

collaterals of the fifth degree in respect of non-ancestral property of the last male-holder. The only instance against them is the one furnished by *Kirpa and others v. Bakhshi Singh and others* (1). As pointed out above, this case was decided mainly on the basis of general custom given in paragraph 24 of the Rattigan's Digest of Customary Law. This statement of general custom has been found to be too widely stated. I am, therefore, of the opinion that it is satisfactorily proved that amongst agriculturist Jats of Ambala District custom does prevail according to which sisters succeed to non-ancestral property in preference to the collaterals of the fifth degree. I would accordingly dismiss this appeal with costs.

Harnam Singh
v.
Mst. Gurdev
Kaur
and others
Gosain, J.

CHOPRA, J.—I agree.

Chopra, J.

D. K. M.

APPELLATE CIVIL

Befor Tek Chand, J.

SHIV SINGH,—Appellant.

versus

JIWAN DAS AND OTHERS,—Respondents.

Regular Second Appeal No. 628 of 1956

Punjab Tenancy Act (XVI of 1887)—Section 59(1)(d) proviso—Courts, whether can ignore the rule of succession prescribed in section 59—Expression, "Common ancestor occupied the land", meaning of—Whether land must also be occupied by the successors of the common ancestor—Words and Phrases—"Descend" meaning of.

1957
Sept. 4th

Held, that the rule of succession to the right of occupancy is prescribed in section 59 of the Punjab Tenancy Act and it is not open to the Courts to have recourse either to the customary rule of succession or to rule of logic.

Held further, that reference to "male line of descent" has nothing to do with the property being inherited from generation to generation. Regarding the possession of land all that is required is that the common ancestor should have occupied it. If the intention of the legislature was that every succeeding ancestor should also be shown to have been in occupation of the land, it could have expressly said so. The condition as to the occupation of the land is restricted to common ancestor only and not to his successors.

Held also, that by the word "descend" is understood the passing of property to the heir or heirs without disposition by will or by alienation in the form of gift, sale, etc. It is a transmission by inheritance from an ancestor to the next heir.

Regular Second Appeal from the decree of the Court of Sh. Ram Gopal Kohli, Senior Sub-Judge, with enhanced appellate powers, Hoshiarpur, dated the 19th day of March, 1956, affirming that of Sh. Surjit Singh Raikhy, Sub-Judge, 1st Class, Garhshankar, dated the 31st March, 1955, granting the plaintiffs a decree for joint possession of the land in suit as occupancy tenants to the extent of one-half share held by Moti Das, deceased (the other $\frac{1}{2}$ share goes to defendant No. 9). The parties will bear their own costs in both the Courts.

P. C. PANDIT, for Appellant.

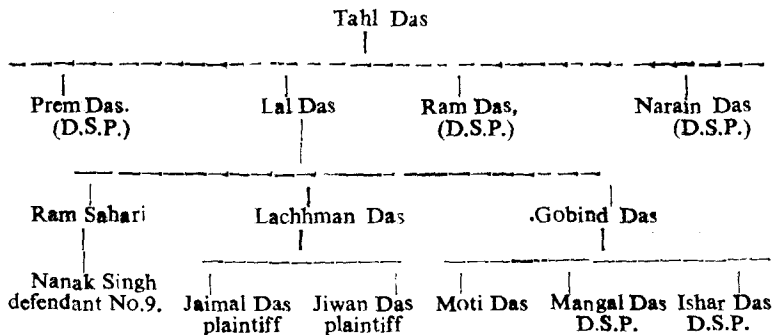
D. N. AGGARWAL, for Respondents.

JUDGMENT.

Tek Chand, J.

TEK CHAND, J.—This is a regular second appeal instituted by Shiv Singh defendant from the judgment and decree of the Senior Subordinate Judge, Hoshiarpur, dismissing his appeal and concurring with the decision of the trial Court granting the plaintiffs a decree for joints possession of the land in suit as occupancy tenants to the extent of one-half share held by Moti Das, deceased.

The following pedigree table will be helpful in understanding the nature of the dispute:—



Shiv Singh
v.
Jiwan Das
and others

Tek Chand, J.

The plaintiffs instituted a suit for possession of the land detailed in the plaint alleging that Moti Das was recorded as occupancy tenant of the land and the plaintiffs had become owners by virtue of Act No. VIII of 1953 (The Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953). Moti Das had not been heard of for more than seven years by those who would naturally have heard of him if he had been alive and, therefore, in view of the provisions of section 108 of the Indian Evidence Act, he should be deemed to have died. It was contended that the plaintiffs and defendant No. 9 were his collaterals and they were entitled to succeed to him.

The suit was contested by defendants 1 and 2 who pleaded that Moti Das was alive and he had been seen recently. They also pleaded that neither Lal Das, common ancestor of the plaintiffs, nor Moti Das, occupied the land in suit. The occupancy tenancy was joint with the defendants. They also pleaded that they were the sons of, Rakha Das who was *chela* of Govind Das, the father of Moti Das, and, therefore, they were entitled to succeed collaterally. There were other pleas also but they are of no concern at this stage. The following issues were framed:—

- (1) Whether Moti Das has not been heard of for seven years, and, therefore, he can be presumed to be dead?

Shiv Singh
v.
Jiwan Das
and others

Tek Chand, J.

- (2) Whether the common ancestor of the plaintiffs and Moti Das occupied the land in suit?
- (3) Whether defendants 1 and 2 are preferential heirs of Moti Das as compared to plaintiffs and defendant No. 9?
- (3A) Whether defendants 1 and 2 are entitled to the rights in suit in the land in dispute on the basis of survivorship?
- (4) Whether defendant No. 2 is the *Chela* of Moti Das and what is its effect?
- (5) Whether the suit property vests in the Udasi institution and what is its effect?
- (6) Is the suit barred by time?
- (7) Relief?

The trial Court decided all the issues in favour of the plaintiffs and decreed their suit for joint possession to the extent of one-half share of Moti Das. The other half belonged to defendant No. 9 and the plaintiffs' claim as to this half was dismissed. Shiv Singh defendant then instituted an appeal in the Court of the Senior Subordinate Judge who agreed with the findings of the trial Court and dismissed the appeal. On the first issue the lower appellate Court held that although a number of plaintiffs' witnesses, who were independent and credible, had stated that they had not heard of Moti Das for over seven years, that was not enough as it had not been shown that they were the persons who would have naturally heard of him had he been alive. The evidence of the defendants' witnesses who had stated that they had seen Moti

Das two or three years ago going about in the adjoining villages was considered to be interested, unsatisfactory and unconvincing. The lower appellate Court relied upon the statement of Jiwan Das plaintiff who had also produced letter, Exhibit D. 1, from Moti Das sent from Sind, now in Pakistan, in the year 1945. Jiwan Das plaintiff had stated that he used to get letters from Moti Das but he did not receive any letter from him after the receipt of Exhibit D. 1. The lower appellate Court came to the conclusion that Jiwan Das was the only person who could have heard of Moti Das and as he had not been heard of for more than seven years by him he was deemed to have died and the burden of proving that he was alive, which had shifted to the defendants, had not been discharged. Mr. Prem Chand Pandit, learned counsel for the appellant, has assailed this finding on the ground that the solitary testimony of an interested witness like the plaintiff himself ought not to have been accepted in the absence of any independent corroboration. I do not agree with his contention, and am of the view that it was open to the learned Senior Subordinate Judge to rest his finding on the solitary testimony of a single witness whom he found to be credible even if he had a personal interest in the litigation. The fact that Jiwan Das used to receive letters from Moti Das is supported by the testimony of D. W. 2, besides the production of Exhibit D. 1, letter from Moti Das. The finding of the lower Courts on the first issue was correct and in any case being a finding of fact I cannot reverse it even if I were to disagree with it.

On the second issue, Mr. Pandit has argued that the requirements of section 59, Punjab Tenancy Act, have not been satisfied in this case. Section 59(1) of the Punjab Tenancy Act runs as under:—

“When a tenant having a right of occupancy in any land dies, the right shall devolve—

Shiv Singh
v.
Jiwan Das
and others
Tek Chand, J.

Shiv Singh
 v.
 Jivan Das
 and others

 Tek Chand, J.

- (a) on his male lineal descendants, if any, in the male line of descent, and
- (b) failing such descendants, on his widow, if any, until she dies or re-marries or abandone the land or is under the provisions of this Act ejected therefrom, and
- (c) failing such descendants and widow, on his widowed mother, if any, until she dies or re-marries or abandons the land or is under the provisions of this Act ejected therefrom;
- (d) failing such descendants and widow or widowed mother, or, if the deceased tenant left a widow or widowed mother, then when her interest terminates under clause (b) or (c) of this subsection, on his male collateral relatives in the male line of descent from the common ancestor of the deceased tenant and those relatives :
 Provided, with respect to clause (d) of this subsection, that the common ancestor occupied the land."

Subsection 1(a), (b) and (c) admittedly do not apply. Under subsection (1)(d) of section 59, on the death of a tenant having a right of occupancy the right to the land devolves failing lineal descendants in the male line of descent and widow or widowed mother, on his male collateral relatives in the male line of descent from the common ancestor of the deceased tenant and those relatives. There is a proviso with respect to clause (d) which requires that the common ancestor must be shown to have occupied the land. The rule of succession to the right of occupancy is prescribed in section 59 of the Punjab Tenancy Act and it is not open to the Courts to have

recourse either to the customary rule of succession or to rule of logic. The argument of the learned counsel for the appellant is that it is not sufficient that the common ancestor occupied the land but it has further to be shown that on the death of every ancestor succeeding the common ancestor the property devolved by rule of inheritance. Mr. Prem Chand Pandit wants to apply the rule of custom regarding ancestral land which is that the land ceases to be ancestral if it comes into the hands of an owner otherwise than by descent or by reason merely of his connection with the common ancestor,—*vide Saif-ul-Rahman v. Mohammad Ali Khan* (1), *Jagtar Singh v. Raghbir Singh* (2), *Inder Singh v. Gulzara Singh* (3), and the ruling mentioned at page 676 of the Thirteenth Edition of the Digest of Customary Law by Rattigan. It is true that a property is deemed to “descend” when the estate vests by operation of law in the heirs immediately upon the death of the ancestor. When property devolves by rule of hereditary succession on the death of an ancestor it is said to “descend”. By the word “descend” is understood the passing of property to the heir or heirs without disposition by will or by alienation in the form of gift, sale, etc. It is a transmission by inheritance from an ancestor to the next heir.

Shiv Singh

v.

Jiwan Das
and others

Tek Chand, J.

In subsection 1(d) of section 59 of the Punjab Tenancy Act an answer is found to the question as to who is to succeed in the absence of descendant's widow and widowed mother, and the answer is that the male collateral relatives in the male line of descent are the successors. The reference to “male line of descent” has nothing to do with the property

(1) I.L.R. 9 Lah. 95.

(2) I.L.R. 13 Lah. 165.

(3) A.I.R. 1951 Punjab 345.

Shiv Singh
v.
Jiwan Das
and others
Tek Chand, J.

being inherited from generation to generation. Regarding the possession of land all that is required is that the common ancestor should have occupied it. If the intention of the legislature was that every succeeding ancestor should also be shown to have been in occupation of the land, it could have expressly said so. The condition as to the occupation of the land is restricted to common ancestor only and not to his successors. Mr. Pandit drew my attention to a judgment of Addison, J., in *Mula Singh v. Muhammad Sher* (1). The question in that case was that one Mita Singh, the common ancestor, had been shown to have held the land for one harvest as tenant of the then occupancy tenant Ganga Singh. The occupation for one harvest by Mitha Singh was considered to be not sufficient for making the plaintiff's heirs, under section 59 of the Punjab Tenancy Act, to be occupancy holders. It was observed—

“What is meant there (section 59(1)) is that it is not necessary to decide in what capacity the common ancestor held the land provided he did hold it and the land descended from him to his heirs. It is impossible to construe the proviso to section 59(1) as meaning that a tenant holding an occupancy tenancy for a brief period under the existing occupancy tenant or a trespasser holding the land, say for two days, is a person who occupied the land.”

The occurrence of the words “and the land descended from him to his heirs” does not suggest to me that the learned Judge who decided the case was reading in section 59(1)(d) what was not really there. The

(1) A.I.R. 1931 Lah. 507(1).

stray observation does not to my mind support the contention of the learned counsel for the appellant that something over and above what was contained in section 59(1)(d) was also required to be proved before plaintiff could succeed. I do not think that Addison, J., in that ruling was laying the proposition that besides proving that the land in suit was occupied by the common ancestor, it had further to be proved that every successive heir was also in occupation of the land.

Shiv Singh
v.
Jiwan Das
and others
Tek Chand, J.

The other authority reported in *Mst. Har Kaur v. Kharga* (1), does not lay down any proposition from which support can be found for the appellant's contention.

After giving my careful consideration to the arguments of the learned counsel I find no force in the contention of the appellant. I agree with the conclusion arrived at by the lower Courts. I, therefore, dismiss the appeal. In the circumstances of the case the parties are left to bear their own costs throughout.

D. K. M.

CIVIL REFERENCE

Before Falshaw and Mehar Singh, JJ.

SHRI SATISH CHANDER AND ANOTHER,—*Petitioners*

versus

DELHI IMPROVEMENT TRUST, ETC.,—*Respondents.*

Civil Reference No. 7 of 1956

*Government Premises (Eviction) Act (XXVII of 1950)—
Constitution of India Article 19(1)(f)—Whether Government
Premises (Eviction) Act is ultra vires, Article 19(1)(f) of
the Constitution of India.*

1957
Sept., 5th

(1) A.I.R. 1927 Lah. 534(1).