

I. L. R. Punjab and Haryana

(1967)1

APPELLATE CIVIL

*Before Daya Krishan Mahajan, J.*BACHAN KAUR,—*Appellant.**versus*BISHNI AND OTHERS,—*Respondents.*

R.S.A. 678 of 1958.

May 16, 1966.

Custom—Succession—Brother's daughter of last male holder—Whether preferential heir as against 3rd degree collateral's widow—Right of representation—Female heirs—Whether entitled to succeed—Daughter's right to succeed collaterally as representative of her father—Extent of.

Held, that the brother's daughter of the last male holder is a preferential heir as against the widow of a third degree collateral.

Held, that the rule of representation is of universal application in the Punjab and sex is no bar to representation. In the matter of representation, all females succeed as representing the male-owners, whether they be the sons or fathers or husbands.

Held, that the rule of custom is so well settled in this State and no exception can be taken to it that a daughter is entitled to succeed collaterally representing her father. Of course, the position may be different if the property is ancestral and the daughter is not under the customary rule entitled to succeed.

Regular Second Appeal from the decree of the Court of Shri Des Raj Dhameja, Senior Sub-Judge, with Enhanced Appellate Powers, Ludhiana, dated the 24th day of July, 1958, affirming with costs the decree of Shri Shiv Dass Tyagi, Sub-Judge- II Class, Ludhiana, dated the 5th July, 1957, granting the plaintiff a decree for possession with costs against the defendant.

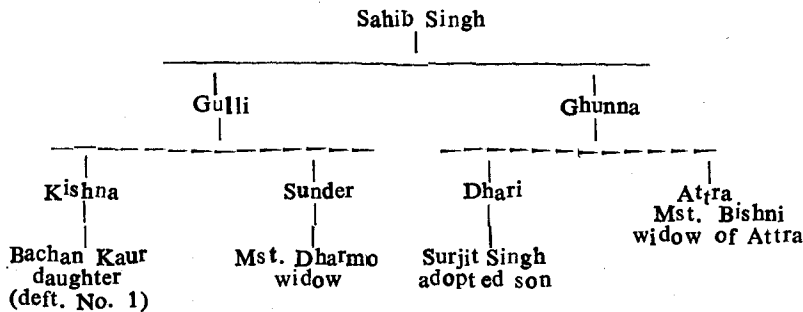
MR. BALDEV SINGH JAWANDA, ADVOCATE, for the Appellant.

MR. HARBANS SINGH GUJRAL, ADVOCATE, for the Respondent No. 1.

Bachan Kaur v. Bishni, etc. (Mahajan J.)

JUDGMENT.

MAHAJAN, J.—The contest in this second appeal is between the brother's daughter of the last male-holder and a third degree collateral's widow. The relationship of both the contestants will be apparent from the following genealogical table—



Kishna, father of Bachan Kaur, defendant No. 1 and Mst. Dharmo, widow of Sunder, were owners of the land, part of which is in dispute. By will Exhibit D. 1, dated 24th of August, 1953, Kishna willed away, not only his own interest in the land, but also the interest of Mst. Dharmo, to his daughter Bachan Kaur. Kishna died first and then Dharmo died on the 19th of May, 1955. The mutation of the estate of Mst. Dharmo was sanctioned in favour of Bachan Kaur and this order was maintained in appeal. Thereupon Mst. Bishni, widow of a third degree collateral of Kishna, brought the present suit, on the 7th of June, 1956, for possession of the share of Dharmo. In this suit, the mortgagees of the land were also impleaded, but we are not concerned with them. The suit was resisted by Bachan Kaur alone. According to her, she was the preferential heir to Mst. Dharmo and in other words, to Sunder. The Courts below have, however, negatived this defence and decreed Mst. Bishni's suit. Against this decision, the present second appeal has been preferred by Bachan Kaur.

It appears to me that the Courts below have gone wrong in decreeing the plaintiff's suit. By no stretch of imagination, Bachan Kaur can be postponed to Mst. Bishni in the matter of succession to Sunder. Bachan Kaur is the brother's daughter of Sunder whereas Mst. Bishni is the widow of a third degree collateral. If the Courts below had kept in view that the rule of representation is of universal application, in this State and sex is no bar to representation, they

would not have fallen into the error into which they fell. It seems that they were obsessed with the fact that a widow's right of collateral succession is recognised, whereas a daughter's right is not recognised. There is no basis for this distinction. In the matter of representation, all females succeed as representing the male owners, whether they be the sons or fathers or husbands. As far back as 1925, their Lordships of the Privy Council in *Hashmat Ali and another v. Mst. Nasib-un-Nisa* (1), observed as follows—

“It is settled by judicial decision that a son in matters of inheritance represents his deceased father, and the record discloses instances of succession in which a widow was recognised as the representative of her husband, and a daughter as the representative of a deceased uncle. It is thus shown that sex is not a bar to representation, but that widows and daughters in the absence of sons can claim the right in their favour.”

If a reference is made to *Mehtab-ud-Din and others v. Abdullah and others* (2), the force of the observations of the Privy Council, would be fully apparent. Lal Chand, J., in the aforesaid decision, after a review of the authorities, observed as follows:—

“Customary rule of representation has been found by judicial enquiry 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.”

There is not a single case that has been brought to my notice where a daughter has not succeeded collaterally on the ground that she could not represent her father. It appears to me that the rule of custom is so well-settled in this State and no exception can be taken to it that a daughter is entitled to succeed collaterally representing her father. Of course, the position may be different if the property

(1) I.L.R. (1925) 6 Lahore 117.

(2) 140 P.R. 1908.

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is ancestral and the daughter is not under the customary rule entitled to succeed. But so far as the present case is concerned, it was never alleged nor proved that the property in dispute was ancestral *qua* the collaterals of the husband of the widow who is contesting the daughter's claim to her uncle's estate. After giving the matter my careful consideration, I am clearly of the view that the decision of the Courts below, cannot be sustained, either on principle or on authority.

I would accordingly allow this appeal set aside the judgments and decrees of the Courts below and dismiss the plaintiff's suit. However, I will make no order as to costs throughout.

R. S.

CIVIL MISCELLANEOUS

Before Mehar Singh, A.C.J., and A. N. Grover, J.

HARI SINGH AND OTHERS,—*Petitioners.*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 1359 of 1964.

May 17, 1966.

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948)—Ss. 21, 23 and 28—East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules (1949)—Rule 14—Provisions regarding delivery of possession in the Consolidation Scheme—Whether invalid—Levy of Consolidation fee—Whether a tax—S. 28—Whether unconstitutional because of excessive delegation—Rule 14—Whether discriminatory.

Held, that when the repartition is complete according to section 21 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, and the stage of delivery of possession arises, it is at that stage that all the owners and tenants affected by the repartition have the opportunity to agree to exchange possessions immediately, and if they do not agree, then only the provisions of