

the principles of natural justice in that the plaintiff had fled to India in October, 1947 it was certainly not practicable either for him to send pronote to his counsel at Bannu through the post, or to go there in person with it or to send it through any messenger from this side, and in such circumstances the refusal to allow any further adjournment for the production of the pronote appears to me to be extremely harsh and arbitrary. I thus see no reason to interfere and would accordingly dismiss the appeal with costs.

Firm Tijarati
Hindu Joint
Family Kesar
Das-Rajan Singh
v.
Seth Parma
Nand
Falshaw, J.

Dua, J.—I agree.

Dua, J.

K. S. K.

APPELLATE CIVIL

Before D. Falshaw and I. D. Dua, JJ.

SHRIMATI BUI,—*Defendant-Appellant.*

versus

GANGA SINGH AND OTHERS,—*Plaintiffs-Respondents.*

Regular Second Appeal No. 247 of 1950.

Custom—Amritsar District—Acquired property—Sister—Whether entitled to succeed as against collaterals—Riwaj-i-am—Questions and answers in—Whether relate to ancestral property—Rattigan's Digest of Customary Law—Para 24—Whether applies to Hindus and Muhammandans.

1953
Nov., 6th

Held, that the sister under the Customary Law of Amritsar District as also under the general custom is entitled to succeed to acquired property of her brother in preference to collaterals.

Held, that the questions and answers in the *Riwaj-i-am* deal with ancestral property and are of no avail as regards the acquired property.

Held, that the construction to be placed on para 24 of Rattigan's Digest cannot be influenced by the parties being Hindus or Mohammandans. The author of the Digest does not seem to have drawn any such distinction. If, however, that is a valid consideration, then under Hindu Law (as amended), now a sister stands fairly high up in order of succession and she is certainly a preferential heir than the 7th degree collaterals.

Regular Second Appeal from the decree of Shri T. C. Sethi, District Judge, Amritsar, dated the 14th January, 1950, affirming that of Shri Mani Ram, Sub Judge, Ist Class, Amritsar, dated 16th August, 1949, granting the plaintiffs a declaration to the effect that they are owners in possession of the property in dispute excepting one house and also granting in favour of the plaintiffs a decree for possession of the house on 5 marlas, as mentioned in the plaint.

Y. P. GANDHI, and V. P. GANDHI, for Appellant.

S. D. BAHRI, ROOP CHAND and N. N. GOSWAMI, for Respondents.

JUDGMENT

I. D. Dua, J.

I. D. DUA, J.—The plaintiffs, who claim to be 7th degree collaterals of Bua Ditta, a Jat of Amritsar, the last male holder, filed the present suit for a declaration that they were owners in possession of the land in suit measuring 121 Kanals 14 Marlas situate in village Sathiala with one Haveli and one vacant site measuring 7 marlas situate in the same village and in addition they claimed possession of a house. Their case is that Bua Ditta, who was the last male holder, had a sister Bui. On Bua Ditta's death, his mother Mst. Chandi succeeded to the usual life estate. On Mst. Chandi's death, Mst. Bui claimed to have obtained a gift from her mother with regard to the property in dispute. The plaintiffs alleged that Mst. Chandi had no right to make a gift of the property in favour

of her daughter in the presence of the plaintiffs-reversioners qua whom the property was ancestral. They also pleaded in the alternative that even if the property was held not to be ancestral, they had a preferential right than the sister of the deceased Bua Ditta. The suit was resisted by Mst. Bui. On the pleadings of the parties the following issues were framed:—

Shrimati Bui
v.
Ganga Singh
and others

I. D. Dua, J.

- (1) Are the plaintiffs preferential heirs of the land in suit?
- (2) Was the land validly gifted by Mst. Chandi in favour of defendant No. 1 and had she power to do so?
- (3) Is the land ancestral qua the plaintiffs?
- (4) If not, what is its effect?
- (4) Are the plaintiffs entitled to possession of the whole land?
- (6) Is the defendant entitled to inherit this land?

It may at this stage be stated that on Chandi's death a mutation in favour of the sister had been effected but the reversioners forcibly took possession of a part of the property in dispute with respect to which they prayed for a declaration. The trial Court held that the property was not proved to be ancestral. It was also held that Mst. Chandi succeeded Bua Ditta as a mother and, therefore, as such she had only life estate and had no right to make the gift. On issues Nos. 1 and 6, however, relying on question and answer 70 of the *Riwaj-i-am* of Amritsar District compiled in 1914, it was held that sister having no right of succession under

Shrimati Bui
 v.
 Ganga Singh
 and others
 I. D. Dua, J.

custom, the collaterals were entitled to succeed. On an appeal having been preferred by Mst Bui in the Court of the District Judge that court also dismissed the appeal relying on cases reported as *Hamira and others v. Ram Singh and others* (1), and *Mussammat Sant Kaur, etc. v. Sher Singh, etc.* (2). It has been observed by the learned District Judge that according to the authorities relied upon by him a sister does not exclude distant collaterals even as regards succession to self-acquired property.

Mst. Bui has come up in second appeal to this Court and on her behalf reliance has been placed on *Bholi v. Kahna and others* (3), a decision by Sir William Clark, Chief Judge. This was a case from Amritsar and it was observed that para 24 of Rattigan's Digest appears to have rather broadly stated that sisters are usually excluded, and this statement is hardly warranted by the authorities quoted for and against. The learned Chief Judge also observed that the fact, that a proprietor can dispose of his acquired property and would presumably prefer to transfer it to his sister rather than to a remote collateral who lived in another village, practically a stranger, was also a consideration in favour of sister's right to succeed qua acquired property in preference to collaterals. On this reasoning the appeal filed by the sister was allowed by the learned Chief Judge. As a matter of fact, recently a Division Bench of this Court had an occasion again to deal with a case from Amritsar, where the right of a sister to succeed to acquired property as against collaterals of the 12th degree was involved (*Mt. Sukhwant Kaur v. S. Balwant Singh and others* (4)). In that case

(1) 134 P.R. 1907.
 (2) I.L.R. 4 Lah. 392.
 (3) 35 P.R. 1909.
 (4) A.I.R. 1951 Simla 242.

after reviewing almost the entire case law on the subject the Division Bench (Weston, C.J. and Kapur, J.) came to the conclusion that the sister under the Customary Law was entitled to succeed to acquired property in preference to collaterals. I am in respectful agreement with the views expressed in the reported case. Indeed the learned counsel for the respondents has not denied that under the general custom a sister is entitled to succeed in preference to collaterals, but he says that on the present record special custom in favour of sisters with respect to the Jats of Amritsar has been established. In support of his contention he relies on Exhibits P. 18 and P. 19

Shrimati Bui
v.
Ganga Singh
and others
I. D. Dua, J.

I have no hesitation in repelling this contention. Exhibits P. 18 and P. 19 are two judgments of Subordinate Judges which proceed on the basis that an entry in the Riwayat-i-am raises a presumption in favour of collaterals as against sisters. This approach has now been finally rejected and it has consistently been held that the questions and answers in the Riwayat-i-am deal with ancestral property, and if that is so then these two instances can hardly be of any avail to the learned counsel. Another decision on which Mr. Bahri has relied is *Mussammatt Sant Kaur etc. v. Sher Singh etc.* (1). But this case also proceeds on the same basis and, therefore cannot be of much assistance to the learned counsel. In this case the decision in *Bholi v. Kahna* (2), was distinguished on the ground that the parties to that case were Mohammadans. I fail to see how the construction to be placed on para 24 of *Ratigan's Digest* could be influenced by the parties being Hindus or Mohammadans. The author of the *Digest* does not seem to have drawn any such

(1) I.L.R. 4 Lah. 392.

(2) 35 P.R. 1909.

Shrimati Bui
v.
Ganga Singh
and others

I. D. Dua, J.

distinction. If, however, that is a valid consideration, then, under Hindu Law (as amended), now a sister stands fairly high up in order of succession and she is certainly a preferential heir than the 7th degree collaterals. Hamira and others v. Ram Singh and others (1), can hardly be of any substantial assistance to Mr. Bahri. In the reported case the only question referred for decision to the Full Bench was whether in the absence of a son, a sister of the last male holder, can for the purposes of inheritance, be regarded as a daughter of his (the last male holder's) father and the answer was in the negative. A sister, according to this decision, has to establish her right to succeed in the capacity of sister and not in the capacity of a daughter of the last male holder's father. As is apparent, from the above discussion, sister's right to succeed to her brother's non-ancestral property has in the present case been considered on the footing only of her being a sister of the last male holder.

In this view of the matter, the appeal must be allowed, the judgment and decree of the Court below set aside and the plaintiffs' suit dismissed; there will be no order as to costs in this Court.

Falshaw, J.—I agree.

R. S.

APPELLATE CIVIL

Before Falshaw and Dua, JJ.

RATI RAM AND OTHERS,—Appellants.

VERSUS

MAM CHAND AND OTHERS,—Respondents.

Regular Second Appeal No. 13 of 1953.

Punjab Pre-emption Act (I of 1913)—Right of pre-emption—Nature of—Transaction whether a sale—Burden

1958
Nov., 14th

(1) 134 P.R. 1907.