APPELLATE CIVIL

Before Prem Chand Pandit, J.

PIARI,—*Appellant.*

versus.

VIRAN DEVI,—*Respondent.*

Regular Second Appeal No. 985 of 1961

February 9, 1972.

Customary Law—Riwaj-i-am of Jhajjar Tehsil—Daughter—Whether can *succeed to the ancestral property left by her father—Collaterals alone—Whether* ***exclude the daughter from such inheritance.***

Held, that under Riwaj-i-am of Jhajjar Tehsil, the son or sons or widow of other male issue of grandfather or collaterals of any degree exclude the daughters from inheritance to the ancestral property but not from self acquired property left by her father. It is not laid down that the daughters under no circumstances can inherit the property of their father. Moreover only the collaterals can exclude the daughter, but not their decendants even by right of representation. In matters of collateral succession, the sex is no bar to the right of representation and therefore a daughter can succeed to her father. The right of inheritance of daughters has to be compared with other persons, who have a preferential right to inherit and in their absence, the daughters will succeed. The property will not escheat to the State.

Regular Second Appeal from the decree of the Court of Dewan .H. C. Gupta, Senior Sub Judge, with enhanced appellate Powers, Rohtak, dated the 21st day of March, 1961, reversing that of Shri Balwant Singh Teji, Sub Judge IInd Class, Jhajjar, dated the 13th January, 1961, and dismissing the plaintiff's suit and leaving the parties to bear their own costs throughout.

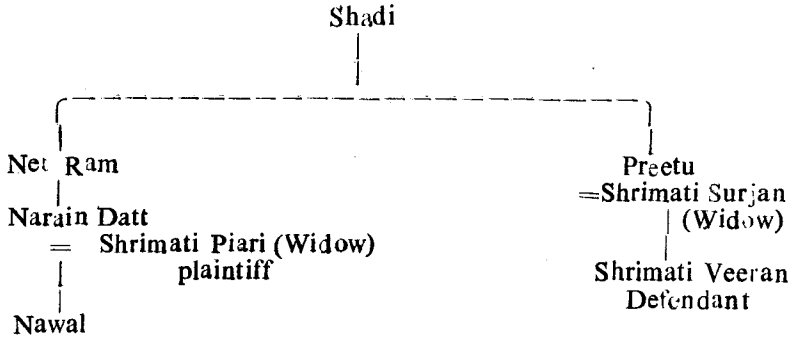
S. P. Jain, Advocate *for the appellant.*

J. V. Gupta, Advocate *for the respondent.*

JUDGMENT

PANDIT, J.—The dispute in this second appeal relates to agricultural land, measuring 9 Bighas, 12 Biswas, situate in village

Dhandlan, Tehsil Jhajjar, District Rohtak. The parties ot this litigation are Gaur Brahmans. Their short pedigree-table is given below:—



(2) This property was held by Preetu, on whose death, it was mutated in favour of his widow Surjan. She died on 1st August, 1954, and after her death, it was mutated in the name of her daughter Veeran. This mutation was effected on 9th June, 1959. In March, 1960, Piari brought a suit for a declaration that the mutation of this land in favour of Veeran was wrongly sanctioned, because under the law, she was entitled to succeed to the property of Preetu as she was the widow of Narain Datt, a second degree collateral of Preetu. Some other allegations were also made by her, but we are not concerned with them in the present second appeal.

(3) The suit was resisted by Veeran. She challenged the *locus standi* of the plaintiff to bring the suit and averred thatt she was not an heir of Preetu. It was also said that the plaintiff had performed *Karewa* with one Suraj Bhan and on that account she had lost her rights, if any, in the property.

(4) The trial Judge decreed the suit and held that the parties were governed by custom in matters of succession, that the suit property was ancestral *qua* the plaintiff, that the plaintiff had *locus standi* to file the suit, that the suit was not barred by limitation, that the plaintiff had not performed any *Karewa* with Suraj Bhan, that the suit was maintainable in the present form, that the plaintiff was a preferential heir to the property in question and that the mutation of the land effcted in favour of the defendant was illegal.

(5) Aggrieved by this decision, the defendant went in appeal before the learned Senior Subordinate Judge, Rohtak. He also had that the parties were governed by custom in matters of succession. A part of the property was held to be ancestral and a part non-ancestral. It was held that the plaintiff had no *locus standi* to sue. It was said that the plaintiff was not a preferential heir to the property as against the defendant and, consequently, the mutation of the land in favour of the latter was quite legal. On these findings, the appeal was accepted, the judgment and decree of the trial Court reversed and plaintiff's suit dismissed. The plaintiff has come here-in second appeal.

(6) The first argument raised by the learned counsel for the appellant was that according to the answer to question No. 56 in the Riwaj-i-am of Jhajjar Tehsil, of the year 1909, Exhibit P. 3, a daughter has under no circumstances any right to the ancestral property of her father. In this connection, he referred to two decisions of the Lahore High Court—(i) *Mt. Jawahran and another* v. *Hazari and others* (1) and (ii) *Mt. Mam Kaur* v. *Molia and others* (2).

(7) The question and answer in Exhibit P. 3 are in Urdu. When translated, they will read thus:

> "*Question No.* 56.—Under what circumstances and daughters entitled to inherit? Are they excluded by the sons, or by the widow, or by the near male kindred of the deceased? If they are excluded by the near male kindred, is there any fixed limit of relationship within which such near kindred must stand towards the deceased in order to exclude his daughters If so how is the limit ascertained? If this depends on descent from a common ancestor, state within how many generations relatively to the deceased, such common ancestor must come.
>
> *Answer.* Daughters or their descendants do not get any property by inheritance. Son or sons or widow or other male issue of grandfather or collaterals of any degree exclude them."

(1) A.I.R. 1938 Lah. 562.
(2) A.I.R. 1939 Lah. 20.

(8) From the question and answer given above, it would be clear that the question asked was whether the sons, the widow or the near male kindred of the deceased exclude the daughter from inheritance. The reply given was that the son or sons or widow or other male issue of the grandfather or collaterals of any degree exclude the daughters. Thus, it cannot be said that the daughters under no circumstances can inherit the property of their father. In the Riwaj-i-am of the Rohtak District, which was the subject-matter of the two decisions, mentioned above, and relied upon by the learned counsel for the appellant, the answer given to question No. 56 was in these terms. "All tribes throughout except Pathans outside Guriani Zail and Shekhs of Jhajjar say that in no circumstances has the daughter or her descendants a right to inherit". There the answer, as would be apparent, was that under no circumstances the daughter or her descendants have a right of inheritance. It was question No. 56 and its answer in the Riwaj-i-am of the Rohtak District, which was interpreted by the Division Bench of the Lahore High Court in *Mt. Jawaharan's case* (1) and it was held:

> "According to the entry in the Riwaj-i-am of the Rohtak District a daughter has no right to succeed to her father's landed property, whether ancestral or self-acquired, and a widow has no right to alienate her husband's property whether ancestral or self-acquired. When such entry is challenged the burden is heavy on the party to prove that the entry in the Riwaj-i-am is wrong."

Similarly, in *Mt. Mam Kaur's case* (2), it was observed by Skemp, J.—

> "According to the customary law of Rohtak District a daughter has no right to inherit and is not, therefore, heir. Hence she has no *locus standi* to challenge alienation made by another female who is full owner."

(9) These two rulings, as I have already said deal with the Raiwaj-i-am of the Rohtak District and the answer to question No. 56 in that Riwaj-i-am is not couched in the same language as the answer to question No. 56 in the Riwaj-i-am of the Jhajjar Tehsil. In any case, it would be seen that even according to the answer to

question No. 56, only the collaterals can exclude the daughter. Admittedly, the plaintiff, in this case, was not a collateral. She was the widow of Narain Datt, a collateral, or the mother of Nawal, another collateral. On this part of the case, learned counsel for the appellant contended that by virtue of the principle of representation, it should be held that the widow represented her husband, who was a collateral and, therefore, according to the answer to question No. 56, she would exclude the daughter.

(10) In the first place, as I have already said in the answer itself, the word used is "collateral". Therefore, strictly on the basis of the answer, the plaintiff, in the instant case, who is not a collateral, cannot exclude the defendant, who is a daughter. Secondly, if the plaintiff wants to rely on the rule of representation and say that she represents her husband who is a collateral, then the reply of the defendant can be that she, being the daughter of her father, can also represent him on the same principle of representation. Previously, there was some dispute as to whether or not in collateral succession, the daughter could represent her father, because, admittedly, the widow did represent her husband, but this matter was settled by a Bench of this Court in *Smt. Kago widow of Jai Narain* v. *Smt. Chambeli* (3). There it was held that under custom there was right of representation in matters of collateral succession, that sex was no bar to the said right and that a daughter could succeed to her father. It may be stated that the case of the plaintiff in the plaint was that she was the widow of Narain Datt, who was a second degree collateral of Preetu, and, therefore, she was a preferential heir as against the daughter of Preetu. No instance has either been cited or proved in this case in which in similar circumstances, the widow of a second degree collateral excluded the daughter from inheritance.

(11) Reference was also made by the learned counsel for the appellant to question No. 57 in the Riwaj-i-am of the Jhajjar Tehsil. When translated, the question and answer will read thus:

> "*Question No.* 57. Is there any distinction as to the rights of daughters to inherit (1) the immoveable or ancestral, (2) the movable or acquired, property of their father?

(3) L.P.A. No. 162 of 1967 decided on 24th November, 1970.

Answer. Daughters do not get immovable property by inheritance. As regards movable property, the father or the brothers are entitled to give the same, as much as they like, irrespective of the fact whether the said property be ancestral or self-acquired."

(12) On the basis of this answer to question No. 57, it was argued that the daughters do not, under any circumstances, get immovable property by inheritance.

(13) There is no merit in this contention, because both these questions Nos. 56 and 57 have to be read together with their respective answers. Standing alone, question No. 57 will not make any sense. It would be seen that in reply to question No. 56, it was said that the daughters or their descendants did not get any property by inheritance. It obviously presupposes that the inheritance will go to somebody else in preference to the daughters. In this very reply, it is stated that the sons or the widow or other male issue of the grandfather or the collaterals of any degree will exclude them. It is only to find out who are the preferential heirs as against the daughters that question No. 56 and its answer have to be looked to. Under the answer to question No. 57, it cannot be suggested that since the daughters would not inherit the immovable property at all, therefore, in their absence, it will escheat to the State. Their right of inheritance has obviously to be compared with other persons, who have a preferential right to inherit and, therefore, it follows that in the absence of the latter, the daughters will succeed. That is why I say that both these questions and their answers have to be read together. In the instant case, none of the preferential heirs mentioned in the reply to question No. 56 being there, the daughter, i.e., the defendant had to succeed. There is thus no force in this argument.

(14) Learned counsel then referred to Para 23 of the Rattigan's Digest of Customary Law, in which it was mentioned that a daughter only succeeded to the ancestral landed property of her father in default of near male collaterals of her father and submitted that if there were near male collaterals of the father, then the daughter would have no right of inheritance.

(15) This again shows that the male collaterals alone could exclude the daughter from inheritance. As I have already said, the plaintiff is not a male collateral and if she wants to base her claim on the right of representation, then that contention has already been dealt with by me above.

(16) There is no denying the fact that the entries in the Riwaj-i-am or the general customary law as contained in the Rittigan's Digest of Customary Law, relate to the ancestral property and not the non-ancestral one. In the present case, it has been found by the lower Appellate Court that out of the land in dispute, only three Khasra numbers, namely, 346, 350 and 351, were proved to be ancestral. The remaining property was not established to be ancestral. Learned counsel for the appellant assailed this finding and argued that the remaining Khasra numbers were also ancestral. The learned Senior Subordinate Judge has found that only the three Khasra numbers, mentioned above, were held by Shadi, the common ancestor of the parties. Obviously, those three Khasra numbers were ancestral property, and the remaining Khasra numbers, having not been occupied by the common ancestor, had been correctly held to be non-ancestral. It was urged by the learned counsel for the appellant that even *qua* the non-ancestral property, the widow of a second degree collateral would exclude the daughter, but no ruling had been cited in support of this contention. He was also unable to produce any authority which laid down that a daughter would be excluded even by the collaterals regarding the self-acquired property of her father.

(17) There is one other point that may be mentioned, though, ultimately, it may not affect the result of the case. It was said that the plaintiff, Piari, succeeded as the widow of her husband Narain Dutt, but the learned Senior Subordinate Judge held that she did not succeed as the widow of Narain Datt but as the mother of Nawal, son of Narain Datt. From the revenue excerpts produced in the case, the learned Judge concluded that after Narain Datt, Nawal succeeded to his property and on Nawal's death, the property came to Piari. She was, admittedly, the mother of Nawal and the widow of Narain Datt. But since the last maleholder of the property was Nawal, therefore, the learned Judge held that she succeeded as the mother of Nawal and not as the widow of Narain Datt.

(18) This argument was raised by the learned counsel for the appellant presumably because if she succeeded as the mother of Nawal and not as the widow of Narain Datt, then she could not even take advantage of the principle of representation, because there are authorities that lay down that a widow represents the husband and the daughter her father. There is, however, no ruling for this proposition that the mother represents the son. But be that as it may, as I have already said, if the plaintiff wants to depend on the principle of representation, then she can be properly met with a plea by the defendant that in that case the latter also represents her father, whose property she inherits.

(19) In view of what I have said above, this appeal fails and is dismissed. In the circumstances of this case, however, I will leave the parties to bear their own costs.

B.S.G.

ORIGINAL CIVIL

Before R. S. Narula, J.

NORTHERN INDIA FINANCE CORPORATION (P.) LTD.,—*Petitioner*

versus.

R. L. SONI,—*Respondent.*

Civil Original No. 9 of 1971

February 10, 1972

Limitation Act (XXXVI of 1963)—Section 19—Payment of debt by cheque which is dishonoured—Whether amounts to part-payment and acknowledgement of liability of the debt—Suit for the recovery of such debt—Whether to be filed within the normal period of limitation.

Held, that payment of debt by a cheque which is dishonoured does not save limitation under section 19 of the Limitation Act, 1963. If the cheque is encashed, it amounts to part-payment within the meaning of section 19 and saves the suit from getting barred by time. If, however, the cheque is not