ARJAN SINGH AND ORS.

v.

NARAIN SINGH & ORS.

1963

February 12.

(P. B. GAJENDRAGADKAR, K. N. WANCHOO, M. HIDAYATULLAH, K. C. DAS GUPTA and J. C. SHAH, JJ.)

Customary Law—Jats of Tehsil Zira of Ferozepore District—Adoption—Formal adoption in Hindu Law and customary appointment of an heir—Difference—Effect of appointment of heir on connection with natural family.

Harnam Singh died leaving behind two daughters. They also died without leaving any issue surviving them. The Revenue authorities ordered that the entire estate of Harnam Singh be entered in the revenue records in the names of the defendants.

The plaintiffs filed a suit for possession of the estate of Harnam Singh. Their contention was that notwithstanding the adoption of Ghuda Singh, their predecessor, by his maternal uncle, they as descendants of Ghuda Singh were not excluded from inheritance to the estate of a member in the natural family of Ghuda Singh. It was also contended that the family of the plaintiffs and Harnam Singh was governed by Zamindara *Riwaj-i-am* by virtue of which a son adopted in another family and his decendants did not lose their right to inherit in the natural family because by the adoption according to the custom of the community, the adopted son did not completely sever his connection with his natural family.

The contention of defendants-appellants was that in the District of Ferozepore, every adoption in a Hindu family was formal and according to the *Riwaj-i-am* of the District, an adopted son was excluded from the right to inherit in his natural family. Consequently, Ghuda Singh, who was adopted by Bhan Singh, could not inherit the estate because his adoption operated as complete severance from the natural family.

The suit was dismissed by the Subordinate Judge and his order was confirmed by the District Judge. However, the High Court set aside the order of the District Judge and held that the record disclosed no evidence that the adoption of Ghuda Singh was formal and hence it must be presumed that the adoption was a customary appointment of an heir and not a formal adoption under the Hindu Law. It was also held that there was overwhelming authority in favour of the proposition that by reason of a customary adoption, the adopted

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son and his descendants were not excluded from the right to inherit to collaterals in the natural family. The plaintiffs as grandsons in the male line of Ghuda Singh were entitled to inherit the estate. The appellants came to this Court by a certificate of fitness granted by High Court.

Held, that the view of the High Court was correct. A person adopted according to the customs of the community, i.e. who is appointed as a heir to inherit the property of a person outside the family, does not, by virtue of such appointment, lose his right to inherit in his natural family except the right to inherit the property of his natural father when there are natural brothers. The natural brothers would take the property to the exclusion of such an adopted son and his decendants.

Daya Ram v. *Sohel Singh* (1906) P. R. No. 110 (F.B.), *Abdul Hussain Khan* v. *Bibi Sona Dero* (1917) L.R. 45 I.A. 10, *Vaishno Ditti* v. *Rameshri* (1928) L. R. 55 I. A. 407, *Mela Singh* v. *Gurdas*, (1922) I. L. R. 3 Lah. 362, *Jagat Singh* v. *Ishar Singh* (1930) I. L. R. 11 Lah. 615, *Kanshi Ram* v. *Situ* (1934) I. L. R. 16 Lah. 214, *Rahmat* v. *Ziledar* (1945) I. L. R. 26 Lah. 504 and *Jai Kapur* v. *Sher Singh*, [1960] 3 S. C. R. 975, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 223 & 224 of 1961.

Appeals from the judgment and decree dated April 25, 1956, of the Punjab High Court in Civil Regular Second Appeals Nos. 158 and 159 of 1949 respectively.

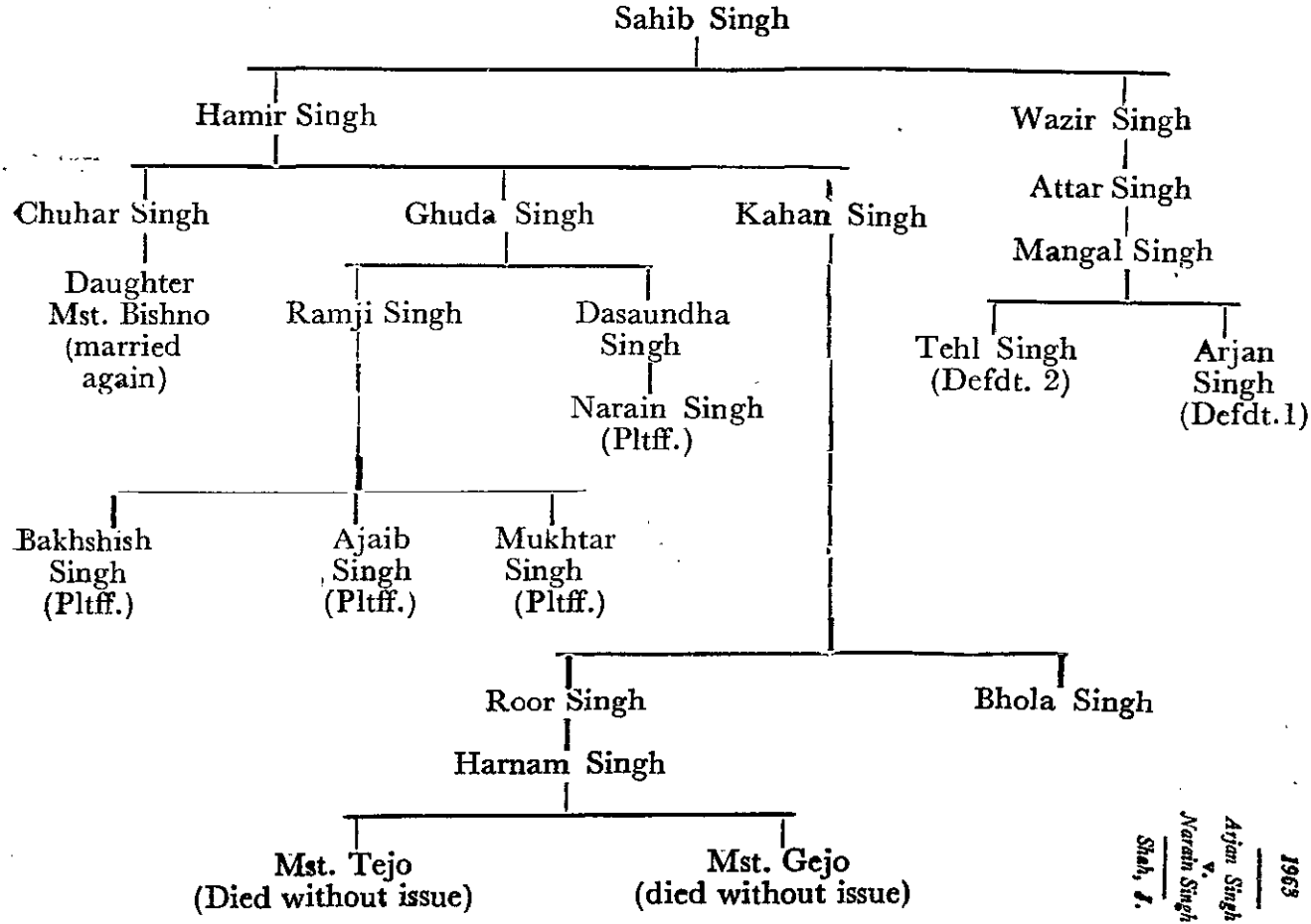
N. S. Bindra and *K. L. Mehta*, for the appellants.

Gurbachan Singh, *Harbans Singh* and *M. L. Kapur*, for the respondents (in C. A. No. 224/61).

1963. February 12. The Judgment of the court was delivered by

Shah J.

SHAH J.—These appeals arise out of two suits relating to certain agricultural lands situate in village Umri Ana, tehsil Zira, District Ferozepore in the Punjab. The dispute relates to the right to inherit the estate of one Harnam Singh who was the last male holder. The disputing parties are descended from Sahib Singh as disclosed by the following genealogy :—


Sahib Singh
Hamir Singh
Wazir Singh
Chuhar Singh
Ghuda Singh
Kahan Singh
Attar Singh
Daughter Mst. Bishno (married again)
Ramji Singh
Dasaundha Singh
Mangal Singh
Narain Singh (Pltff.)
Tehl Singh (Defdt. 2)
Arjan Singh (Defdt.1)
Bakhshish Singh (Pltff.)
Ajaib Singh (Pltff.)
Mukhtar Singh (Pltff.)
Roor Singh
Bhola Singh
Harnam Singh
Mst. Tejo (Died without issue)
Mst. Gejo (died without issue)

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Harnam Singh grandson of Kahan Singh died leaving him surviving two daughters Mst. Tejo and Mst. Gejo and no male lineal descendant. The property of Harnam Singh devolved upon his two daughters in equal shares. On the death of Mst. Tejo without issue the entire estate was entered in the name of Mst. Gejo by the revenue authorities. Mst. Gejo also died in 1942 without leaving any issue surviving her. By order dated September 6, 1945 the Assistant Collector directed that the entire estate be entered in the name of Narain Singh s/o Dasaundha Singh and Bakshish Singh, Ajaib Singh and Mukhtar Singh sons of Ramji Singh—who will hereinafter be referred to collectively as 'the plaintiffs.' In appeal to the Collector of Ferozepore the order of the Assistant Collector was set aside and the estate was directed to be entered in the names of Tehl Singh and Arjan Singh sons of Mangal Singh—who will hereinafter be referred to collectively as 'the defendants.' The Commissioner of the Division confirmed the order of the Collector.

The plaintiffs who are the descendants of Ghuda Singh then instituted suit No. 9/1947 in the Court of the Subordinate Judge, Zira for a decree for possession of the estate of Harnam Singh, barring a small area of 8 Kanals and 11 Marlas—Khasra No. 325—which was in their possession. The defendants who are the descendants of Wazir Singh in their turn commenced an action (Suit No. 13/1947) for possession of Khasra No. 325 against the plaintiffs. Each side claimed title to the estate of Harnam Singh according to the customary law applicable to the *Jats* residing in *tehsil* Zira, District Ferozepore. It was the case of the plaintiffs that notwithstanding the adoption of Ghuda Singh by his maternal uncle Bhan Singh, Ghuda Singh's descendants were not excluded from inheritance to the estate of a member in the natural family of Ghuda Singh. It was submitted by the plaintiffs

that the family of the plaintiffs and Harnam Singh was governed by Zamindara *Riwaj-i-am* (general custom obtaining amongst the Zamindars) by virtue of which a son adopted in another family and his descendants do not lose their right to inherit in their natural family, because by the adoption according to the custom of the community the adopted son does not completely sever his connections with his natural family. The defendants, on the other hand, claimed that in the District of Ferozepore every adoption in a Hindu family is 'formal' and according to the *Riwaj-i-am* of the District an adopted son is excluded from the right to inherit in his natural family. Consequently Ghuda Singh, who was adopted by Bhan Singh, could not inherit the estate of Hamir Singh, his adoption operating as a complete severance from the natural family. The sole dispute between the parties was, therefore, as to the customary law applicable to the rights of a son adopted in a *jat* family residing in *tehsil* Zira, District Ferozepore.

The two suits were consolidated for trial. The Subordinate Judge held that all ceremonies relating to adoption were performed and Ghuda Singh ceased to be a member of the family of his natural father according to the custom prevailing in the District and the plaintiffs who were the descendants of Ghuda Singh could not inherit the estate of Hamir Singh. In so holding he relied upon the manual of *Riwaj-i-am* of Ferozepore District prepared in 1914, which, in his view, recorded that when any adoption in the District takes effect the adopted son stands 'transplanted to the family of the adopter'. In appeal the District Court, Ferozepore held that in the case of *Jats* of Ferozepore District by special custom prevailing in the Dist ist, the adopted son had the right to inherit collaterally in the family of his adoptive father only and could not inherit collaterally in his natural father's family. In second appeal the High Court of Punjab set aside the decree passed

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by the District Court. In the view of the High Court the record disclosed no evidence that the adoption of Ghuda Singh made by his maternal uncle Bhan Singh was formal and in the absence of any such evidence it must be presumed that the adoption was a customary appointment of an heir and not a formal adoption under the Hindu Law and that there was overwhelming authority in favour of the proposition that by reason of a customary adoption the adopted son and his descendants were not excluded from the right to inherit to collaterals in the natural family. The High Court accordingly held that the plaintiffs, as grandsons in the male line of Ghuda Singh, were entitled to inherit the estate of Hamir Singh. With certificate of fitness granted by the High Court, these two appeals are preferred by the defendants.

It is common ground that Ghuda Singh was adopted some time before 1856 by Bhan Singh, his maternal uncle. The dispute between the parties has to be resolved by applying the customary law applicable to the parties, because s. 5 of the Punjab Laws Act, 1872 which governs the parties provides that :

> "In questions regarding succession, special property of females, betrothal and marriage, divorce, dower, adoption, guardianship, minority, bastardy, family relations, wills, legacies, gifts, partition, or any religious usage or institution, the rule of decision shall be—
>
> (a) any custom applicable to the parties concerned, which is not contrary to justice, equity or good conscience, and has not been by this or any other enactment altered or abolished, and has not been declared to be void by any competent authority;

(b) The Muhammadan Law in cases where the parties are Muhammadans, and the Hindu Law, in cases where the parties are Hindus, except in so far as such "law has been altered or abolished by legislative enactment, or is opposed to the provisions of this Act, or has been modified by any such custom as is above referred to."

In *Daya Ram* v. *Sohel Singh* (1), Robertson, J., (at p. 410) in dealing with the true effect of s. 5 observed :

> "In all cases it appears to me under this Act, it lies upon the person asserting that he is ruled in regard to a particular matter by custom, to prove that he is so governed, and not by personal law, and further, to prove what the particular custom is. There is no presumption created by the clause in favour of custom; on the contrary, it is only when the custom is established that it is to be the rule of decision. The Legislature did not show itself enamoured of custom rather than law, nor does it show any tendency to extend the 'principles' of custom to any matter to which a rule of custom is not clearly proved to apply. It is not the spirit of customary law, nor any theory of custom or deductions from other customs which is to be a rule of decisions, but only 'any custom applicable to the parties concerned which is not.....'; and it 'therefore' appears to me clear that when either party to a suit sets up 'custom' as a rule of decision, it lies upon him to prove the custom which he seeks to apply; if he fails to do so clause (b) of s. 5 of the Punjab Laws Act applies, and the rule of decision must be the personal law of the parties subject to the other provisions of the clause."

This view was affirmed by the Judicial Committee

(1) (1906) P.R. No. 110 (F.B.).

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of the Privy Council in *Abdul Hussein Khan* v. *Bibi Sona Dero* (1). In *Vaishno Ditti* v. *Rameshri* (2), the Judicial Committee observed :

> "x x x x their Lordships are of opinion that in putting custom in the forefront, as the rule of succession, whilst leaving the particular custom to be established, as it necessarily must be, the Legislature intended to recognize the fact that in this part of India inheritance and the other matters mentioned in the section are largely regulated by a variety of customs which depart from the ordinary rules of Hindu and Mohamedan law."

The pleadings also disclose an unanimity that the rights of the parties have to be adjudged in the light of the customary law applicable and not by the rules of Hindu Law. The relevant general custom which is applicable in the matter of adoption is to be found in Rattigan's *Digest of Civil law* for the Punjab, 13. Edn. p. 572 :

Article 48 :

> "An heir appointed in the manner above described ordinarily does not thereby lose his right to succeed to property in his natural family, as against collaterals, but does not succeed in the presence of his natural brothers."

Article 49 :

> "Nor, on the other hand, does the heir acquire a right to succeed to the collateral relatives 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."

This adoption, according to Rattigan is irrevocable and an adopted son cannot relinquish his status.

(1) (1917) L.R. 45. I.A. 10. (2) (1928) L.R. 55 I.A. 407, 421.

Article 52 sets out the rights of the adopted son. It states :

> "The appointed heir succeeds to all the rights and interests held or enjoyed by the appointer, and, semble, would succeed equally with a natural son subsequently born."

There is a long course of decisions in the High Court of Lahore and the High Court of Punjab in which it has been held that the relationship between the appointed heir and the appointer which is called adoption is purely a personal one and resembles the *Kritrima* form of adoption of Hindu Law: *Mela Singh* v. *Gurdas* (1), Sir Shadi Lal, C. J. observed in dealing with the effect of a customary adoption in the Punjab :

> "The tie of kinship with the natural family is not dissolved and the fiction of blood relationship with the members of the new family has no application to the appointed heir. The relationship established between the appointer and the appointee is a purely personal one and does not extend beyond the contracting parties on either side."

Similarly in *Jagat Singh* v. *Ishar Singh* (2), it was held that the reservation as to the adopted son not succeeding in the presence of his brothers refers only to his succession to his natural father but does not apply to cases of collateral succession in his natural family. A similar view was expressed in *Kanshi Ram* v. *Situ* (3), and *Rahmat* v. *Ziledar* (4). In the last mentioned case it was stated :

> "Under the general custom of the province a person who is appointed as an heir to a third person does not thereby lose his right to succeed to the property of his natural father. But

(1) (1922) I.L.R. 3 Lah. 362 (F.B.) (2) (1930) I.L.R. 11 Lah. 615.
(3) (1934) I.L.R. 16 Lah. 214. (4) (1945) I.L.R. 26 Lah. 540.

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the appointed heir and his lineal descendants have no right to succeed to the property of the appointed heir's natural father *against the other sons of the natural father* and their descendants. The appointed heir can succeed to the property of his natural father when the only other claimant is the collateral heir of the latter."

But it is urged on behalf of the defendants that the general custom applicable to the Punjab as recorded by Rattigan is shown to be superseded by proof of a special custom of the District recorded in the *Riwaj-i-am* of Ferozepore District prepared by Mr. Currie at the settlement of 1914, and reliance is placed upon answers to Questions 76 and 77 which deal with the effect of adoption. The Questions and the Answers recorded are :

"Question 76—Does an adopted son retain his right to inherit from his natural father ? Can he inherit from his natural father if the natural father dies without other sons ?

Answer—All agree that the adopted son cannot inherit from his natural father, except as for as regards such share of the property as would come to his adoptive father as a collateral. *Sodhis* 'however' say that he can inherit his natural father's estate if the latter has no male descendants, while the *Nipale* say the adopted son inherits from both fathers.

Question 77—Describe the rights of an adopted son to inherit from his adoptive father. What is the effect of the subsequent birth of legitimate sons to the adoptive father ? Will the adopted son take equal shares with them ? If natural legitimate sons be born subsequently to the adoption where the *chundawand* system

of inheritance prevails, how will the share of the adopted son, whose tribe differs from that of the adoptive father, inherit from him ? Does an adopted son retain his own *got* or take that of his adoptive father ?

Answer—An adopted son has exactly the same rights of inheritance from his adoptive father as a natural legitimate son. The inheritance would only be by *chundawand*, if that was the prevalent rule of the family.

The *Nipals, Rajputs, Arains, Moghals, Sayyads, Gujjars* and *Muhammadan Jats* state that if the adopted son is of a different *got* he takes the *got* of his adoptive father ; while if he is of a different tribe, he cannot inherit.

As it is, as a rule aged men without hope of sons who adopt, cases of the birth of legitimate sons after adoption has taken place must be rare."

When there is conflict between the general custom stated in Rattigan's *Digest of Customary Law* and the *Riwaj-i-am* which applies to a particular area it has been held by this Court that the latter prevails. In *Jai Kapur* v. *Sher Singh* (1), it was observed :

"There is, therefore, an initial presumption of correctness as regards the entries in the *Riwaj-i-am* and when the custom as recorded in the *Riwaj-i-am* is in conflict with the general custom as recorded in Rattigan's Digest or ascertained otherwise, the entries in the *Riwaj-i-am* should ordinarily prevail except that as was pointed out by the Judicial Committee in *Mt. Subhani* v. *Nawab* [A. I. R. 1941

(1) [1960] 3 S.C.R. 975, 979.

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(P. C.) 21], "that where, as in the present case, the *Riwaj-i-am* affects adversely the rights of females who had no opportunity whatever of appearing before the revenue authorities, the presumption would be weak, and only a few instances would suffice to rebut it."

Therefore when there is a conflict between the record of custom made in Rattigan's Digest of Customary Law and the local Riwaj-i-am, *prima facie*, the latter would prevail to the extent of the inconsistency, and it would be for the person pleading a custom or incident thereof different from the custom recorded in the *Rewaj-i-am* to prove such custom or incident. Attention must, therefore, be directed to the question whether there is in fact any inconsistency between the custom recorded in Rattigan's Digest of Customary Law and the relevant entries in the *Riwaj-i-am*. The general custom recorded in Rattigan's Digest is apparently this : a person adopted according to the custom of the community *i. e.* who is appointed as an heir to inherit the property of a person outside the family does not, by virtue of such appointment, lose his right to inherit the property in his natural family except the right to inherit the property of his natural father when there are natural brothers. The natural brothers would take the property to the exclusion of such an adopted son and his descendants. Question 76 in the *Riwaj-i-am* primarily refers to the right of an adopted son to retain his right to inherit the property of his natural father and the answer recorded is that the adopted son cannot inherit the property of the natural father, except such property as would devolve upon his adoptive father as a collateral (of the adopted son's natural father). It is to be noticed that the question was directed to ascertain the right of the adopted son to inherit the estate of his natural father : it did not seek elucidation on the right of the adopted son to inherit the estate of any collaterals of the natural

father, and the fact that in the answer it was recorded that to the estate which would devolve upon his adoptive father as a collateral of his natural father he has a right of inheritance, strongly supports the view that the village elders in replying to the question were only concerned with the right of an adopted son to inherit the property of his natural father and were not concerned to dilate upon any right to collateral succession in the natural family. The answer to question 77 also supports this view. When asked to describe the rights of an adopted son to inherit the estate of his adoptive father, they replied that the adopted son had exactly the same rights of inheritance from his adoptive father as a natural legitimate son.

Mr. Bindra appearing on behalf of the defendants submitted that Questions 76 and 77 were intended to ascertain the custom of the District relating to the rights of the adopted son in his natural *family* and the *family* of his adoptive father and the answers must be read in that light. We are unable to accept this suggested interpretation of Questions 76 and 77 and the information elicited thereby. The *Riwaj-i-am* appears to have been carefully compiled by officers of standing and experience, and it is clear that they made a limited enquiry about the rights of an adopted son to inherit the property of his natural father and of his adoptive father. There is undoubtedly some conflict between the custom recorded in Rattigan's Digest and the custom in the *Riwaj-i-am*. Whereas in Rattigan's Digest it is recorded that an heir appointed in another family does not succeed to his natural father in the presence of his natural brothers, in the *Riwaj-i-am* it is recorded that the adopted son does not directly inherit the estate of his natural father in any event. But we are not concerned with that inconsistency in this case. It is sufficient to observe that in Art. 48 of Rattigan's Digest, it is

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recorded that an heir appointed in the manner described (an adopted son) does not thereby lose his right to succeed to property in his natural family: and nothing inconsistent therewith is shown to be recorded in the *Riwaj-i-am* of the District.

Mr. Bindra contended that in any event there is clear evidence of instances of devolution of property in the family of the parties indicating that a son adopted in another family was totally excluded from inheritance in the natural family. Counsel relied upon Ext. D-5 an extract from the register of mutations relating to certain agricultural lands in village Umri Ana. It appears from that extract that on the death of Hamir Singh the estate was in the first instance entered in the names of his three sons. But Salig Ram, Patwari of the village, made a report on May 28, 1884 that Kahan Singh and Chuhar Singh (two of the sons of Hamir Singh) claimed that Ghuda Singh had never been in possession of the 1/3rd share of the *Khata* entered in his name and that Ghuda Singh himself had admitted that he had no concern with the *Khata* in question and that his name should be removed. On that report the Assistant Collector ordered that the lands be entered in the names of Kahan Singh and Chuhar Singh and that the name of Ghuda Singh be removed from the mutation entry and that the *Jamabandi* papers be altered accordingly. But this instance of exclusion of Ghuda Singh from the right to participate in the estate of his father is consistent with the statement of custom recorded in Rattigan's Digest. It is expressly recorded in Art. 48 that an appointed heir does not thereby lose his right to succeed to property in his natural family, as against collaterals, but he does not succeed in the presence of his natural brothers. Kahan Singh and Chuhar Singh were brothers of Ghuda Singh and Ghuda Singh having been adopted could not, according to the custom recorded in

Rattigan's Digest, inherit his father's estate in the "presence of his brothers."

The other instance relied upon by counsel is about the devolution of the estate of Chuhar Singh on the remarriage of his daughter Bishno. On the death of Chuhar Singh it appears that his property was entered in the name of his daughter Bishno, and when Bishno contracted a *Karewa* marriage according to the custom prevalent in the community, the estate held by her was entered in the name of Rura Singh and Bhola Singh sons of Kahan Singh. In the register of mutations Ext. R-D-1 it is recorded that Ghuda Singh who was the *Lambardar* appeared before the Tehsildar and identified Mst. Bishno and stated that she had contracted *Karewa* marriage with Jawala Singh and further admitted that Rura Singh and Bhola Singh were entitled to take her property, and pursuant to this statement the Tehsildar directed that mutation regarding succession be sanctioned in favour of Rura Singh and Bhola Singh in equal shares. This instance also, in our judgment, does not support any case of departure from the custom recorded in Rattigan's Digest. It is clear from the genealogy and the extract of the register of mutations Ext. D-1 that the occasion for making an entry of mutation was the *remarriage* of Bishno. Mr. Bindra submitted that according to the custom of the community a daughter inheriting property, from her father would on marriage be divested of the property, which would devolve upon the collaterals of her father, and according to that custom when on the remarriage of Bishno the succession opened, Ghuda Singh was on his own admission excluded. This, counsel submitted, was a strong instance supporting a departure from the custom recorded in Rattigan's Digest. But if by virtue of the custom prevalent in the community, as asserted by Mr. Bindra, on her marriage Bishno would lose her interest in the property of her father, it is

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difficult to appreciate how she acquired title or continued contrary to that custom, to remain owner of the property of her father after her first marriage. It is clear that it was not because of her marriage, but on re-marriage, that the property was alleged to have devolved upon Rura Singh and Bhola Singh. Why Bishno did not forfeit her right to the property on her marriage and forfeited her right thereto on re-marriage has been left in obscurity.

The learned Judges of the High Court held that the mere circumstance that Ghuda Singh permitted the estate to go to the descendants of Kahan Singh was not by itself sufficient to establish the custom set up by the defendants and uncontested instances were of little value in establishing a custom. They observed that the instance might have received considerable reinforcement if it had been shown that Ghuda Singh or any of his descendants had inherited collaterally in the family of Bhan Singh but except succession of Ghuda Singh to the estate of Bhan Singh which is in accordance with the general custom no proof of collateral succession was established, and the single instance of Chuhar Singh's estate devolving upon the descendants of Kahan Singh with the consent of Ghuda Singh does not establish any custom contrary to what is stated in Rattigan's Digest. We are unable to disagree with the view so expressed.

On that view of the case, these appeals fail and are dismissed with costs.

Appeal dismissed.