APPELLATE CIVIL.

Before Bhandari, C. J. and Bishan Narain, J.

SALIG RAM,—*Appellant.*

versus

MUNSHI RAM AND OTHERS,—*Defendants-Respondents*

Letters Patent Appeal No. 29 of 1953

1954

July, 5th

Custom (Punjab)—Adoption—Brahmins of Amritsar District—Whether Para 48 of Rattigan's Digest of Customary Law or question 87 of the District Riwaj-i-Am, 1940 applicable—Riwaj-i-Ams of 1865, 1911-12 and 1940 discussed.

(1) 1952 S.C.R. 583

Held, that the entries in the Riwaj-i-Ams of 1865 and 1911-12 were not considered sufficient in judicial decisions to replace the general Customary Law that an adopted son does not lose his right of succession to the natural family. Moreover at the compilation of the Riwaj-i-Am of 1911-12 the Brahmins and Khatries of the District did not accept the position that an adopted son does not retain his right of succession in the natural family. The Riwaj-i-Am of 1940 does not describe correctly the Custom prevalent in the District regarding the rights of the adopted son in his natural family and that paragraph 48 of Rattigan's Digest of Customary Law gives the Custom accurately as applicable to the District.

Letters Patent Appeal under Clause 10 of the Letters Patent from the decree of the Court of Hon'ble Mr. Justice Soni of the High Court of Judicature for the State of Punjab at Simla, dated the 21st day of May, 1953, affirming that of the Additional District Judge, Amritsar, dated the 14th June, 1951, affirming that of Shri Pritam Singh, Sub-Judge, 1st Class, Tarn Taran, dated the 14th April, 1951, granting the plaintiff a decree for joint possession for two-thirds share, as described in the plaint, one-half share in Khasra Nos. 1028, 1270, 1478, 1535, 1543, 1843, 1852 and for one-third share in Khasra Nos. 2080 and 411 and for joint possession on payment of Rs. 600 as regards one-half share of Khasra Nos. 977, 978, 979, 1058 min Lehnda and 1058 min Charhda against the defendants with costs and further ordering that the plaintiff's costs will be paid by defendant No. (1) and defendant No. (1) alone would be entitled to get Rs. 600 if paid by the plaintiff.

SHAMAIR CHAND, Y. P. GANDHI and P. C. JAIN, *for* Appellant.

A. N. GROVER, for Respondents.

JUDGMENT

Bishan Narain, J.

BISHAN NARAIN, J. This is an appeal under clause 10 of the Letters Patent against the judgment of Soni, J., confirming the judgment of the Additional District Judge, Amritsar, who had upheld the judgment passed by Shri Pritam Singh.

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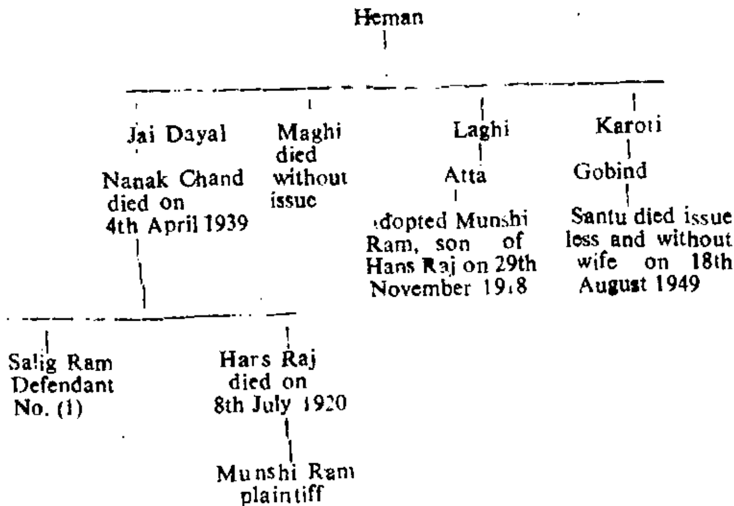
Subordinate Judge, 1st Class, Tarn Taran. in favour of Munshi Ram. plaintiff, for joint possession of the lands with Salig Ram, defendant No. (1) mentioned in the plaint according to the shares specified therein.

There is no dispute now in this appeal regarding the facts of the case. The parties are Brahmans from Sarhali Khurd, Tahsil Tarn Taran, in the district of Amritsar and their pedigree-table is as follows:—



Munshi Ram, plaintiff, natural son of Hans Raj, was adopted by Atta, son of Laghi, on 29th November 1918 in accordance with the ceremonies prescribed by custom amongst them. Hans Raj died on 8th July 1920, during the lifetime of his father Nanak Chand, who survived him by about 19 years. Santu, son of Gobind, died issueless on 18th August 1949. Thus amongst the descendants of Heman, the common ancestor, two persons now survive, namely Munshi Ram, plaintiff and Salig

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Ram, defendant No. (1). Munshi Ram filed the present suit claiming to succeed to the estate left by Santu as well as to the estate left by Nanak Chand along with Salig Ram, defendant No. (1). Salig Ram in his written statement denied the plaintiff's claim and also raised other defences on facts which are not relevant now. It is common ground between the parties that they are governed by custom in the matter of succession. The trial Court relying on paragraph 48 of Rattigan's Digest of Customary Law came to the conclusion that there is no evidence or instance in support of the special custom laid down in the Riwaj-i-am of the district which is inconsistent with paragraph 48 mentioned above and decreed the plaintiff's suit and granted the relief of joint possession of lands with Salig Ram in the shares specified in the plaint. This finding was upheld by the learned Additional District Judge, Amritsar, and the second appeal was dismissed by Soni, J., by his judgment, dated 21st May 1953.

The question involved in this appeal is whether custom in the matter of succession by an adopted son as applicable to the Brahmans of the Amritsar District, is according to paragraph 48 of the Rattigan's Digest of Customary Law or as laid down in the Riwaj-i-am of the district.

Mr. Shamair Chand, counsel for the defendant-appellant, urged before us that the parties to this litigation were not governed by the Customary Law as enunciated in paragraph 48 but by the Riwaj-i-am of the district as compiled in 1865, 1911-12 and 1940. His case is that under the Riwaj-i-am of this district an adoption made in accordance with the customary rites had the effect of an adoption under Hindu Law and the rights of an adopted son are those as are given to an adopted son under the Hindu Law or in other words that an adopted son has no rights left in his natural family after his adoption and can succeed only in his adoptive family. Consequently, according to Mr.

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Shamair Chand the plaintiff is entitled to succeed to Santu as the adopted son of Atta, but he has no right to succeed to Nanak Chand's estate in the presence of a son—Salig Ram, defendant No. (1).

Now paragraph 48 of Rattigan's Digest of Customary Law states general rule of custom and it is to the effect that a son adopted according to the customary rites does not thereby lose his right to succeed to the property in his natural family. The Riwaj-i-am of the district of Amritsar, compiled in 1865 in answer to Question 15 says—

> "A man once admitted into the family of his adoptive father ceases to have any claim on the property of his natural father. To this custom there is no exception."

And in reply to Question No. 17 the answer is that even if all the other sons pre-decease the natural father and he has no issue, the adopted son cannot succeed to the property of his natural father. After the compilation of this code of customary law for the district of Amritsar, the rights of an adopted son were the subject-matter of dispute and it was held in the judgment reported as *Majja Singh and six others* v. *Ram Singh* (1), that an adopted son was not deprived of his right of inheritance in his natural family in the absence of proof of custom to that effect and it was further held that no such custom was proved. The effect of this decision was that the answers to Questions 15, 16 and 17 given in the Manual of Customary Law of 1865, were not considered sufficient to prove special custom overriding the custom as enunciated in paragraph 48 mentioned above. The customary law prepared in 1911-12 by Mr. Craik was also to the same effect. In answer to Question 89, the reply given by all the tribes is recorded as follows:—

> "As in 1865, all the tribes, with the exception of Brahamans and Khatris, answered that an adopted son does not retain his right to inherit from his natural father even if the latter dies without leaving

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other sons. Some persons make an exception in favour of the adopted son, who is an only son of his natural father, and one instance of Sidhu Jats of Attari is quoted."

It will be noticed that in 1911-12 the Brahmans and Khatris of this district did not accept the custom described in reply to Question 89.

In a case from this district *Jagat Singh etc.* v. *Ishar Singh, etc.* (1), it was held by Abdul Qadir. J.—

> "I must say that, on this particular point, the manual cited by the counsel for the appellants states the proposition too broadly to be accepted as correct, inasmuch as it is materially at variance with the view embodied in Article 48 of the Rattigan's Digest, which clearly gives an adopted son the right of succession to his natural father's property, when there are no natural brothers in existence. Article 48 may, therefore, be taken as a more reliable basis for decision in a case like this."

And Sir Shadi Lal in a separate judgment while holding that a person appointed an heir under the Customary Law of the Punjab is not debarred from succeeding to the estate of his collateral relative in the natural family, stated the legal position to be as follows:—

> "It is, therefore, clear that the appointed heir does not cease to be a member of his natural family and does not lose his right of succession in that family."

Thus, in spite of the Manuals of Customary Law of 1865 and 1911-12 it was held by the Punjab High Court in 1930 that an adopted son under the Customary Law does not lose his right in the natural family.

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The Customary Law of the Amritsar District was again compiled in 1940, and in answer to Question 87 the reply as recorded was—

> "An adopted son loses his right to inherit from his natural father. If the latter dies without other sons, he cannot inherit as his son but may inherit collaterally as the successor of his adoptive father."

In answer to Question 88 it was stated that the adopted son has the full rights of a natural son in respect of the estate of his adoptive father.

Mr. Shamair Chand has strongly relied upon a Division Bench judgment of this Court reported as *Teju* alias *Teja Singh and others* v. *Kesar Singh and others* (1), in which it was held in a Letters Patent Appeal that in the Amritsar District, an adoption according to customary ceremonies has all the ingredients of an adoption under Hindu Law. The Hon'ble Judges in that case considered the three Manuals of Customary Law mentioned above and came to the conclusion that an adopted son succeeds collaterally to his adoptive family. Mr. Shamair Chand points out that this decision is not in consonance with paragraph 49 of Rattigan's Digest of Customary Law which reads—

> "Nor, on the other hand, does the heir acquire a right to succeed to the collateral relative of the person who appoints him, where no formal adoption has taken place, inasmuch as the relationship established between him and the appointer is a purely personal one."

The argument is that after this decision holding that paragraph 49 reproduced above is not in accordance with the custom prevailing in this district, it cannot be said that paragraph 48 remains applicable as the two paras stand or fall together and if paragraph 49 is not applicable to the district of Amritsar, then it cannot be held that paragraph

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48 remains applicable and in support of this argument reliance has been placed upon the following passage from the judgment of Sir Shadi Lal, Chief Justice, in *Jagat Singh, etc.* v. *Ishar Singh, etc.*, (1)—

> "His appointment as an heir, however, confers upon him the right of succeeding to the estate of his adoptive father, and it was, therefore, considered unjust that he should be allowed to compete with his natural brothers in the matter of succession to the estate of his natural father. Equity and justice demanded that he should not succeed to the property of his natural father in the presence of his natural brothers, and an exception was grafted on the general rule allowing him to succeed in his natural family.
>
> This exception has, however, no application to the case of a succession to the estate of a collateral in the natural family; because it is common ground that the appointed heir has no right of succession to the collateral relative of the appointor. Neither the nature of the relationship created by the appointment of an heir, nor the rule of equity can be invoked to support the contention that the appointed heir, who does not succeed to the estate of the collateral relative of the appointer, should be deprived of his right of succession to a collateral in the natural family, merely because he has got his natural brothers in that family."

The learned counsel for the appellant has further pointed out that the idea of an adoption according to the customary ceremonies having the result of an adoption under the Hindu Law is not one that is unknown to the customary law in the

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province, and for this purpose he has invited our attention to various cases from various districts which laid down that an adoption under customary law has the legal effect of an adoption under the Hindu Law:—

(1) *Jug Lal and others* v. *Jot Ram* (1) relates to Karnal District;

(2) *Hari Singh Prem* v. *Moti Ram* (2). relates to Gurgaon District;

(3) *Sheo Ram and others* v. *Moman and others* (3), relates to Hissar District;

(4) *Sabha Chand and others* v. *Piara Lal* (4), relates to Rohtak District;.

(5) *Abdur Rehman Khan and others* v. *Raghbir Singh and others* (5), relates to Gurdaspur District; and

(6) *Milkhi and others* v. *Ram Das representative of Hulasa, deceased and others* (6), relates to Hoshiarpur District.

After having fully considered the arguments of the learned counsel for the appellant I have come to the conclusion that there is no force in these submissions. It is quite clear that the entry in the Riwaj-i-am of 1865, was not considered sufficient by the Judges in *Majja Singh and others* v. *Ram Singh* (7), to replace the general customary law that an adopted son does not lose his right of succession in the natural family. Similarly in 1930 the Lahore High Court in *Jagat Singh and others* v. *Ishar Singh* (8), did not consider the entries in the two Manuals of Customary Law of 1865 and 1911-12 as sufficient to replace paragraph 48 of the Rittigan's Digest of Customary Law. Moreover, as I have stated above, it appears that in 1911-12 at the

(1) I.L.R. 11 Lah. 624
(2) A.I.R. 1939 Lah. 196
(3) A.I.R. 1934 Lah. 405
(4) I.L.R. 11 Lah. 381
(5) 1949 P.L.R. 119
(6) 133 P.L.R. 1914
(7) 43 P.R. 1879
(8) I.L.R. 11 Lah. 615

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time of compilation of the Riwaj-i-am the Brahmans and Khatris of this district did not accept the position that an adopted son does not retain his right of succession in the natural family. It would be further noticed that the Manual of the Riwaj-i-am of 1940 while recording the reply to Question 87 as reproduced above relies on *Majja Singh and others* v. *Ram Singh* (1), and *Jagat Singh and others* v. *Ishar Singh* (2), as judicial instances for the answer given to that question. It is, therefore, clear that at the time of compilation of 1911-12 Riwaj-i-am the Brahmans of this district did not accept the custom as described in it and that at the time of compilation of 1940 Riwaj-i-am reference has been made to two instances which are against the custom as recorded in reply to Question 87. I am, therefore, of the opinion in agreement with the judgment of Soni, J., that the Riwaj-i-am of 1940, does not describe correctly the custom prevalent in this district regarding the rights of an adopted son in a natural family and that paragraph 48 of Rattigan's Digest of Customary Law gives the custom accurately as applicable to this district.

It is corect that in *Teju* alias *Teja Singh* v. *Kesar Singh and others* (3), a Division Bench of this Court held after considering the answers recorded in the Riwaj-i-ams of 1865, 1911-12 and 1940, that these Riwaj-i-ams should be considered as describing correctly the custom prevailing in this district in preference to paragraph 49 of Rattigan's Digest of Customary Law. It may appear inequitable that an adopted son should have right of succession both in his natural and adoptive families, but it cannot be argued that if paragraph 49 of the Rattigan's Digest of Customary Law is not applicable, then paragraph 48 is necessarily abrogated in this district. There is nothing inconsistent in the applicability of paragraph 48 and non-applicability of paragraph 49 although it may appear to be inequitable. The idea of an adopted

(1) 43 P.R. 1979
(2) I.L.R. 11 Lah. 615
(3) 1953 P.L.R. 445

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son inheriting from both families lineally and collaterally is not unknown to Hindu Law. Mulla in his Principles of Hindu Law in section 486 says—

> "Where a person gives his son to another under an agreement that he should be considered to be the son of both the natural and adoptive fathers, the son so given in adoption is called '*dvyamushyayana*'."

In subsection (2), he says—

> "A *dvyamushyayana* inherits both in his natural and adoptive families."

And this subject is discussed in Mayne's Treatise on Hindu Law, 1950, Edition, at page 268 and the legal position of such an adoption is described—

> "The son adopted in the *dvyamushyayana* form inherits both in the family of his birth and in the family of his adoption. A son born after such adoption ranks as a grandson of an adoptive father and would exclude the latter's brother's son."

Therefore, it cannot be said that the idea of an adopted son inheriting in both families is so foreign to the notion of Hindu Law that it should be rejected summarily. Moreover, in the present case the defendant never pleaded specifically that an adopted son loses all his rights in the natural family, nor is there any evidence on the record in support of such a plea. It may be that in some other case in future on the material on the record of that case the Courts may come to the conclusion that paragraph 48 of Rattigan's Digest of Customary Law does not apply to this district, but as the record stands in this case it is not possible to take that view. It is significant that the Judges while deciding the case reported in *Teju alias Teja Singh* v. *Kesar Singh and others* (1), did not discuss

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or advert to *Majja Singh and others v. Ram Singh* (1), or *Jagat Singh and others* v. *Ishar Singh* (2), and it is possible that they did not consider these judgments as relevant for decision in that case. In any case, it is not open to us to alter the custom which has been judicially recognised since 1879 by applying *Teja Singh's case* (3), on analogous or equitable grounds. I am of the opinion that the decision reported in *Teju alias Teja Singh* v. *Kesar Singh and others* (3), is of no assistance to the defendant in this case.

It is further argued by Mr. Shamair Chand that Hans Raj predeceased Nanak Chand and, therefore, Munshi Ram is not entitled to succeed to the estate left by Nanak Chand. There is no force in this contention. On the principles of representation Munshi Ram stands in the shoes of Hans Raj and is entitled to succeed to the estate left by Nanak Chand as his father would have succeeded if he had been alive at the time of the death of Nanak Chand.

The result is that this appeal fails and is hereby dismissed and the judgment of Soni, J., is confirmed. As the point involved was not free from difficulty, I leave the parties to bear their own costs throughout.

Bhandari, C.J.

BHANDARI, C. J.—I agree.