against a woman, it must in the very nature of things cause her extreme anguish. The fact that the charge was made in a communication addressed to the wife and was not then given publicity, would not go to show that the making of the unfounded charge was not a cruel act."

(16) Pandit, J., in *Shritmati Santosh Kaur* v. *Mehar Singh* (3) held that where the husband had filed a petition for restitution of conjugal rights on the ground that his wife had withdrawn herself from his company without any sufficient cause, it was for him to prove that fact before he could be granted any relief. Simply because the wife could not establish her defence that the husband had treated her with cruelty, that alone would not entitle the husband to claim relief.

(17) In view of what has happened in the domestic life of the parties and the treatment meted out to the wife by her husband, husband's application for restitution of conjugal rights does not deserve to succeed. I, therefore, allow the appeal and set aside the decree passed by the Additional District Judge for restitution of conjugal rights in favour of the respondent. In the circumstances, I leave the parties to bear their own costs.

K. S.

APPELLATE CIVIL

Before Mehar Singh, C.J., and R. S. Narula, J.

MOHINDER KAUR AND OTHERS,—*Appellants*

versus

WASSAN SINGH AND OTHERS,—*Respondents*

Regular Second Appeal No. 1078 of 1964

March 8, 1968

Hindu Succession Act (XXX of 1956)—S. 27— Scope of—Title of the estate of murdered person—Whether can be claimed through his murderer—Father's will in favour of two sons excluding female heirs— One of the sons hanged for murdering his father—His share of the willed property—Whether devolves on surviving son or goes in intestacy.

(3) 1966 P.L.R. 713.

Held, that section 27 of the Hindu Succession Act, 1956 is in the form of a declaratory enactment of the rule of Hindu law in regard to personal disqualification of the murderer from inheriting to the estate of the person whom he has murdered. To that, a rule has been grafted on the principle of justice, equity and good conscience that no title to the estate of the person murdered can be claimed through the murderer. He should be treated as non-existent when the succession opens on the death of his victim; he cannot be regarded as a fresh stock of descent. (Para 8)

Held, that where a father makes a will in favour of his two sons, excluding female heirs and one of the sons is hanged for murdering him, the half of the willed property goes to the surviving son by testamentary succession. The question whether the other half share devolves on the surviving son in terms of the will or goes in intestacy, depends upon the intention of the testator. If a testator leaves the whole of his property to his two sons without defining any share and at the same time excluding the then known and future possible female heirs who could possibly have made a claim to his inheritance under the new succession law, the intention of the testator is clear beyond any possible mistake that he left the whole of his property to his two sons as a class. He excluded all the female heirs recognized under the new succession law from inheriting him. He named such of the heirs as were then known to him and left no manner of doubt that he excluded any other heir who might raise any dispute about succession to him in the wake of the new law referring to Hindu Succession Act. In this approach, there is no intestacy in regard to the half of the property bequeathed by the testator to his son who murdered him, and in the terms of the will and according to the intention of the testator the whole of his property under his will passes to the surviving son.

(Paras 6 and 7)

Second Appeal from the decree of the Court of Shri H. K. Mehta, Additional District Judge, Amritsar, dated the 13th May, 1964 affirming that of Shri P. C. Saini, Sub-Judge, 1st Class, Patti, dated the 8th August, 1963 granting the plaintiff a decree for declaration to the effect that the plaintiff was the exclusive owner in possession of the suit land.

Case referred by the Hon'ble Mr. Justice R. S. Narula on 31st March, 1967 to a Division Bench for decision of an important question of law involved in it. The case was finally decided by a Division Bench consisting of the Hon'ble the Chief Justice Mr. Mehar Singh and the Hon'ble Mr. Justice R. S. Narula, on 8th March, 1968.

H. L. Sibal, Senior Advocate with R. C. Sethia, Advocate, for the Appellants.

N. L. Dhingra and Santosh Kumar Aggarwal, Advocates, for the Respondents.

JUDGMENT.

MEHAR SINGH, C.J.—The litigation between the parties, out of which this second appeal has arisen, concerns the inheritance of Kundan Singh deceased. On April 13, 1957, he executed a will, Exhibit P. 4. of his property, movable and immovable, in favour of his two sons Wassan Singh, plaintiff and Gurdial Singh, deceased. The will was scribed by Jaswant Singh and attested by two Panches of the village, namely, Ujagar Singh and Dayal Singh. The evidence of these witnesses, which is not open to any criticism whatsoever, has been that the testator was in a disposing mind, when the will was read over to him he understood, it, and, while he thumb-marked the will in their presence, they signed it in his presence. The genuineness of the thumb-mark on the will has never been questioned by anybody during the whole of the proceedings. The evidence of the witnesses led by the contesting defendants, who in the trial Court, were the two daughters and widow of Kundan Singh deceased, was of witnesses from different places and witnesses found not reliable by the trial Court, as also by the first appellate Court, and so also by my learned brother, Narula, J., when he heard this second appeal in the beginning. The two Courts below have held the will to have been duly proved and genuine. A few suspicious circumstances of no substance were referred to before those Courts but were found by the same not in the least derogating from the veracity of the testimony of the scribe and the two attesting witnesses of the will and from the genuineness of the will. My learned brother has agreed in his order of reference with such an appraisal of the testimony on the record. So the will of Kundan Singh deceased has been duly proved and its genuineness has also been proved. It is in the wake of this that next to no argument has been urged at the hearing of this second appeal on this aspect of the matter. In other words, the due execution of the will and its genuineness has not been a matter of controversy at the hearing of this appeal before this Bench.

(2) In the will Kundan Singh deceased recited that he had two sons, two daughters, and his wife. He then said that he had incurred expenses in connection with the marriages of his daughters and had already given them sufficient amount of property. Then he said that he had given property in the shape of cash and ornaments and the like to his wife. However, because of the new law of succession [obviously referring to the Hindu Succession Act, 1956 (Act 30 of

1956), which came into force on June 17, 1956], he said his daughters and wife might start litigation with his sons in regard to his inheritance, so he proceeded to bequeath the whole of his, movable and immovable, property to his two sons. The Courts below have taken that he did so in fifty-fifty shares, and though, if both of his sons were alive and claiming under this will, that might be the effect, but no such thing is stated in the will itself. All that is said in the will is that the testator was bequeathing his moveble and immovable property to his two sons and he has taken particular care to repeat at the end of the will that he was excluding his daughters and wife from any share of his property after his death.

(3) The testator's second son, Gurdial Singh, murdered him on May 24, 1962, some five years after the execution of the will. When the suit giving rise to this second appeal was instituted by his son, Wassan Singh, plaintiff, to obtain declaration that under the will, Exhibit P. 4, he alone was entitled to the whole of the inheritance left by his deceased father, Gurdial Singh was under trial. But he had been convicted by the time there was an appeal in the first appellate Court, after the trial Court had decreed the suit of Wassan Singh, plaintiff, by the two daughters and widow of the testator. In that appeal Gurdial Singh, the second son of the testator, was shown as a party respondent. The death sentence passed on Gurdial Singh, by the Sessions Court was confirmed in the High Court and consequently Gurdial Singh was hanged before the decision of the first appeal by the daughters and the widow of the testator. So Gurdial Singh's widow, Mohinder Kaur, was impleaded as his legal representative in the first appeal. The learned Judge in the first appeal affirmed the decree of the trial Court and hence dismissed the appeal. The two Courts below proceeded on the basis that the will, Exhibit P. 4, was the genuine will of Kundan Singh, deceased and that as one of his sons, Gurdial Singh, had murdered him, he could not inherit under the will so that the whole of the property to which the will relates passes to his surviving son, Wassan Singh plaintiff, as the female heirs such as daughters and widows have been expressly excluded from inheritance by the terms of the testator's will. The claim of the wife of Gurdial Singh murderer was also denied.

(4) The second appeal has been filed against the decree of the first appellate Court by the widow and two daughters of the testator and the wife of Gurdial Singh deceased who was hanged for

murdering his father Kundan Singh deceased. In the memorandum of appeal there is a misdescription of Mohinder Kaur, widow of Gurdial Singh deceased, but on that account the argument of the learned counsel for Wassan Singh plaintiff cannot be accepted that there is either no appeal on the side of Mohinder Kaur, widow of Gurdial Singh, deceased, or that her case anyhow cannot be considered.

(5) This second appeal first came for hearing before my learned brother, Narula, J., when the counsel appearing for the defendants-appellants urged that in view of section 27 of Act 30 of 1956, the widow of Gurdial Singh deceased, son of the testator, who had murdered the testator, was not debarred from inheriting to the testator because according to that section it is the murderer alone who is disqualified from inheritance which is to devolve, as if such person had died before the intestate, in this case Kundan Singh deceased. The learned counsel for Wassan Singh, plaintiff then referred to the commentary under the very section in Mulla's Hindu Law, Thirteenth Edition, at page 865, which reads—"The effect of the rule laid down in this section is that no title or right to succeed can be traced by any person through one who is disqualified from inheriting any property under the provisions of sections 24 to 26. The section does not affect the rights of those who cannot be said to claim through the disqualified person". And it was contended that the widow of a predeceased son in the circumstances as of the present case, because of her husband having murdered his father, could not inherit, through her husband, to her deceased father-in-law. It was in these approaches on both sides that my learned brother referred this case to a larger Bench, and this is how it has come for hearing before this Bench.

(6) The will of Kundan Singh, deceased, having been duly proved, half of his movable and immovable property goes by testamentary succession to Wassan Singh, plaintiff. The question if whether the rest of the half of his movable and immovable property is to devolve in the terms of his will or in intestacy ? This obviously enough depends upon the intention expressed by Kundan Singh, deceased, in his will with regard to his property and the expression given by him to that intention, in the same. In Halsbury's Laws of England, Volume 39, Third Edition, paragraph 1315, at page 869, it is stated—

> "It is contrary to public policy that a man should be allowed to claim a benefit resulting from his own crime. Accordingly, a donee who is proved to be guilty of the murder

> on man-slaughter of the testator cannot take any benefit under his will. The property goes to the other persons entitled under the will, if it is a gift to a class, or, if the exclusion of the donee effects an intestacy as to the property in question, to the persons, other than the donee, entitled on intestacy, and not to the Crown as *bona vacantia,* save in so far as the Crown may be entitled under the intestacy provisions in the ordinary way."

(7) This statement of law has met the approval of their Lordships of the Privy Council in *Kanchava* v. *Girimallappa Channappa,* (1), at page 373, The question whether in the present case the remaining half of the property bequeathed by the testator has to devolve in the terms of the will or on intestacy thus depends upon whether the bequest is to the sons as a class, in which case the whole of the property will pass to the surviving son Wassan Singh, plaintiff. The learned counsel for the defendants-appellants contends that the testator left his property to his two sons in equal shares and, therefore, only the half share left to Wassan Singh, plaintiff passes to him under the will of the testator and there is an intestacy with regard to the remaining half share of the murderer, the second son, Gurdial Singh, deceased. On the other hand, what is urged on the side of Wassan Singh, plaintiff, is that the will of the testator has left his property (a) to his two sons without saying that each was to have half, though that might have been the ultimate effect if nothing else had intervened, and (b) specifically and in so many words excluding his two daughters and widow from inheriting to him. The learned counsel contends that it follows that the testator left his property to his two sons as sons and as a class, at the same time excluding female heirs from inheriting him under his will. He named such of the female heirs who were then available and known to him, but when he said that because of the provisions of Act 30 of 1956 he was making the will in favour of his sons, he left no manner of doubt that he was expressly excluding female heirs recognized by that Act. This includes the case of the widow of Gurdial Singh, deceased, the second son, who murdered the testator. The contention on the side of Wassan Singh, plaintiff, is sound and consistent with the terms and conditions of the will of the testator, who left the whole of his property to his two sons, without defining

(1) (1924) 51 I.A. 368.

any shares, and at the same time excluding the then known and present female heirs who could possibly have made a claim to his inheritance, after his death, in view of the provisions of Act 30 of 1956. He has said specifically in the will that because of the new law of succession and to avoid litigation about his inheritance after his death in the wake of such law he was bequeathing the whole of the property to his two sons excluding his two daughters and his widow. The intention of the testator in this case is clear beyond any possible mistake that he left the whole of his property to his two sons as a class. He excluded all the female heirs recognized under the new succession law from inheriting him. He named such of the heirs as were then known to him and left no manner of doubt that he excluded any other heir who might raise any dispute about succession to him in the wake of the new law, referring to Act 30 of 1956. In this approach, there is no intestacy in regard to the half of the property bequeathed by the testator to his second son, Gurdial Singh, who murdered him, and in the terms of the will and according to the intention of the testator the whole of his property under his will passes to his surviving son Wassan Singh, plaintiff.

(8) In the circumstances, the question of consideration of the effect of section 27 of Act 30 of 1956 does not really arise because there is no question of intestacy in this case with regard to the remaining half of the property bequeathed by the testator, but if there was such a question I should have been inclined to say that section 27 is in the form of a declaratory enactment of the rule of Hindu law in regard to personal disqaulification of the murderer from inheriting to the estate of the person whom he has murdered. To that a rule has been grafted on the principle of justice, equity and good conscience that no title to the estate of the person murdered can be claimed through the murderer. He should be treated as non-existent when the succession opens on the death of his victim; he cannot be regarded as a fresh stock of descent: See Paragraph 99, at page 154 of Mulla's Hindu Law, Thirteenth Edition, and the observation of their Lordships of the Privy Council in *Kenchava's* case. I should have been inclined to the view that section 27 has not made any change in that rule of justice, equity and good conscience. On a different view the rule of justice, equity and good conscience will apply to wills by non-Hindus, but not to Hindus, a distinct treatment which could hardly have been intended by the Legislature.

(9) In the result, the second appeal of the defendants-appellants is dismissed, but, in the circumstances of the case, there is no order in regard to costs.

R. S. NARULA, J.—I agree.

R. N. M.

CIVIL MISCELLANEOUS

Before Mehar Singh, C. J. and Shamsher Bahadur, J.

DALIP SINGH AND OTHERS,—*Petitioner*

versus

THE SUPERINTENDING CANAL OFFICER, WEST CIRCLE, ROHTAK, AND OTHERS,—*Respondents*

Civil Writ No. 408 of 1967

April 8, 1968

Northern India Canal and Drainage Act (VIII of 1873)—Ss. 30-A, 30-B and 30-C—Divisional Canal Officer not approving a scheme—Revision against such order—Whether maintainable—Jurisdiction with regard to revision—Whether to be conferred by a statute.

Held, that under section 30-C of Northern India Canal and Drainage Act what has to be published by the Divisional Canal Officer is the particulars of the scheme approved by him and the object is to call upon the shareholders to implement the same. A scheme not approved or rejected cannot be published nor implemented. A revision is only permitted under section (3) of section 30-B in regard to a scheme published under section 30-C, and if the conclusion is that a scheme disapproved or rejected cannot be published under section 30-C, there is no power of revision given by sub-section (3) of section 30-B to the Superintending Canal Officer against the disapproval or rejection of a draft scheme. The condition laid down in section 30-C for publication is with regard to an approval scheme with the object of calling upon the shareholders to implement it. It is when the shareholders are thus under the statute called upon to implement an approved scheme, that someone of them, may have grievance against such an approved scheme, and, when he has that, he has been given a right of approach