

APPELLATE CIVIL

Before D. K. Mahajan, J.

MST. PARBATI,—Appellant.

versus

BIJE SINGH AND OTHERS,—Respondents.

Regular Second Appeal No. 1250 of 1959.

February 6, 1969.

Custom (Punjab)—Succession—Division of ancestral property on Chundaward basis—Heirs of one group not extinct—Heirs of the other group—Whether can succeed to the properties of the former—Granddaughter—Whether succeeds to the property of the grandfather in preference to the collaterals—Sex—Whether a bar to such succession.

Held, that if the initial division of the ancestral property on the death of the common ancestor is on the basis of the *chundaward* rule, the descendants of one group can succeed to the other group only on the extinction of the descendants in that group. The whole-blood excludes the half-blood and till the heirs in the whole-blood come to an end the half-blood does not succeed. (Paras 6 & 7)

Held, that the rule of representation is universally recognised in the Punjab, whether the parties are governed by custom or not, and the logical consequence of the recognition of this rule is that a granddaughter represents her father in matter of succession to the grandfather, provided the daughter is otherwise entitled to succeed to ancestral property. Sex is no bar to such representation. A daughter is a preferential heir to self-acquired property of the father and also succeeds generally to ancestral property in the absence of the fifth degree collaterals of the father. A granddaughter will, however, oust the collaterals to succession to grandfather, if the collaterals are not of whole-blood but of half-blood. (Paras 6 & 7)

Regular Second Appeal from the decree of the Shri H. S. Bhandari, District Judge, Rohtak, dated the 1st day of April, 1959, affirming that of Shri Mohan Lal Jain, Sub-Judge, 1st Class, Rohtak, dated the 21st July, 1958, dismissing the plaintiff's suit.

C. L. AGGARWAL, ADVOCATE, for the Appellant.

RAM RANG, ADVOCATE, for Respondent No. 1.

K. K. CUCCRIA AND S. P. JAIN, ADVOCATES, for Respondents 2 to 23.

JUDGMENT.

MAHAJAN, J.—This second appeal is directed against the concurrent decision of the Courts below, dismissing the plaintiff's suit.

(2) Plaintiff, Shrimati Parbati, is the daughter of Bharat Singh who had died during the lifetime of his father Molar. On the death of Bharat Singh, his brother Surat Singh succeeded to him, and, on Surat Singh's death, his mother Shrimati Dhundhan, widow of Molar, succeeded as his mother. Shrimati Dhundhan died on the 1st of February, 1955. Defendants, who are fourth degree collaterals of Molar, succeeded in getting the mutation entered in their names after the death of Shrimati Dhundhan. This led to the present suit by Shrimati Parbati, daughter of Bharat Singh. She claims that she is entitled to succeed to the property in preference to the collaterals of her grandfather. Both the Courts below, relying upon the *Riwaj-i-am* of Rohtak District, have negatived her claim. Hence the present second appeal by the plaintiff.

(3) Mr. Chiranjiva Lal Aggarwal, learned counsel for the appellant, has raised two contentions. The first contention is that the division of property, after the death of Daulat, the common ancestor, was on the basis of *chundawand*. Half of the property came to the descendants of Daulat from one wife and the other half went to his descendants from the other wife. The property held by Molar belongs to the branch which got half of the property by rule of *chundawand*, whereas the defendants belong to the other branch which got the other half of the property. It may be mentioned that some of the defendants are in the same branch as Molar, but they are cognates, and, therefore, their claim cannot be considered in competition with the granddaughter of Molar. In fact we are really left with the defendants who are the descendants of Chanan Singh, Prem Sukh and Sham Sukh, sons of Daulat. It is *vis-a-vis* them that the claim of Shrimati Parbati has to be considered. It is maintained by the learned counsel that in view of the Privy Council decision in *Nabi Baksh and others v. Ahmad Khan and others* (1) and of this Court in *Jawala and others v. Sadhu Singh and others* (2), the whole-blood will exclude the half-blood. Their Lordships of the Privy Council settled finally that where the succession is on the basis of *chundawand* rule, unless the heirs in one group are extinct, the heirs of the other group will not succeed to the properties of the former group.

(4) The second contention of the learned counsel is that Shrimati Parbati, being the granddaughter, is entitled to succeed

(1) A.I.R. 1924 P.C. 117.

(2) A.I.R. 1950 E.P. 15.

to her grandfather's property in preference to the fourth degree collaterals, the property being non-ancestral.

(5) Mr. Ram Rang, learned counsel for the respondents, on the other hand contends that the first contention raised by the learned counsel for the appellant had not been raised in any of the Courts below and, therefore, it should not be entertained. Regarding the second contention, the learned counsel maintains that the property being ancestral—having been so found by the Courts below, the fourth degrees collaterals would be entitled to succeed to it in preference to the granddaughter, assuming the granddaughter to be heir of Molar under the Customary Law.

(6) After hearing the learned counsel for the parties, I am of the view that the first contention of the learned counsel for the appellant must succeed. The Courts below have found that the property on the death of Daulat devolved according to the *chundawand* rule. Therefore, the whole-blood will exclude the half-blood and till the heirs in the whole-blood come to an end the half-blood will not succeed. The contention being purely of law can be entertained even in second appeal and, therefore, there is no force in the contention of Mr. Ram Rang that this point not having been specifically agitated in the Courts below could not be permitted to be agitated in second appeal. In this view of the matter the second contention does not arise, but, in order to dispose of the matter finally, I may express my opinion thereon.

(7) It was debated before me that a granddaughter is not a heir to the grandfather, but I find from the Customary Law of Rohtak District that the rule of representation is recognised amongst the male lineal descendants : See question 45 and the answer thereto. It is now well-settled that sex is no bar to representation : See in this connection Privy Council decision in *Hashmat Ali and another v. Mst. Nasib-un-Nisa* (3). Moreover, as observed by Tek Chand, J., in *Mangta v. Mangat* (4), “* * * *strict rule of the Mitakshara is not followed among high-caste Hindu tribes of the districts of Rohtak, Karnal and Gurgaon, where a nephew succeeds along with the uncle to the property of a deceased collateral.” The learned Judge followed the observations of Lal Chand, J., in *Mehtab-ud-Din v. Abdullah* (5). Lal Chand, J., after a review of the

(3) I.L.R. 6 Lah. 117.

(4) A.I.R. 1942 Lah. 27.

(5) 140 P.R. 1908.

authorities observed that "the customary rule of representation has been found by judicial inquiry as well as experience to prevail generally throughout the province among agriculturists as well as non-agriculturists, whenever the matter was disputed, and not a single case to the contrary is traceable or was quoted. The presumption, therefore, might be that a custom so generally prevalent was also followed by the parties to the present case." It will, therefore, appear that the rule of representation is universally recognised in the Punjab, whether the parties are governed by custom or not, and the logical consequence of the recognition of this rule would be that a granddaughter would represent her father in matter of succession to the grandfather, provided the daughter is otherwise entitled to succeed to ancestral property. After the Privy Council decision in *Mst. Subhani v. Nawab* (6), it is now well-settled that a daughter is a preferential heir to self-acquired property of the father and also succeeds generally to ancestral property in the absence of the fifth degree collaterals of the father. In the present case the collaterals are within the fifth degree and, therefore, no fault can be found with the decision of the Courts below that if the defendants were of the whole-blood they would naturally oust the daughter (the plaintiff) from succeeding to Molar. I would, therefore, affirm the decision of the Courts below so far as the right of the plaintiff to oust the defendants in succession to Molar is concerned, provided it was further found that the defendants were of the whole-blood and not of the half-blood. In view of my finding that the initial division on the death of the common ancestor was on the basis of the *chundawand* rule, the descendants of one group can succeed to the other group only on the extinction of the descendants in that group, and that not being the case the plaintiff would be entitled to succeed.

(8) For the reasons recorded above, I allow this appeal, set aside the judgments and decrees of the Courts below and decree the plaintiff's suit. There will be no order as to costs.

(6) I.L.R. 1941 Lah. 154 (P.C.).