Kehar Singh & Ors.

Vs

Chanan Singh & Ors.

Civil Appeal No. 781 of 1964

(J. C. Shah, V. Ramaswami-I, V. Bhargava JJ)

14.12.1967

JUDGMENT

RAMASWAMI, J. –

The question to be considered in this appeal is whether under the customary law applicable to Sidhu Jats of Muktsar Tahsil of Ferozepore district collaterals of the 5th degree of the deceased land-owner could take precedence over his married daughters in succession to his non-ancestral property.

The dispute relates to 1574 kanals 4 marlas of land situated in village Kotli Ablu, Muktsar Tahsil of Ferozepore district. Dulla Singh was the last male holder of the land and he was succeeded by his widow, Smt. Indi on his death. Smt. Indi died on September 8, 1955 and thereafter the estate was mutated by the revenue authorities on February 11, 1956 in favour of the defendants who were the reversioners of her husband in the 5th degree. Smt. Nihal Kaur is the daughter of Dulla Singh. On November 14, 1957 she instituted the suit which is the subject-matter of the present appeal in the court of Subordinate Judge, Muktsar for a declaration that she was the legal heir of the land left by Smt. Indi and that she was entitled to inherit the estate to the exclusion of the collaterals. The suit was resisted by the defendants who claimed that the whole of the land was ancestral and they were preferential heirs to the deceased Dulla Singh than the plaintiff. The trial court held that the land in dispute was not the ancestral property of Dulla Singh, but the defendants who were 5th degree collaterals of Dulla Singh were entitled to exclude his daughter from succession even to the non-ancestral property under the custom of the district. Accordingly the trial court dismissed the suit of the plaintiff. The decree was affirmed by the Additional District Judge, Ferozepore in appeal. Mst. Nihal Kaur preferred a Second Appeal to the Punjab High Court which was allowed and the suit of the plaintiff was decreed. The High Court took the view that the general custom of the Punjab as laid down in Rattigan's Customary Law was that the daughters excluded collaterals for succession to the self-acquired property of their father and the special custom set out in the Riwaj-i-am that the agnates, however, remote, exclude daughters from succession to their father's property was opposed to the general custom referred to above and the Riwaj-i-am was only a presumptive evidence in favour of the collaterals and the presumption has been rebutted by the plaintiff Mst. Nihal Kaur in the circumstances of the present case. In other words, the High Court, held that the general custom in favour of the daughter's succession prevailed and the defendants had not been able to prove that the general custom had been varied by a special custom enabling the collaterals to exclude the daughters.

This appeal is brought by the defendants on a certificate from the judgment of the Punjab High Court dated September 6, 1961 in Regular Second Appeal No. 54 of 1960.

On the question of custom the respondents relied upon the statements in paragraph 23 of Rattigan's Digest of Customary Law (14th Edn.), a book of unquestioned authority in the Punjab State. In para 23, p. 132 it is stated that (1) a daughter only succeeds to the ancestral landed property of her father, if an agriculturist, in default :- (1) of the heirs mentioned in the preceding paragraph (viz., male lineal descendants, widow or mother), or (2) of near male collaterals of her father, provided that a married daughter sometimes excludes near male collaterals in certain circumstances specified in the paragraph, (2) But in regard to the acquired property of her father, the daughter is preferred to collaterals. It is further stated at p. 152 that "the general custom of Punjab is that a daughter excludes collaterals in succession to self-acquired property of her father and the initial onus, therefore, is on the collaterals to show that the general custom in favour of the daughter's succession to the self-acquired property of her father, has been varied by a special custom excluding daughters". This being the legal position of the parties, the question arises whether the defendants had discharged the onus of providing the existence of a special custom excluding the daughters. On this point the appellants relied upon the answers to Questions 48 and 49 in the Compilation of the Customary Law of Ferozepore district by M. M. L. Currie, Settlement Officer. These questions and answers are comprised in the Riwaj-i-am of the settlement of Ferozepore district of 1914 and are reproduced below :

> "Question 48 - Under what circumstances are daughters entitled to inherit ? Are they excluded by the sons or near male kindreds of the deceased ? If they are excluded by the near male kindred, is there any fixed limit of relationship within which such near male kindred must stand towards the deceased in order to exclude his daughter ? 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 ?
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> Answer - At last settlement Mr. Francis wrote :- 'Except a few Sayyads all tribes say that a daughter can never succeed. Some Sayyads say that an unmarried daughter can succeed like a son; but no instances are given.'
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> The custom has now changed completely, most tribes admitting that a daughter is entitled to succeed till marriage in the absence of a widow or male lineal descendants. The following groups, however, do not admit that a daughter can succeed :- Dogars of Fazilka, Nipals, Sayyads of Ferozepore. Zira and Muktsar. Bodlas (unless there are no collaterals in the 5th degree), Chishtis (unless no collaterals in the 7th degree), Pathans of Ferozepore (except the Kasuria group), Rajputs of Fazilka, Wattus of Zira and Fazilka, Moghals except in Ferozepore, Mahtams, Sodhis, Bagri Jats, Kumhars and Suthars, Bishnois and the following Jat Sikhs in Fazilka Tahsil - Dhaliwals, Sidhhus, Gils and Sandhus.
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> The Kasuria Pathans state that a daughter succeeds if there are no sons, and the Arians state that she excludes collaterals who do not come within the 4th degree.
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> Question 49 - Is there any distinction as to the rights of daughters to inherit (i) the immovable or ancestral. (ii) the movable or acquired property of their father ?
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> Answer - There is no distinction. A father can of course gift his movable or acquired property to his daughter."

In the present case, there is no proof of any instance for or against the right of inheritance of a daughter of a deceased last male holder of the Sidhu tribe of Jats, either in the Muktsar Tahsil or in the whole district of Ferozepore. At least, none was brought to the notice of the lower courts by the plaintiff or the defendants. It was contended on behalf of the appellants that the Riwaj-i-am of 1914 was entitled to a presumption as to the existence of a custom even though not supported by proof of instances and it must therefore be held that the defendants have discharged the initial onus of proving that the general custom has been varied by a special custom enabling them to exclude the married daughter. The real controversy in this appeal is, however, on the question whether the entries in the Riwaj-i-am on which the defendants rely refer at all to non-ancestral property or not. In Mst. Raj Kaur v. Talok Singh [A.I.R. 1916 Lah. 343] Sir Donald Johnstone, the Chief Justice held that the Riwaj-i-am as complied, did not cover self-acquired property and that where the Riwaj-i-am talked about succession to land without discrimination between ancestral and self-acquired property and that where the Raiwaj-i-am talked about succession to land without discrimination between ancestral and self-acquired land, the rule laid down could only be taken to apply to ancestral property. This case related to property in Ferozepore district, though with regard to a different tehsil and different sub-caste of Jats, but the important point is that the questions of the Riwaj-i-am 1878 in that case were exactly in the same language as questions 48 and 49 of the Riwaj-i-am of 1914. A similar view was taken by Shadilal and Wilberforce, JJ. in Budhi Prakash v. Chandra Bhan [A.I.R. 1918 Lah. 225]. The view was followed by other judges of the Lahore High Court in Narain v. Mst. Gaindo [A.I.R. 1918 Lah. 304], and Fatima Bibi v. Shah Nawaz [A.I.R. 1921 Lah. 180]. In Abdul Rahman v. Mst. Natho [I.L.R. [1932] 13 Lah. 458] it was observed by the High Court as follows :

> "According to the Customary Law of the district, collaterals within the fifth degree exclude daughters, but it has been consistently held by this Court that Riwaj-i-am refer only to ancestral land unless there is a clear statement to the contrary. It is unnecessary to refer to the numerous decisions on this point. Customary law is in fact usually only concerned with protecting ancestral property, while self-acquired property can be disposed of as the owner pleases, that is, reversioners are usually concerned only with property ancestral qua them."

The decision of this case was affirmed by the Full Bench of the Lahore High Court in Mst. Hurmate v. Hoshiaru [I.L.R. 25 Lah. 228]. Din Mohammad, J. delivering the leading judgment in this case, observed as follows :

> "In my view, the raison d'etre of those cases which lay down that the Manuals of Customary Law were ordinarily concerned with ancestral property only is quite intelligible. Collaterals are, as stated by Addison, J. in Abdul Rehman v. Mst. Natho [I.L.R. [1932] 13 Lah. 458] really speaking interested in that property only which descends from their common ancestor and this is the only basis of the agnatic theory. What a maleholder acquires himself is really no concern of theirs. It is reasonable, therefore, to assume that when manuals of customary law were originally prepared and subsequently revised, the person questioned, unless specifically told to the contrary, could normally reply in the light of their own interest alone and that, as stated above, was confined to the ancestral property only. The fact that on some occasions the questioner had particularly drawn some distinction between ancestral and non-ancestral property would not have put them on their guard in every case, considering their lack of education and lack of intelligence in general. Similarly, the use of the terms "in no case" or 'under no circumstances' would refer to ancestral

> property only and not be extended so as to cover self-acquired property unless the context favoured that construction."

The decision of the Full Bench of the Lahore High Court was approved by the Judicial Committee in Mst. Subhani v. Nawab and Ors. [68 I.A. 1] in which the controversy arose with regard to the interpretation of questions 16 and 17 and the answers thereto in Wilson's Manual of Customary Law which are reproduced below :-

> "Question 16 (p. 48) - Under what circumstances are 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 it depends on descent from a common ancestor, state within how many generations relatively to the deceased such common ancestor must come.

Answer 16 - All Musalmans.

A married daughter in no case inherits her father's estate or any share in it. An unmarried daughter succeeds to no share in presence of agnate descendants of the deceased, or of her own mother; but if there be no agnate descendants and no sonless widow, the unmarried daughters succeed in equal shares to the whole of their father's property, movable and immovable, till their marriage, when it reverts to the agnate heirs. If there be a widow and daughters of another wife who has died, the unmarried daughters of the deceased wife succeed to their mother's share till their marriage.

Question 17 (p. 49) - Is there any distinction as to the rights of daughters to inherit (1) the immovable or ancestral, (2) the movable or acquired, property of their father ?

Answer 17 - All Musalmans.

As regards the right of the daughter to inherit, no distinction is made between the movable and immovable ancestral and acquired, property of the father. If she inherits at all she takes the whole estate."

It was held by the Judicial Committee that though in the answers to question No. 17 in Wilson's Manual no distinction was made between ancestral and non-ancestral or between movable and immovable property, and the rule was stated as a wide generalization (in answer to question No. 16) that a married daughter in no case inherits her father's estate or any share in it, it must be taken in view of the numerous decisions of the Punjab courts that the Riwaj-i-am which states the rule in such wide and general terms governs ancestral property only. It should be noticed that Questions 16 and 17 of the Wilson's Manual are couched in similar language to Question 48 and 49 of the Riwaj-i-am with which we are concerned in the present appeal. In view of these authorities we have therefore come to the conclusion that the entries in the Riwaj-i-am with regard to Questions 48 and 49 on which the appellants rely do not refer at all to non-ancestral property and are therefore not relevant evidence to establish a special customs among the Sidhu Jats of Muktsar Tahsil of Ferozepore district entitling collateral for succession to non-ancestral property in preference to daughters. It follows therefore that the appellants have not discharged the onus which lay upon them of proving that the general custom has been varied by a special custom enabling the collaterals to exclude the daughters. It is manifest therefore that the customary law among the Sindhu Jats of

Muktsar Tahsil of Ferozepore district as regards non-ancestral property is the same as recorded generally for the State of Punjab in paragraph 23 of Rattigan's Digest i.e. a daughter is preferred to collaterals.

We shall, however, assume in favour of the appellants that Questions 48 and 49 of the Riwaj-i-am relate also to succession of non-ancestral property of the last male holder. Even upon that assumption we are of opinion that the case of the appellants cannot succeed. The reason is that though the entries in the Riwaj-i-am are entitled to an initial presumption in favour of their correctness, the quantum of evidence necessary to rebut this presumption would vary with the facts and circumstances of each particular case. Where, for instance, the Riwaj-i-am laid down a custom in consonance with the general agricultural custom of the State, very strong proof would be required to displace this presumption, but where, on the other hand, this was not the case, and the custom as recorded in the Riwaj-i-am was opposed to the rules generally prevalent, the presumption would be considerably weakened. Likewise, where the Riwaj-i-am affected adversely the rights of females who had no opportunity whatever of appearing before the revenue authorities, the presumption would be weaker still, and very little evidence would suffice to rebut it. In Har Narain v. Mst. Deoki [(1893) 24 P-R. 124], Roe, J. stated as follows :

> "There is no doubt a general tendency of the stronger to over-ride the weak, and many instances may occur of the males of a family depriving females of rights to which the latter are legally entitled. Such instances may be followed so generally as to establish a custom, even though the origin of the custom were usurpation; but the Courts are bound carefully to watch over the rights of the weaker party, and to refuse to hold that they had ceased to exist unless a custom against them is most clearly established".

In a later case, Sayad Rahim Shah v. Sayad Hussain Shah [(1901) 102 P.R. 353], a similar caution was uttered by Robertson, J. who observed as follows :

> "The male relations, in many cases at least, have been clearly more concerned for their own advantage than for the security of the rights of widows and other female relatives with rights or alleged rights over family property, and the statements of the male relatives in such matters have to be taken cum grano salis where they tend to minimize the rights of others and to extend their own."

The same view was expressed by the Lahore High Court in a still later case - Bholi v. Man Singh [(1908) 86 P.R. 402] where the Riwaj-i-am had laid down that daughters were excluded by collaterals, even up to the tenth degree and it was stated as follows :

> "As the land is rising in value under British rule, the land-holders are becoming more and more anxious to exclude female succession. They are ready to state the rule against daughters as strongly as possible, but if the custom is so well established, it is strange that they are unable to state a single instance in point on an occasion like the compilation of the Riwaj-i-am, when detailed inquiries are being made and when the leading men are supposed to give their answers with deliberation and care."

The principle was reiterated by this Court in Mahant Salig Ram v. Mst. Maya Debi [[1955] 1 S.C.R. 1191]. It was pointed out in that case that it was well-settled that the general custom of the Punjab State was that the aughter excluded collaterals from succession to self-acquired property of her

father and so the initial onus must therefore be on the collaterals to show that the general custom in favour of the daughter's succession to the self-acquired property of her father has been varied by a special custom excluding the daughter. It was also well-settled that the entires in the Riwaj-i-am are entitled to an initial presumption in favour of their correctness but the presumption will be considerably weakended if it adversely affects the rights of the females who have no opportunity of appearing before the Revenue authorities. In the present case, apart from the general custom of the Punjab to which due weight must be attached three instances have been referred by the High Court in the course of its judgment to show that the presumption attaching to Riwaj-i-am has been rebutted in this case. The first instance is the subject-matter of the decision in Mst. Raj Kaur v. Talok Singh [A.I.R. 1916 Lah. 343]. It was a case of Gill Jats from Zira Tahsil of Ferozepore district. It was held in that case that the plaintiffs on whom the onus rested had failed to prove that by custom among Gill Jats of mauza Lohara, tahsil Zira, district Ferozepore, they, as near collaterals of a deceased sonless proprietor, succeeded to his self-acquired estate in preference to a daughter. As we have already pointed out earlier, Questions 48 and 49 correspond to Questions 1 and 2 of the Riwaj-i-am of 1878 which were dealt with in this case. The second instance is reported as Ratta v. Mai Jai Kaur [(1934) P.L.R. 69]. It is a case of a Daliwal Jat of Tahsil Moga, District Ferozepore. It was admitted that daughter of the last male holder was entitled to succeed to his self-acquired property. It is true that the case was decided upon the admission of Counsel for the collaterals but it is improbable that if there was material evidence in support of the collaterals the Counsel would have made such an admission. The third instance referred to by the High Court is R.F.A. No. 220 of 1954, decided on April 11, 1961, in which it was held that sister of the last male holder excludes his collaterals from inheritance in regard to his non-ancestral or acquired property. That is a case of Jats from Fazilka tahsil of Ferozepore district. The property, however, was situated in two villages, one in Fazilka tahsil and the other in Muktsar tahsil. It was held in that case that in Muktsar and in Fazilka in regard to non-ancestral or acquired property of the last male holder his sister was a preferential successor as against collaterals. In this connection it should be noticed that in the Riwaj-i-am of 1914 Question 58 concerns the rights of succession of sisters and sisters' sons and the answer is that they never inherit. Considering therefore that in the neighbouring tahsils of the same district in regard to non-ancestral property a daughter has excluded collaterals and in Muktsar tahsil a sister has excluded collaterals, there is in our opinion sufficient material to displace the presumption of correctness of the Riwaj-i-am entries in this case. In view of the considerations already mentioned in the judgment the presumption attaching to the Riwaj-i-am entries is a weak presumption and in our opinion it has been sufficiently discharged by the evidence adduced by the respondents in this case. It is necessary to add that the appellants-defendants have not relied upon any instances in support of their case.

For the reasons expressed we hold that the judgment of the High Court dated September 6, 1961 in Regular Second Appeal No. 54 of 1960 is correct and this appeal must be dismissed with costs.

Appeal dismissed.

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