

## APPELLATE CIVIL

*Before Bhandari, C.J. and Dulat, J.*

DEWAN SINGH AND GYAN SINGH,—*Plaintiffs-Appellants*

versus

KEHAR SINGH AND OTHERS,—*Defendants-Respondents.*

**Regular Second Appeal No. 340 of 1953.**

*Custom—Aulakh Jats of Ajnala Tehsil—Adopted son—Whether can succeed collaterally in the family of his adoptive father.*

1958

Oct., 6th

*Held*, that an adopted son is entitled to succeed collaterally in the family of his adoptive father according to the special custom which is being followed in the Amritsar District and no reason has been shown why this special custom should be departed from in the case of Aulakh Jats of Ajnala tehsil.

*Case referred by Hon'ble Mr. Chief Justice A. N. Bhandari, on 10th September, 1958, for opinion of the legal point involved in it to a larger Bench. the case was finally disposed of by the Division Bench consisting Hon'ble Mr. Chief Justice A. N. Bhandari and Hon'ble Mr. Justice Dulat on 6th October; 1958:*

*Second Appeal from the decree of the Court of Shri G. C. Bahl, District Judge, Amritsar, dated the 25th (28th) day of April, 1953, reversing that of Shri Manohar Singh, Sub-Judge, Ist Class, Amritsar, dated the 10th January, 1951, and dismissing the plaintiff's suit and directing the parties to bear their own costs throughout.*

M. C. SOOD, for Appellant.

J. N. SETH AND K. C. NAYAR, for minor Respondents.

## JUDGMENT

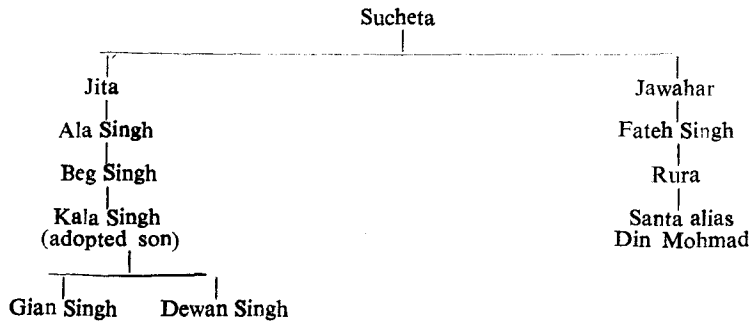
Bhandari, C.J.—This second appeal raises the question whether among Aulakh Jats of the Ajnala tehsil an adopted son can succeed collaterally in the family of his adoptive father. The

Bhandari, C. J.

Dewan Singh following pedigree-table shows the relationship  
and Gyan Singh between the parties:—  
v.

Kehar Singh  
and others

Bhandari, C. J.



On the death of Santa alias Din Mohammad the property belonging to the latter was mutated in favour of his eight-degree collaterals. Gian Singh and Dewan Singh sons of Kala Singh, adopted son of Beg Singh, thereupon, brought a suit for possession of the property in question on the ground that they were entitled to succeed to the property of the deceased in preference to eight-degree collaterals. The trial Court granted the decree in their favour, but the learned District Judge set aside the order and dismissed the plaintiff's suit. The plaintiffs have come to this Court in second appeal, and the question for this Court is whether the learned District Judge has come to a correct determination in point of law.

Two points arise for decision in the present case, namely, (1) whether Kala Singh was lawfully adopted by Beg Singh; and if so, (2) whether he is entitled to succeed collaterally in the family of his adoptive father.

The plaintiffs stated in paragraph 6 of the plaint that the adoption of Kala Singh by Beg Singh was of a formal character which involved the transplantation of Kala Singh from his natural

family into the family of his adoptive father. The defendants, on the other hand, asserted in the written statement filed by them that the adoption in question was a mere customary adoption which was nothing more than an appointment of an heir. The defendants did not allege that Beg Singh had no power to adopt his daughter's son Kala Singh as he did not belong to the same *got* as his adoptive father, or that the adoption could not be held to be valid for any other reason. They stated merely that the adoption in question was customary adoption which could confer no rights on the adopted son to succeed collaterally to the family of the adoptive father. As the validity of the adoption was not called into question the parties had no opportunity of showing whether Kala Singh could or could not be taken in adoption by his mother's father Beg Singh. On the contrary it appears that Kala Singh was always recognised as an adopted son of Beg Singh, that he actually succeeded to the property of Beg Singh, and that on the death of Kala Singh his sons, Gian Singh and Dewan Singh plaintiffs, succeeded to the property of Beg Singh without any protest from any of the collaterals of Beg Singh. As Beg Singh died over fifty years ago and as Kala Singh has throughout this long period recognised as the validly adopted son of Beg Singh, it is too late in the day to reopen the question of his adoption.

This brings me to the decision of the second question, namely whether Kala Singh or his sons Gian Singh and Dewan Singh are entitled to succeed collaterally in the family of Beg Singh. If Kala Singh's adoption was valid in the eye of law, there can be no doubt that his sons, the plaintiffs, are entitled to succeed collaterally to the property of Santa alias Din Mohamad, for Answer 91 of the Customary Law of 1914 and Answer 90 of

Dewan Singh  
and Gyan Singh  
v.

Kehar Singh  
and others

Bhandari, C. J.

Dewan Singh  
and Gyan Singh  
v.  
Kehar Singh  
and others  
Bhandari, C. J.

the Customary Lay of 1940 make it quite clear that an adopted son succeeds collaterally in the family of his adoptive father. The answer to the later question contains a list of as many as seventeen instances out of which twelve relate to Ajnala tehsil, including two relating to Aulakh Jats, in which adopted sons had succeeded collaterally in the families of their adoptive fathers. No reason has been shown why the special custom, which is being followed in the Amritsar district and according to which an adopted son succeeds collaterally in the family of his adoptive father, should be departed from in the case of this particular family.

For these reasons, I would accept the appeal, set aside the order of the learned District Judge and restore that of the trial Court. There will be no order as to costs.

Dulat, J.—I agree.  
B. R. T.

#### LETTERS PATENT APPEAL

*Before Bhandari, C.J. and Dulat, J.*

PUNJAB STATE AND OTHERS,—Appellants  
versus  
MEHR CHAND,—Respondent.

**Letters patent Appeal No. 81 of 1954.**

*Administration of Evacuee Property Act (XXX of 1950)—Section 6—Superintendence by the Custodian—Extent and scope of—Assistant Custodian not exercising his own discretion but acting according to the instructions of the Custodian—Effect of—Exercise of discretion—Manner of—Section 40(4) clause (c)—Whether to be interpreted as ejusdem generis to clauses (a) and (b)—Interpretation of Statutes—Doctrine of Ejusdem generis—Meaning, scope and extent of.*

1958

Oct., 7th