A

KEHAR SINGH & ORS.

v.

DEWAN SINGH & ORS.

January 21, 1966

B [K. SUBBA RAO, M. HIDAYATULLAH AND R.S. BACHAWAT, JJ.]

Custom—Jats of Amritsar District—Adoption—Difference between adoption as heir and formal adoption—Test of formal adoption—Severence of ties with natural family—Right of person adopted to the property of collaterals of adopting family.

C The revenue authorities sanctioned mutation of the lands left by S, an Aulakh Jat of Tehsil Ajnala in Amritsar District of the Punjab, in favour of the appellants who were collaterals of S in the 8th degree. A suit for possession of the said lands was filed against them by the respondents who claimed the lands as descendants of K. According to them K was the daughter's son of M, a collateral of S in the 5th degree, and had been formally adopted by M as his son. The trial court held that the adoption of K was the usual customary appointment of an heir and D that by the custom of Jats in Amritsar District an appointed heir was entitled to succeed collaterally in the family of his adoptive father and consequently K was the preferential heir to S. The first appellate court agreed with the trial court that the adoption of K was the customary appointment of an heir, but rejected K's claim to be preferential heir on various grounds. The High Court in second appeal held that under the customary law K, as the adopted son of M was entitled to succeed collateE rally in his adoptive father's family; on this view it restored the trial Court's decree. The appellants came to this Court on certificate.

HELD : (i) There is a presumption that the entries in Riwaj-i-am are correct and if there is a conflict between Rattigan's digest and the Riwaj-i-am, normally the Riwaj-i-am of the locality prevails.

(ii) Under the customary law of the Jats in Amritsar District when F the customary adoption is formal and the adopted son is completely transplanted in the family of his adoptive father, he is entitled to succeed to the collateral relatives of the adoptive father. This finding is in harmony with the Riwaj-i-am of the Amritsar District, is supported by judicial decisions, and is not in conflict with Art. 49 of Rattigan's Digest. On the other hand if the customary adoption amounts to a mere appointment of an heir, the appointed heir is not entitled to succeed to the collateral relatives of the adoptive father. This finding is in harmony with Art. 49 G of the Rattigan's Digest and the judicial decisions, and is consistent with the Riwaj-i-am properly interpreted in the light of the decided cases. [398 C, D]

(iii) It is a question of fact in each case whether the adoption by a Jat in the Amritsar District is formal or informal. The adoption is formal if the parties manifest a clear intention that there should be a complete change of the family of the adopted son, so that he ceases to be a member of his natural family and lose his right of collateral succession in the H family and at the same time becomes a member of the adoptive father's family and acquires a right of collateral succession in the family. The losses of the right of collateral succession in the natural family is strong evidence to show that the adoption is formal and effects a complete change

in the family. On the other hand retention of the right of collateral succession in his natural family indicates that the adoption was informal by way of customary appointment of an heir. [398 E-G] A

(iv) In the present case the courts had found, and the finding was amply supported by materials on the record, that the adoption of K was no more than a mere appointment of an heir by the custom of the Jats in the District of Amritsar. The onus to show otherwise was on the respondents. The fact that K succeeded to the lands left by his natural brother and by one of the collaterals of his natural family strongly indicated that the adoption of M did not effect a change in his family. K's adoption not being a formal one, he could not be a preferential heir to S. [398 H; 399 D] B

Case law referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 429 of 1963. C

Appeal from the judgment and decree dated October 6, 1958 of the Punjab High Court in Civil Regular Second Appeal No. 340 of 1953.

Gopal Singh, for the appellants and respondent No. 11. D

N. N. Keswani, for respondent No. 1.

The Judgment of the Court was delivered by

Bachawat, J. : The parties are Aulakh Jats of Tehsil Ajnala in Amritsar District, and are governed by customary law in matters of succession and adoption. The dispute concerns succession to the property of one Santa Singh *alias* Din Mohammad. Santa Singh has not been heard of for a long time and is presumed to be dead. The revenue authorities sanctioned mutation of the lands left by him in favour of the defendants, who are his collaterals of the 8th degree. One Megh Singh was the collateral of Santa Singh in the 5th degree. Megh Singh died more than 50 years ago. Before his death, he adopted his daughter's son, one Kala Singh. Kala Singh has died leaving his sons, Dewan Singh and Gian Singh as his heirs. Dewan Singh and Gian Singh instituted a suit in the Court of the Subordinate Judge, First Class, Ajnala praying for a decree for possession of the lands left by Santa Singh and alleging that Megh Singh adopted Kala Singh as his son, took him out of his natural family, transplanted him completely in the family of Megh Singh and bestowed on him the rights of a natural son, according to the custom by which the parties were governed, Kala Singh was entitled to succeed as a reversionary heir in the family of his adoptive father and was the preferential heir of Santa Singh. The contesting defendants alleged that the adoption of Kala Singh amounted to the appointment of an heir only and they denied that according to custom Kala Singh was the reversionary heir of Santa Singh or entitled to inherit his lands. E F G H

A The Subordinate Judge, Ajnala and the District Judge, Amritsar concurrently held that the adoption of Kala Singh was the usual customary appointment of an heir. The trial Court also held that by the custom of Jats in Amritsar District an appointed heir was entitled to succeed collaterally in the family of his adoptive father and consequently, Kala Singh was the preferential heir of Santa B Singh. On appeal, the District Judge, Amritsar set aside the decree passed by the trial Court, and dismissed the suit. He held that according to custom, the adoption of a daughter's son was not permissible and the adoption of Kala Singh was, therefore, invalid. He also held that under the customary law an adopted son could not succeed collaterally in his adoptive father's family if he was a C non-agnate, *i.e.*, if he did not belong to the *Got* of his adoptive father. On second appeal, the High Court set aside the order of the District Judge, Amritsar, and restored the decree passed by the trial Court. The High Court, held that it was not open to the defendants to challenge the validity of the adoption of Kala Singh, as the point was not in issue between the parties, and under the customary law, Kala Singh, as the adopted son of Megh Singh, was D entitled to succeed collaterally in his adoptive father's family. Some of the defendants now appeal to this Court on a certificate granted by the High Court.

In agreement with the High Court we hold that it is not open to the defendants to contend that the adoption of Kala Singh by E Megh Singh was invalid. In the written statement, the defendants did not allege that Megh Singh had no power to adopt Kala Singh, as Kala Singh was the daughter's son of Megh Singh. As the validity of the adoption was not in issue, the parties had no opportunity to lead any evidence on the question whether by the special custom of the parties Megh Singh could lawfully adopt his daughter's son.

F

The substantial point in controversy between the parties is whether by the custom governing the Jats of Amritsar District Kala Singh was entitled to succeed collaterally in the family of his adoptive father. Some general customs as to adoption are found to exist in the Punjab, and they are collected in Rattigan's Digest of G Customary Law. Some of the customs observed in the several Districts and Tehsils of the Punjab are collected in the *Riwaj-i-am*. There is a presumption that the entries in the *Riwaj-i-am* are correct, and if there is a conflict between Rattigan's Digest and the *Riwaj-i-am*, normally the *Riwaj-i-am* of the locality prevails, see *Jai Kaur* v. *Sher Singh* (1), *Salig Ram* v. *Munshi Ram* (2). Judicial decisions furnish reliable instances in which the custom in question H was recognised or departed from. Oral and documentary evidence of mutations and other transactions in which the custom was

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

(2) [1962] 1 S.C.R. 470, 474-475.

recognised or departed from are also relevant material to prove or disprove the custom. A

A customary adoption in the Punjab is ordinarily no more than a mere appointment of an heir creating a personal relationship between the adoptive father and the appointed heir only, see *Mela Singh* v. *Gurdas* (1). There is no tie of kinship between the appointed heir and the collaterals of the adoptive father. The appointed heir does not acquire the right to succeed collaterally in the adoptive father's family. The status of the appointed heir is thus materially different from that of a son adopted under the Hindu law. B

The general custom negativing the right of the appointed heir to succeed collaterally in the family of his adoptive father is stated in Art. 49 of Rattigan's Digest of Customary Law, 13th Edn., p. 572 thus : C

> "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." D

The rule in Art. 49 does not apply to a formal adoption by the customary method. The customary formal adoption completely severs the connection of the adopted son with his natural family and transplants him from his natural family to the adoptive family. Such an adoption confers on the adopted son the right of collateral succession in the adoptive father's family and takes away the right of collateral succession in the natural family. The formal adoption may be made in accordance with custom and by observing the customary forms, and it is not necessary to comply with the rules of Hindu law in the matter of ritual or otherwise. See *Abdur Rehman* v. *Raghubir Singh* (2), *Waryaman* v. *Kanshi Ram* (3). E F

The Manual of Customary Law of the Amritsar District by H. D. Craik in 1914 records the following question and answer—

> "Question 91—Can an adopted son succeed collaterally in the family of his adoptive father ? G

> Answer 91. All the tribes state that an adopted son succeeds collaterally in the family of his adoptive father, with the exception of Brahmans and Khatris of Neshta, who say that he does not do so. The rule defined by the courts, however, is that an adopted son has no right to H

(1) [1922] I.L.R. 3 Lah. 362 F.B. (2) [1949] 51 P.L.R. 119.
(3) [1922] I.L.R. 3 Lah. 17.

A succeed in this manner. The latest ruling on this point is P.R. 107 of 1913 in which it was held that among Jat Sikhas of the Taran Taran tehsil an adopted son, appointed by the usual customary method, does not succeed to collaterals as his adoptive father's representative."

B The English translation of the Urdu version of the *Riwaj-i-am* of the Amritsar District for the year 1940 (Ex. P. C/1) records the following question and answer :—

No. of question	Question	Answer
C 90	Can an adopted son succeed collaterally in the family of his adoptive father ?	All the tribes, yes. See Schedule I for relevant mutations. See Schedule II for judgments in Civil cases.

D

Schedule I annexed to Ex. P.C./1 gives 17 instances of mutations on collateral successions of adopted sons in the family of the adoptive father. Schedule II annexed to Ex. P.C./1 is not printed in the paper book. The English version of the *Riwaj-i-am* of the Amritsar District published by A. MacFARQUHAR in 1947 E gives the list of the relevant judicial decisions bearing on question 90. The decided cases show that where the adoption is by way of a customary appointment of an heir, the adopted son does not succeed collaterally in the adoptive father's family. The latest *Riwaj-i-am* refers to the Court rulings without disapproval. In the light of the decided cases, the entries in the *Riwaj-i-am* recognising the adopted son's right of collateral succession in the adoptive F father's family should be taken to apply to cases of customary formal adoptions and not to cases of adoptions by way of customary appointments of heirs.

The relevant judicial decisions may be briefly noticed. In *Jowala Singh* v. *Mt. Lachmi and others* (1) (Gil Jats of Tehsil Ajnala, G Amritsar), *Mangal Singh* v. *Tilok Singh* (2) (Sohel Jats of Tehsil Ajnala, Amritsar), *Chetu* v. *Jawand Singh and others* (3) (Sikh Jats of Tehsil Taran Taran, Amritsar), it was held that an heir appointed under the customary law of Jats in the District of Amritsar does not acquire a right to succeed to the collaterals of the adoptive father, and in *Indar Singh* v. *Mt. Gurdevi* (4) (Amritsar Jats), it was held that he was not a lineal descendant of the adoptive father H within the meaning of s. 59 of the Punjab Tenancy Act XVI of 1887.

(1) 14 P.R. of 1884.
(2) 61 P.R. of 1894.
(3) 107 P.R. of 1913.
(4) A.I.R. 1930 Lah. 897.

Conversely, the appointed heir retains the right of collateral succession in his natural family. *See Jagat Singh* v. *Ishar Singh* ( ) (Amritsar Jats). On the other hand, according to the customs of Jats in the Amritsar District, in a case of a formal adoption effecting a complete transplantation of the adopted son in the adoptive father's family, the adopted son is entitled to inherit collaterally in the adoptive father's family. See *Teju* v. *Kesar Singh* (2), affirming the decision of Kapur, J. in *Teja Singh* v. *Kesar Singh* (3).

We thus find that under the customary law of Jats in Amritsar District, where the customary adoption is formal and the adopted son is completely transplanted in the family of his adoptive father, he is entitled to succeed to the collateral relatives of the adoptive father. This finding is in harmony with the *Riwaj-i-am* of the Amritsar District, is supported by judicial decisions, and is not in conflict with Art. 49 of Rattigan's Digest. On the other hand, if the customary adoption amounts to a mere appointment of an heir, the appointed heir is not entitled to succeed to the collateral relatives of the adoptive father. This finding is in harmony with Art. 49 of Rattigan's Digest and the judicial decisions, and is consistent with the *Riwaj-i-am* properly interpreted in the light of the decided cases.

In *Teju* v. *Kesar Singh* (2), it was said that the ordinary rule in Amritsar District is that the adoption is complete. In other cases, it was said that ordinarly such an adoption is by way of a customary appointment of an heir. The true rule appears to be that it is a question of fact in each case whether the adoption by a Jat in the Amritsar District is formal or informal. The adoption is formal if the parties manifest a clear intention that there should be a complete change of the family of the adopted son, so that he ceases to be a member of his natural family and loses his right of collateral succession in that family and at the same time becomes a member of the adoptive father's family and acquires a right of collateral succession in the family. The loss of the right of collateral succession in the natural family is strong evidence to show that the adoption is formal and effects a complete change in the family. On the other hand, retention of the right of collateral succession in his natural family indicates that the adoption was informal by way of customary appointment of an heir.

The onus is upon the plaintiffs-respondents to prove that the adoption of Kala Singh was formal and effected a complete change in his family. On the death of the adoptive father Megh Singh, Kala Singh inherited the properties of Megh Singh, and on the death of Kala Singh, his sons, Gian Singh and Dewan Singh, inherited those properties. But these successions are consistent with the

(1) I.L.R. 11 Lah. 645. (2) A.I.R. 1954 Punjab 30.
(3) A.I.R. 1951 Punjab 117.

A informal appointment of Kala Singh as an heir to Megh Singh. According to custom, the appointed heir succeeds to the properties left by the adoptive father, and on the death of the appointed heir, his male issue succeeds: see Rattigan's Digest of Customary Law, 13th Edn., Arts. 52 and 54, pp. 572-573. The succession of Kala Singh as the reversionary heir of one Mst. Bhagan is cited B as an illustration of collateral succession of the adopted son in his adoptive father's family in the list of mutations given in Sch. I of the *Riwaj-i-am* of 1940 (Ex. P.C./1). But the oral testimony on the record of this case discloses that Mst. Bhagan, who was the widow of a predeceased son of Megh Singh, was given some land by Megh Singh for her maintenance, and on her death, Kala Singh C succeeded to this land. It will appear, therefore, that Mst. Bhagan got a life estate in this land, and on her death, the land reverted to Kala Singh as the adopted son of Megh Singh. The succession of Kala Singh to this land is, therefore not an instance of collateral succession of Kala Singh in his adoptive father's family, and this was fairly conceded by learned counsel for the respondents. Considering all the circumstances of the case, the trial D Court and the first Appellate Court concurrently found that the adoption of Kala Singh was by way of customary appointment of an heir to Megh Singh. On second appeal, the High Court did not interfere with this finding. The finding is amply supported by the materials on the record. It appears that after his adoption Kala Singh succeeded to the lands left by one Makhan, E his natural brother and by one Hira Singh, his collateral in his natural family. These collateral successions in the natural family strongly indicate that the adoption of Kala Singh did not effect a change in his family. The adoption of Kala Singh was no more than a mere appointment of an heir and by the custom of the Jats in the District of Amritsar he was not entitled to succeed F collaterally in his adoptive father's family. For this reason, the suit out of which this appeal arises, must be dismissed.

The District Judge, relying on *Mangal Singh* v. *Tilok Singh*(1) held that as Kala Singh was not an agnate of his adoptive father, he was not entitled to succeed collaterally in his adoptive father's family, even assuming that his adoption was valid. This G aspect of the matter was not considered by the High Court at all. In view of our conclusions on other points, we do not express any opinion on this point.

We allow the appeal, set aside the decree passed by the High Court, restore the decree passed by the District Judge of Amritsar and direct that the suit be dismissed. The parties will pay and H bear their own costs throughout.

Appeal allowed.

(1) 61 P.R. 1894.