaz* (12), *Ahmad Khan* v. *Mt. Channi Bibi* (13) and *Mohammad Alam v. Mst. Hafizan* (14), are some of the earliest cases that started doubting the correctness or accuracy of Paragraph 24 of Rattigan's Digest of Customary Law. *Sawan* v. *Sahib Khatun* (15), *Rahman* v. *Karim Bakhsh* (16), *Ladha* v. *Mt. Sardar Bibi* (17) and *Ahmad Yar Khan* v. *Mst. Fateh Bibi* (18), were rulings from

(8) 71 P.R. 1904.
(9) 110 P.R. 1906.
(10) 35 P.R. 1909.
(11) A.I.R. 1919 Lah. 147.
(12) A.I.R. 1921 Lah. 180.
(13) A.I.R. 1925 P.C. 267.
(14) A.I.R. 1934 Lah. 351.
(15) 44 P.R. 1909.
(16) A.I.R. 1917 Lah. 157.
(17) A.I.R. 1930 Lah. 255.
(18) A.I.R. 1933 Lah. 326.

all over the province of joint Punjab before its partition in 1947 which started preferring females to remote collaterals in matters of succession. Most of these rulings are reported in official law journals like Indian Law Reports, etc. but I have perferred the All-India Reporter Citations to give an idea of the years during which the question of custom on the point arose and when the cases were finally decided by the highest Courts. Most of these cases lay down the principle that references in the Riwaj-i-am were to be taken to relate only to ancestral land as custom is generally concerned with the conservation of ancestral holdings. These changes in the case law on custom had perforce to be recognized by the compilers of customary manuals in later settlements. Most of the compilers of the customary law had observed this tendency to change and even the Privy Council in *Nagindas Bhagwandass* v. *Bachoo Hurkissondass* (19), observed that Hindu Law and custom have not stood still. Mr. Humphreys who compiled the customary law of Hoshiarpur district in 1914 observed in his introduction—

> "Custom is in its essence subject to change. Custom is the general practice on a given point actually prevalent among the community; and precisely as the community itself is liable to change its practices vary also.....The value of custom is in proportion to the universality of its recognization in practice, much more than to its antiquity or the sanctity of its origin; and (as has been remarked) the one great beauty of customary law is its flexibility, its adaptability to the varying circumstances of the community."

(11) Similarly, Mr. Whitehead has in his introduction to the Customary Law of Ambala District (Edition 1921) observed—

> "As regards changes in the last thirty years there has been a general relaxation in old restrictions especially in the direction of greater rights and liberty for females, and there is now less tribal isolation. Custom is largely moving with the Courts."

This was the position as regards the social and cultural reforms, duly recognized in judicial decisions towards the betterment of property rights of females when Hindu Law of Inheritance (Amendment) Act came to be passed in 1929. In view of the tendencies in

(19) A.I.R. 1915 P.C. 41.

the past it would not be wrong to say that this Act only gave statutory recognition to the forces of reforms that had already set in many years earlier and which could not be denied recognition because of the momentum that they had gained over the years. Section 1(2) of Act No. II of 1929 said that these amendments in Hindu Law were to extend to the whole of British India and some other territories (*not including the princely states*). This was only because the Central Legislature of British India that passed the Act had no jurisdiction to legislate for the princely states. It would be wrong to conclude from section 1(2) of Act No. II of 1929 that the intention of the Central Legislature was to exclude the females in the princely states from the benefits of the forces of reform that had already set in many years earlier and the omission was due more to the helplessness of the Central legislature than to any lack of good intentions on their part towards the rights of females in the princely states. If there was no corresponding legislation in these princely states it was only because the legislative machinery in these states was not quite as streamlined as well oiled to remain abreast of the winds of social and cultural reforms that had been blowing for more than three decades and if the statutory recognition of these tendencies at social reforms in a neighbouring area could give a fillip to the trends and have the effect of promoting and accelerating the process of social reform in the customary law, the benefit was not intended to be denied to female heirs in the neighbouring princely states. Moreover, Act No. II of 1929 was only calculated to bring about amendments in the Hindu Law of inheritance as prevailing in British India, etc. and was not intended to affect the customary law in Punjab or the neighbouring princely states. The changes and reforms in the customary law of Punjab and convenanting princely states had been taking place for a number of years not because of but independently of or in spite of Act No. II of 1929 and these changes or reforms had been going on and continued not only in the customs of agricultural tribes of Hindu origin but also in the agricultural tribes who had Muslim origin and whose personal law was in no way affected by Hindu Law of Inheritance (Amendment) Act, No. II of 1929. Codified law or statute can, by its very nature, have watertight compartments but custom is that fluid and flexible law which would because of its adaptability or ever changing character know no geographical, racial, religious or provincial barriers. I have purposely cited above rulings under custom relating to agricultural tribes of Muslim origin to show that even though Act No. II of 1929 had no effect on the personal law of these tribes,

their customs went on undergoing the same changes as were being noticed in the customs of the agricultural tribes of Hindu origin. It cannot, therefore, be said that the improvements in the property rights of females in these agricultural tribes governed by custom were necessarily due to the fact that tribes of Hindu origin could fall back on their personal law and take advantage of the amendments brought about by Act No. II of 1929. Female heirs in the agricultural tribes of Muslim origin who had never to fall back on their personal law as a last resort were also reaping the benefits of these changes and there could, therefore, be no intention that the customary law of the agricultural tribes whether of Hindu or Muslim origin in the princely states would not undergo corresponding changes which were taking place in the neighbouring districts of Punjab which were at that time under the British Government. The rumblings of these changes were being felt with the turn of the present century from one end of the country to the other as would appear from the cases referred to and discussed in a Full Bench decision of this Court in *Smt. Sukhi* v. *Waryam Singh* (1). The cases mentioned are of all communities and from all districts like Attock near N.W.F.P., Gujrat, Lahore, Ludhiana, Jullundur, Ferozepur, Ambala and Rohtak, etc. The summing up of the entire case law on page 348 of this Full Bench decision may give us an idea how customary law has been changing in favour of sisters as against collaterals over the years both before and after the coming into force of Act No. II of 1929 and that these changes were not confined only to agricultural tribes of Hindu origin. In view of the universality of these changes the benefit would go to the female heirs in the agricultural communities in the covenanting princely states which were governed by similar customs in such matters. The amendments of the personal law of one community in only a part of the country had not arrested the winds of social, cultural and ethical reforms in the customary law irrespective of the territories of States or the basic religions of the agricultural communities and these changes in the customary law had been taking place and continued to do so independently of Act No. II of 1929. The force of momentum that these trends had gained over the years was an adequate substitute for the absence of any legislation with regard to the customs of these communities all over the country whether in covenanting princely states or elsewhere.

(12) Shri Kaushal, the learned counsel for the collaterals—respondents then argued that there was no proof of the custom set up

by the sisters' sons in the shape of specific instances or records of custom like Riwaj-i-am, etc. and that we have, therefore, to fall back upon the personal law of the parties. This argument conveniently assumes that the conception of a general custom of Punjab is a mere myth. *Ujjagar Singh* v. *Mst. Jeo* (2), lays down that when a custom has been repeatedly recognized by the Courts it passes into the law of the land and the proof of such a custom becomes unnecessary and that the Courts would be entitled to take judicial notice of such a custom without any independent proof in each and every case. It was observed that in Punjab the expression general custom has really been used in the sense that a custom has by repeated recognition by Courts gained such universal notoriety that the Courts could take judicial notice of that custom. I also do not agree with the argument of Shri Kaushal that no instances of the custom set up by the plaintiffs have been proved. Decided cases and law reports are instances which can be cited in proof of the existence or non-existence of a particular custom. In this view of the matter, the Full Bench decision in *Sukhi's case* (1) and the large number of cases discussed therein could be used as proof of the custom set up by the plaintiffs. The sisters' sons were entitled to succeed on the basis of the general custom so widely recognised all over the country and so universally observed by agricultural communities professing different religions and it was for the collaterals to prove the special custom pleaded by them and to discharge the onus placed on them by Issue No. 9.

(13) As to how far we can use the instances proved in other cases for the purpose of proving the existence or non-existence of a particular custom in our case, the observations of the Privy Council in *Mst. Subhani* v. *Nawab* (20), reproduced below may appear very pertinent —

> "A judicial decision, though of comparatively recent date, may contain, on its records, evidence of specific instances, which are of sufficient antiquity to be of value in rebutting the presumption. In such a case, the value of the decision arises from the fact not that it is relevant under Ss. 13 and 42 of the Indian Evidence Act as forming in itself a transaction by which the custom in question was recognized, etc., but that it contains, on its records, a number of

(20) A.I.R. 1941 P.C. 21.

specific instances relating to the relevant custom. To ignore such judicial decisions merely on the basis of the Riwaj-i-am would add greatly to the perplexities and difficulties in proving a custom."

(14) These observations were relied upon by the Full Bench in Smt. *Sukhi's case* (1) and applying these observations of the Judicial Committee to the case in hand, it was observed that Paragraph 24 of Rattigan's Digest of Customary Law would not justify our ignoring judicial instances in reported cases.

(15) In *Lachhman Dass* v. *Chuhra Mal* (21), a Division Bench had held that Hindu Law of Inheritance (Amendment) Act, No. II of 1929 was not in force in Patiala State when the succession opened out in that case and that the provisions of that Act could not be invoked by the parties. It may be observed that this was a case only under the Hindu law and the parties were not governed by custom. Even otherwise Hindu law has had to draw upon custom as one of its main sources (*See* Paragraph 8 of Mulla's Hindu Law, 13th Edition) and customary law has always been modifying or impinging upon the abstract conceptions of the basic Hindu Law. There is no such thing as a pure and unalloyed Hindu law and custom and Hindu law have had to intermingle to a certain extent. Hindu law and custom have both been undergoing changes and have not stood still as was observed by Privy Council in *Nagindas Bhagwandas* v. *Bachoo Hurkissondass* (19). In another un-reported judgment *Bhan Singh, etc.* v. *Shan Singh, etc.* (22), a Division Bench of this Court had held that Act No. II of 1929 was not in force in the erstwhile Pepsu state when the succession had opened out in that case. In the absence of any proof of custom the parties had to fall back upon their personal law and collaterals were held to be better heirs than a sister under the Hindu law, un-amended as it was, by Act No. II of 1929. The degree of relationship of the collaterals has not been indicated and the last male holder had only dakhilkari rights in the land situated in the covenanting state of Malerkotla and succession to such lands was governed by the Hidayats of Mr. Roberson according to which neither daughters nor sisters nor their descendants had any right of inheritance. In this ruling it has been mentioned that Act

(21) A.I.R. 1952 Pepsu 5.

(22) R.S.A. 50 of 1961 decided on 23rd April, 1962.

No. II of 1929 was extended to the areas of the erstwhile State of PEPSU after its merger in the present Punjab State in 1956 and this means that section 113 of the Pepsu Ordinance No. X of 2005 B.K. could not have had the effect of extending this Act to those areas in 1948 as has been argued by the counsel for the plaintiff.

(16) For reasons given above, the appeal is accepted, the judgment and decree of the Court of first appeal are set aside and those of the trial Court are restored. The suit of the plaintiffs (sisters' sons) is decreed with costs throughout.

P. C. Pandit, J.—I agree.

K.S.K.

REVISIONAL CRIMINAL

Before S. S. Sandhawalia, J.

TEJA SINGH,—*Petitioner*

versus

SATYA AND OTHERS,—*Respondents.*

Criminal Revision No. 108 of 1968

November 13, 1969.

Hindu Marriage Act (XXV of 1955)—Section 13—Hindu Marriage solemnised in India—Whether can be validly annulled by a foreign decree of divorce—Conformity with the provisions of section 13—Whether necessary—Relationship of husband and wife—Whether dissolved by such decree—Private International Law—Domicile of a wife—Whether follows that of the husband even in cases of desertion and judicial separation.

Held, that so long as the marriage subsists, the domicile of the husband is the governing factor and the derivative domicile of the wife must necessarily follow that of her husband. The exclusive jurisdiction for the dissolution of marriage vests in the Court where the parties are domiciled and the *lex-domicili* would govern such proceedings which are accorded recognition by the comity of nations. A marriage solemnised in India can be validly annulled by a decree of divorce granted by a Court of foreign country, provided the domicile of the husband is in that country. The conformity with the provisions of Hindu Marriage Act and the grounds given herein for divorce is not necessary. The decree of divorce granted by the