

Inheritance among Khasis and Jaintias

Khasis

The Khasis being a matrilineal group, the general rule is that property is inherited by females. Minor variations of this principle amongst certain sub-tribes (the Syntengs and the Wars) do not detract from its general operation. However, it must be noted at the outset that the system of inheritance is governed by a code of rules which, if taken in all its totality and richness, can hardly be described as simple. When reduced to writing—as has been done by certain authors¹—the rules do not present a simple pattern which one would expect amongst people living a quiet life in the vicinity of hills. In the ensuing discussion, it is not proposed to give an exhaustive treatment of the rules of succession. That would require a separate treatise. Attention will be mainly drawn to the salient features of the rules of succession, particularly those of socio-legal interest.

Classification of property

Property may be either ancestral (nongtymmen) or personal (nong-khynraw).² Ancestral property is property derived by its present holders from their predecessors. This property cannot be alienated, except with the consent of the whole clan or family. Personal property is property not derived from ancestors. Its transfer is not so severely restricted. Rules of succession to the two kinds of property show certain differences, as do the rules relating to succession to the property of males and the property of females. It is pertinent to state that the dominant note of most rules of inheritance amongst Khasis is the preference given, directly or indirectly, (i) to maternal relations as against paternal relations, and (ii) to females as against males.

1. For instance Cantlie, *Notes on Khasi Law* (1974-reprint).

2. Personal property is also known as self-acquired property. Cantlie, *supra* note 1 at 20.

Youngest daughter as heir

As a general rule, the youngest daughter, whom the Khasis refer to as *ka-khadduh*, inherits all the properties, including *Ka-ling Seng* (foundation house). (*Khad* means to collect, and *duh* means the losses, i.e. the person who collects the responsibility for the losses of the family). The youngest daughter—*ka khadduh*—is “therefore the moral force in stimulating family affection and charity, preserving balance of kinship in the house and thereby becomes full fledged manager of mother’s property”.³ She has, however, no authority to alienate the foundation house as it is the sacred ground of the family rituals and the place for get-together for the family members, brothers and sisters, uncles and aunts, nephews, nieces and others.

The brothers and sisters of a *ka-khadduh* are called *Nonghih Ling* (the outgoing members of the family). Quite often, these days, the mother may divide her property into separate portions and give some share to the other daughters as well. This property is held by the daughters absolutely to themselves, without any control of the *khadduh*. It gets merged with their separate properties. Succession to this property follows the same principle as in the case of undivided property. If the sole survivor is a male, he takes but only for life.

Importance of the woman as the source of the clan

There is an old saying amongst the Khasis “long jaid naka kynthei”—(From the woman sprang the clan). Opinion is not unanimous about its significance. According to one writer,⁴ “this saying seems to be the later consequence rather than the original cause of the matriarchal system”. Various myths are referred to from time to time for explaining the importance of the woman in tribal society. Before agriculture came on the scene, every one must have been residing in the jungle. In due course, agriculture assumed greater importance, but during the transitional period when agriculture had a lesser importance, men used to go out hunting, so that agriculture was left exclusively to the womenfolk. As agriculture gained importance in the life of pre-historic men, the women who had been responsible for cultivation also gained in position. Furthermore, the fecundity of women was likened to the fertility of the Mother-Earth and hence there was an added imaginary advantage in making the woman, rather than the man, responsible for the cultivation of land. It can be reasonably concluded that by the time agriculture replaced hunting as a means of livelihood, women had gained a high position in society and established their supremacy over men in matters of inheritance, management of

3. Hamlet Barih, *The History and Culture of the Khasi People* 330 (1967).

4. Gemini Paul, “The Place of Khadduh—the youngest daughter in Khasi and Synteng Society” *Vanyajati* 82-83 (1956).

property and lineage. This seems to explain the primacy given to females—particularly, the rule that the daughter succeeds to the family property.⁵ The reason why the youngest daughter inherits is that after the birth of a child, the other daughters, along with their family, set up their own home. It then becomes the duty of the youngest daughter to perform essential obligations. This is why to her goes the major share. Besides this, she cremates her mother and if she be a *ka-khadduh* of the whole family, she puts the bones of all members in their final resting place under the stone (*mawbah*) of the clan. She is given a larger share to meet these expenses which are considerable. She is “the receiver and custodian of property as the steward of family worship and the watcher and mainstay for the peace and the welfare of the living and the peace of the departed souls of the Khasi family (*ka kur*)”.⁶

Khasi khadduh and Hindu karta

The pre-eminent position of the *ka-khadduh* naturally induces one to compare her with the *karta* of a joint Hindu family. Cantlie has very lucidly compared and contrasted the position of *ka-khadduh* with the *karta* of a joint Hindu family in these words, “she is the youngest female, possibly quite inexperienced and unfit to do actual management, the *karta* is the father or an elder male. The duties of management performed by the *karta* are carried out among Khasis and Syntengs by one or more of the elder male *kurs*. Their names often appear in documents of sale and mortgage. The names of *ka-khadduh* may not even appear in the documents, but the transaction is understood to be on behalf of the nominal female owner.

“*Ka-khadduh* obtains her important position as the family priestess, the *Karta* as the person most suitable by age, experience and natural respect due from the family”.⁷

Khadduh's rights as custodian

Ka-khadduh, however, is only the custodian of the ancestral property. She cannot transfer such property without the consent of the members of the family (in the case of family property) or members of the clan (in the case of clan property). Generally, it is the maternal uncles or brothers or senior members of the family or clan who manage such properties on her behalf and she cannot do whatever she likes in respect of such property.

5. *Ibid.*

6. *Supra* note 1 at 93.

7. Cantlie, *id.* at 26.

In one case, decided by the Governor of Assam,⁸ Ka Myrhiah Kharsakhkar purchased some land and houses, towards the payment of which her son U Rabin Singh Kharsakhkar had also contributed. The property was also mutated to him. On the mother's death, the son contested the claim of his youngest sister's daughter (Ka Molibon) in inheriting the same, as her behaviour was not satisfactory. The *Siem* of Myllem and his *Durbar* came to the finding that the house and compound in dispute, along with other properties of the mother, should go to Ka Molibon (the youngest grand daughter of the last owner), with the condition that "she cannot sell or transfer the house and compound to anyone, but the same should remain to be inherited by those persons consecutively or one after another, according to Khasi custom". This decision was upheld by the Governor of Assam (then functioning as the High Court for the area in question) and when Ka Molibon wanted to eject U Rabin Singh and his sister and nieces from the said land and house, the same was disallowed. On the contrary, an order for the eviction of Ka Molibon's tenants was made—presumably because she was prohibited from transferring the ancestral property.

Death of the youngest daughter

If the youngest daughter dies, the ancestral property goes to her own youngest daughter, howsoever low and if she be without any daughter, her next elder sister inherits and, after her, the youngest daughter of that sister, howsoever low. Failing all daughters and their stock, the property reverts to the mother's family, *i.e.*, to the mother's sister, and so on.⁹

Youngest daughter abandoning her claim

A situation may arise where the youngest daughter abandons her claim to inherit. One case,¹⁰ decided by the the High Court, may be cited in this context. There were three sisters. The disputed property belonged to the youngest sister, who died without any issue. The next elder sister would have had the right of inheritance to her youngest sister's property, if she had been alive, but she had died before the younger sister. She had left two daughters. Her younger daughter had the right to inherit but since she did not make a claim in this case, the

8. *U Rabin Kharsakhkar of Laban, Shillong v. Ka Molibon Kharsakhkar*, decided by the *Siem* of Myllem and his *Durbar* on May 16, 1936 and by the Governor of Assam (the then High Court) on January 25, 1941.

9. For a table illustrating the detailed application of these rules to a hypothetical case, see Cantlie, *supra* note 1 at 11. For a briefer statement of the position, see Khongphai, *Principles of Khasi Law* 14 (1974).

10. *Ka Khiamon Jana v. Ka Puren alias Pyren Jana*, S. A. No. 34 of 1949.

elder one (the plaintiff) filed a suit for the property. The plaintiff's maternal aunt, *i.e.*, the eldest sister of the last deceased female owner of the disputed property, was the defendant. It was held that the plaintiff was, under Khasi custom, entitled to inherit the properties.

Preference to female heirs

Another case,¹¹ also decided by the High Court, illustrates the preference given to females. This was a suit for declaration of title to certain property and for its possession. The facts were these. Ka Suthi and Ka Jalie were two sisters. The plaintiff was the grand-daughter of Ka Suthi, while the defendants were descendants of Ka Jalie. The plaintiff claimed the property in dispute as the sole surviving female heir to the family, while the defendants contended that the property was the self-acquired property of their parents and therefore belonged to them. Both the courts below, after a perusal of the evidence, came to the conclusion that the property was ancestral and not the self-acquired property of the defendant's parents, and that the plaintiff was the sole surviving female heir and was, as such, entitled to the property. The defendant was to remain as the manager of the family property, with no right of sale or disposal without the knowledge of the plaintiff. The High Court affirmed the judgment and dismissed the appeal.

Husband's right in wife's ancestral property

According to the Khasi customary law, a husband has no right to his wife's ancestral property. A case¹² will illustrate the operation of this principle. There was a dispute in regard to certain properties. The plaintiff claimed that the disputed properties belonged to him as he had acquired them jointly with his deceased wife and that after his wife's death he should have an exclusive right over them. The defendant was the youngest daughter of the sister of the plaintiff's wife. She contended that the spouses had no self-acquired property, that the property in dispute was ancestral and that she (as the youngest female member of the deceased's family) had the right to inherit these properties. The *Durbar* held that since it was clear that the properties were ancestral, they reverted to the family and therefore the niece of the wife (and not the husband) was entitled to the properties. The husband was, however, given a small amount as maintenance, in view of his sincerity and the care he took of his wife throughout her life. On appeal to the

11. *U Sharon Nongbri v. Ka Prisibon*, M. A. (S) 5 (H) of 1956.

12. *U Rison Nongbri v. Ka Drop & Ka Sorbe, Durbar of the Stem of Mylliem*, Misc. Case No. 50 of 1950.

District Council Court, United Khasi & Jaintia Hills,¹³ the judgment of the *Durbar* was upheld. A second appeal was made to the High Court,¹⁴ in which counsel for the appellant raised the point that a custom depriving the husband of any right in the property of his wife during his lifetime was an unreasonable custom and should not therefore have the force of law. The High Court did not express any opinion on this point since the plaintiff (the husband) had died in the meanwhile, and, after his death, the interest claimed by him could not survive. The appeal was dismissed. In a later case however, it was clearly laid down by the High Court¹⁵ that Khasi custom did not countenance a husband's right to the clan property. It is the *ka khadduh* who is entitled to the clan property, and that property can be managed in consultation with the clan *kurs*.

Male's right as manager of family properties—power of alienation limited to necessity

Though a Khasi male cannot be an absolute owner of clan properties, nevertheless, as a manager of these properties, he has a right to alienate them for a legal necessity. Whether such necessity exists in a particular case often raises interesting questions—questions of mixed fact and law.

In one case¹⁶ a male's right to alienate ancestral property beyond his lifetime had come up for determination. A forest property was owned by one woman, who died leaving behind her son, her sister's son and daughter (Ka Hat). The forest in dispute was subsequently divided between the two sons. U Shing, the son of the deceased owner, leased out the property for 250 years. After his (lessor's) death the plaintiff (who was probably the heir of the daughter Ka Hat) claimed that the lease terminated with the lessor's death, that the property belonged to Ka Hat and that the son could not alienate it for a period beyond his lifetime. The Additional Deputy Commissioner, United Khasi and Jaintia Hills, Shillong, decreed the plaintiff's claim. On appeal to the High Court, it was argued on behalf of the defendant that Ka Hat did not succeed to the property after the death of her maternal aunt, *i.e.*, the owner, that U Shing, who came into possession of the property had the right to adopt a female heir and it was only in the event of his death without such adoption that Ka Hat could succeed to the property. The counsel for opposite party in the appeal argued that after the death of the female owner, Ka Hat, the niece became the owner. No doubt, under

13. Civil Appeal No. 3 of 1954.

14. M.A. (S) 6 (H) of 1954.

15. *Ka Brillie Khorkongor v. Ka Ingiem Kharkongor* (1973) A. L. R. 77.

16. *Ka Ro Jangai v. Hamilton Nilang*, C.R. 41 (H) of 1953.

their custom, U Shing could remain in possession, but he had only a limited interest and could not alienate it beyond his lifetime. The decision of the lower court setting aside the lease as inoperative beyond the lessor's lifetime was affirmed and it was held that there was nothing on evidence to show that Ka Hat had consented to such an alienation, nor was there any evidence of necessity for the alienation.

Necessity for alienation was held to exist in one case decided by the District Council Court.¹⁷ The plaintiff had filed a suit for cancellation of a sale deed. Being the youngest female member of the Surong clan living at Nongbah, she claimed to be entitled to inherit the ancestral properties of the mother, including the land sold by the defendant, who was her brother. She contended that the defendant had mortgaged the suit land in 1961 and subsequently sold the same in 1963, that he had no right to do so without her knowledge and consent and hence the sale should be cancelled. The contention of the defendant was that he was the "executive head" of his family and had been managing all properties, including the suit land, since the death of his mother. His brother and sister being of unsound mind, he had to mortgage the land in 1961 and then to sell it, in order to maintain them. The presiding officer, Subordinate District Council Court, Jowai,¹⁸ dismissed the claim of the plaintiff. An appeal to the District Council Court was also dismissed. It was held that the defendant had to maintain and look after his brother and sister and that as the executive head of the family properties, he had a right to dispose of the property for the maintenance of his brother and sister who were of unsound mind. In the circumstances, sale of the suit land was for legal necessity and was valid.

Khasi male's ownership over self-acquired properties and succession thereto

Though (as will be evident from the above discussion) a Khasi male has a subservient position in the matter of inheritance of ancestral properties, he does own properties which are earned and acquired by him while in service or profession or business. These properties may be acquired either before marriage or after marriage. The position as to these properties may be stated in brief as under :

- (i) A bachelor's personal acquisition, while he is a bachelor and stays with his mother, are mainly under his control. A part of it goes to his mother and the rest is his personal. In the event of

17. *Ka Sylan Surong of Nongbah v. Slang Surong & others*, Title Case Appeal No. 11 of 1970.

18. Title suit No. 11 of 1964.

- his dying issueless, his earnings revert to the mother or failing her to the nearest female *kur*.
- (ii) After marriage, a Khasi husband goes to live in the house of the wife's mother, and hence a large portion of his self-acquired property is used for the maintenance of the wife and children.
 - (iii) Before the birth of a child, the husband uses a large portion of the self-acquired property for the maintenance of the wife. A portion of this is given to his *kurs* also. After the birth of children, the husband and wife work and earn jointly. Properties earned jointly by the husband and wife during coverture go to the wife after the husband's death. This is not so much an "inheritance" (*ioh pateng*), as taking as survivor.
 - (iv) Properties acquired by the husband with his own efforts and capital can be disposed of by him.
 - (v) After the wife's death in his lifetime, the youngest daughter inherits the property and failing daughters, the youngest son. After the son, the property goes to his *kurs*.
 - (vi) When there are no children of a male, the widow is not entitled to claim the entire self-acquired property, since the *kurs* of the husband have to perform his funeral ceremonies and expenses have to be incurred on the same. They can therefore claim a portion of the properties, which portion is, generally, not more than half.¹⁹

In one case,²⁰ decided by the High Court, there was a dispute between the children of the wives, in regard to the personal properties of their father. The plaintiff (male issue from the second wife of the male owner) claimed the property as the heir of his father. The defendant was the fourth wife of the deceased and claimed the property on the ground that her husband had gifted the entire property to her and to her children. It was also contended by her that the property in dispute was acquired by her late husband after the death of his second wife (*i.e.*, the mother of the plaintiff) and therefore the second wife's issue was not entitled to any share in this property. Another contention raised by her was that whatever property is acquired by the husband after marriage, becomes the joint property of both the spouses and thus she was, on this score also, entitled to a share. The District Council Court found that the gift alleged by the defendant was not established and also that there was nothing to show that the property concerned was acquired after the marriage of the defendant. It held that "according to custom the undisposed personal properties left by the deceased father should, in the absence of other claimant or claimants, be divided equally between the plaintiff (male

19. *Supra* note 1 at 20-22.

20. *Ka Oni Sheelat v. Ka Silvery Suchoi*, M.A. (S) 18 (H) of 1961.

issue) and his sister, the children of the second wife and the children of the present appellant, who is the fourth wife". The High Court upheld the findings of the District Council Court which was based on "proved custom".

Jaintias or Syntengs

Amongst the Syntengs, by custom, the husband does not go to live in the wife's house. He remains in the house of his mother or female *kurs* and visits the wife at the latter's residence. Thus, amongst the Syntengs, the connection of a male with his *kurs* is closer than amongst the Khasis. This different mode of life of the two communities has led to certain differences in regard to the rules of succession in respect of self-acquired property of the males. In regard to inheritance of ancestral property the rules are the same as amongst the Khasis.

Succession to males (self-acquired property)

As to self-acquired property among Syntengs, a bachelor's earnings go, after his death, to his mother and *kurs*.²¹ Even after marriage, his mother and *kurs* have a stronger claim to their son's self-acquired properties than the wife. The reason for this may be attributed to the mode of residence prevalent among the Syntengs. After marriage, a husband continues to live with his own family (unlike a Khasi husband who, under strict custom, follows his wife to her parental house).

The custom of *kit-khih* and *ri-shieng*

A collection of Synteng customs was made by Heath (S.D.O. of Jowai in 1882) and Rita, Sub-Divisional Officer of Jowai (from 1888 to 1894), during the last two decades of the nineteenth century. According to Rita,²² if the ceremonies of *kit-khih* and *ri-shieng* are performed, the wife can get a portion of the self-acquired property of her husband at his death. *Kit-khih* is thus described by him :

When a couple have got children and have been living for a long time, then by mutual agreement of the wife and the mother or nearest relative of her husband, the wife can get a monopoly of the income of her husband by a ceremony called *kit-khih*. In such a case the wife sends a *gourd* (u klong) full of liquor to the mother of her husband or his nearest relative and then the husband is at liberty to give, and gives, a part of his income to his wife. After two or three years the wife again sends for the second time another "u

21. *Supra* note 1 at 32-33.

22. *Ibid.*

klong" with liquor, for getting the monopoly of the income of her husband, to his mother or nearest relative. Then the husband leaves the mother's house and goes to that of his wife and the mother must give some property to the wife, and then the husband works for his wife and gives his whole income to her and then the wife cannot remarry and must also deposit her husband's bones in her family urn or must *ri-shieng*, as they call it. If she violates the above custom, *i.e.* remarries with any one, then she will have to return all property belonging to her husband to his relatives.

Rita describes *ri-shieng* as under :—

When a man dies leaving self-acquired property and if the wife undertakes not to marry again and undertakes to keep his bones (which custom is called *ri-shieng*) she will inherit a part of his property. If a man dies and the wife pays the expenses of burial and consents not to remarry and his bones are kept with her clan bones, then she acquires the property left, generally to the value of one-third.

"One-third" mentioned here has a reference to Jowai doloiship. The share in the various doloiships varies.²³

Rita further goes on to observe—

If the widow does not perform the funeral ceremonies and *ri-shieng*, or if she remarries, she has not only no right to her husband's self-acquired property in his possession at death, but returns all property given to her by her husband.²⁴

Heath,²⁵ who also made a collection of customs among Syntengs, observes as under:—

When the widow consents to pay the costs of her husband's funeral expenses, the husband's heirs give her half of her husband's self-acquired property for she has consented never to marry again. If she marries again, she would have to return this half share to her husband's heirs.

Heath does not mention, by name, the ceremonies of *kit-khih* and *ri-shieng*, but the reference to the payment of funeral expenses apparently alludes to *ri-shieng*.

23. *Ibid.*

24. *Id.* at 34.

25. *Ibid.*

The Nongtalang case

The custom came up for judicial consideration in a case²⁶ from Nongtalang, Jaintia Hills. U Siang, a Christian Synteng, was married to Ka Hat, lived with her in her house and had nine children. He died, leaving a house and two groves. Ka Perimai and other daughters of a deceased sister of U Siang claimed these groves and filed a suit in the court of the *doloi* (i.e., the village chief) of Nongtalang in 1913. They alleged that they had allowed the widow and children of their uncle (U Siang) to remain in possession of these properties for some years, only out of sympathy and not because of any right existing in the widow and children. The *doloi*, however, decided against them. On appeal, the Sub-Divisional Officer awarded half the groves to each party. Against this decision, an appeal was made to the Deputy Commissioner, who found that the wife had paid the costs of the Christian burial of her husband and also, being old, had no intention of remarrying. He therefore held that the wife was entitled to the house and half of the groves.

The judgment in the Nongtalang case raised protests from Christian leaders. After the judgment, detailed investigations into the customs were made. There followed several enquiries and conferences. The Deputy Commissioner, departing from the view taken in his judgment in the Nongtalang case, advised Government to take the mode of life as the basis of customs both for Christians and for non-Christians. His advice was not to force customs suitable for a society in which the husband resided with his *kurs* upon a society in which the habit of residence with the wife had arisen.²⁷ In a letter issued by the Government,²⁸ the entire customary law relating to succession to self-acquired properties of Christian and non-Christian Syntengs was reviewed, and it was submitted that the Synteng Christian husband living with his wife ought to be regarded by the courts as having a position similar to that of the Khasi husband.

In a later case,²⁹ there was a dispute relating to a paddy field, which stood in the name of one late U Kamai Singh, the husband of the defendant. The plaintiff claimed that the lands belonged to her (though they stood in the name of her maternal uncle, Kamai Singh), and sued for a declaration that the mutation of these lands in favour of the defendant (the wife of the deceased uncle) was illegal, as she had no interest in this property. The Subordinate Judge, District Council Court, decreed the suit and held that the land was the sole property and earning of the late U Kamai Singh (the maternal uncle of the plaintiff) and that the plaintiff,

26. *Ka Perimai and others v. Ka Hat, U Jhon and other*, decision of D.C. on appeal given on 24. 7. 1914, cited by Cantlie in *supra* note 1 at 34-36.

27. *Supra* note 1 at 36-41.

28. Letter No. 9708-J, dated 10. 12. 1918.

29. *U Ple Khar Ryngi v. Ka Nimal Jait Dkhar*, S.A. No. 132 (H) of 1956.

Ka Driitimai, acquired the same by right of inheritance. On appeal, the District Council Court disagreed with this view and held that the lands in question had been jointly acquired by U Kamai Singh and his wife (the defendant) and that on the death of the husband, the lands became the property of the wife. He also observed that "according to Khasi and Pnar (Synteng) custom when any property is acquired during the period of cohabitation, the property is the joint property of both husband and wife". The High Court, on further appeal, refused to interfere with this finding and dismissed the appeal.

In a still later case,³⁰ the dispute was regarding a stall at Bara Bazar in Shillong, which had been jointly constructed by the late U Niba Singh Kharir and his wife. The Assistant to the Deputy Commissioner, Khasi Hills, divided the property half and half between the childless widow of late U Niba Singh Kharir and his niece. The land had been given by the State to the late U Niba Singh Kharir as *Myntri* of the Myllem Siemship and hence it was not ancestral or family property. The wife had no issue and so the property was divided half and half between her and the niece of U Niba Singh.

Shella Wars

In the southern slopes of Meghalaya constituting the areas inhabited by the Wars, the customs as to inheritance are somewhat different from the customs prevalent on the highlands. War children, when they inherit, take definite shares, unlike the tribes in the highlands.³¹ Amongst the Wars, there are two classes—Khasi Wars and Wars of the Jaintia Hills. Amongst the Wars in the Khasi Hills (for instance, the Shella Confederacy) sons and daughters have a share in the property of their parents and grand parents, whereas amongst the Wars of Jaintia Hills, only daughters inherit.

Ri-shieng land

Land known as *ri-shieng* land is given to the youngest female. This is land to which certain religious obligations concerning the preservation and disposal of the bones of one's relatives are attached. This land cannot be sold or leased out by the female heir, and its management lies with the *kurs*. Regarding other ancestral property of a female in the Shella area, her children, both male and female, inherit equal shares.³² However, the eldest child, irrespective of sex, gets an additional piece of land. The family house and the *ri-shieng* land go to the youngest female.

30. *Ka Krsibon Rynjah v. Ka Philistia Kharir*, Title Suit No. 32 (T) of 1964.

31. *Supra* note 1 at 43.

32. *Id.* at 47-52.

Amongst the children of the same woman, inheritance is *per stirpes* and not *per capita*. Thus, if a woman has three children A, B and C, and B pre-deceases the mother leaving two children, on the woman's death, A and C will get one-third and the two children of B will divide the one-third share of B equally among themselves, thus getting one-sixth each. If, however, the woman be without issue, ancestral property reverts to her relatives.³³

Succession to ancestral property of males

Since by custom the Shella War males also inherit, they too hold ancestral land which is shared by their children in the same way as the children share the property of their mother. All the children get equal shares. Ancestral property of a male dying issueless goes back to his relatives. If he brought cash on marriage, it goes to relatives of his stock (*kpoh*).³⁴ If he dies when his children are minors, the ancestral property is held by his relatives as custodians until the children grow up and take it.

Self-acquired property

As regards self-acquired property, if it be of an unmarried person, it goes to the mother, and failing her, to her *kurs*. Self-acquired property of a female after marriage descends in the same way as her own separate share of ancestral property. Self-acquired property, jointly earned by the husband and wife, is inherited by their children, each child taking an equal share. A wife is considered to be a joint owner of the property, even if she does not make any contribution in the form of labour or capital to the acquisition of that property. Her share is equal to that of the husband. Division is generally made only after the death of both the parents and, in the case of the death of one, the other takes the property. Failing children, the share of the husband and wife, which is generally equal, goes to their respective relatives.

In case of divorce, the husband cannot take away with him his self-acquired property so as to deprive the children. He can keep only that property which he had brought on his own marriage from his *kurs*.³⁵

Synteng Wars

The Synteng Wars do not concede the right of inheritance to males. The *ka-khadduh* gets double the share of other daughters, because of her special duties as the family priest. The eldest daughter gets one and a half

33. *Id.* at 47-48.

34. *Id.* at 49.

35. *Id.* at 42-50.

times as much share as the other daughters (other than the *ka kadduh*), in recognition of her help in rearing the younger children. Except for these two special cases, all daughters take equally. The *ka khadduh* has the right of first selection of her share from landed property. In other respects, the rules among the Synteng Wars regarding inheritance are the same as the rules among Syntengs of the Uplands³⁶

The customary law of succession among the Wars came up for determination before the High Court in one case³⁷. The dispute related to the properties of one late Ka Wan Iawim. She was succeeded by Ka Kholos, who died unmarried. Ka Kholos was the custodian of the ancestral properties, which had descended down to her from the previous generations. On her death, the family line became extinct. The parties—the defendants as well as the plaintiffs—were the *khunkhas* (relatives on the father's side) of Ka Kholos. Under the custom that prevails when a line becomes extinct, the *khunkhas* inherit the ancestral property. The plaintiff's case was that the defendants had not contributed anything towards the expenses for the performance of religious ceremonies on the death of some of their ancestors, and were not therefore entitled to inherit the ancestral properties. In reply, the defendants argued that custom did not require that for inheriting the ancestral properties, when the line became extinct, the claimant should contribute towards the expenses for such religious ceremony. The trial court (the Additional Subordinate District Council Court, Myllem Siemship) held that since the defendants did not contribute towards the said expenses, they were not entitled to inherit the ancestral properties. On appeal to the District Council Court, it was held that on the death of Ka Kholos, when the line became extinct, all the ancestral properties vested in the *khunkha* and thus the plaintiffs as well as the defendants were entitled to get their respective appropriate share in the properties.

Before the High Court, counsel for the plaintiff argued that according to the custom of the Wars, if *khunkha* do not contribute towards religious expenses on the death of the ancestors they become *khang-apot* and are not entitled to inherit. Further, according to him, if some of them do not contribute, the properties would vest in those who bore the expenses and thereafter the properties so vested would not be divested. On behalf of the respondent, however, it was pointed out that irrespective of the fact whether contribution was made towards religious ceremonies, all the *khunkha* are entitled to inherit when the line became extinct. The concepts of *khong-apot* and *apot* thus became important.

The court relied on the following observations of Cantlie for explaining these concepts:³⁸

36. *Id.* at 56.

37. *U Kandro Latsio and others. v. Ka Duba Iawram and another*, S. A. (H) 108 of 1969.

38. *Supra* note 1 at 45.

Apot means expenses in time of religious ceremonies after death, illness or difficulty. Suppose Ka P dies or is in difficulty and expenses have to be met and her children refuse to pay, the other members of the family will contribute according to their means.

The children. . . by refusing to pay would be *khang apot* and cannot inherit to their mothers. Those who paid would take the property instead of them, but cannot sell or lease this property because the children who ought to have paid may in future pay and will then get back the property.

The court observed:

If any of the children or *khunka*, as the case may be, do not contribute, his right to inherit the property remains in abeyance.

The decree of the lower court (which had awarded to both the plaintiffs and the defendants their respective appropriate shares) was affirmed, with the important modification that the defendants shall contribute proportionately according to their share towards the expenditure borne by the plaintiffs in connection with the performance of religious ceremonies.

Disqualifications

Detailed attention seems to have been given to the subject of disqualification for inheritance amongst the Khasis. Writers on the subject of Khasi law have devoted considerable thought and space to this topic. Of the various grounds for such disqualification one ground—marrying a person of the same clan—has peculiar importance in tribal law, while another ground—conversion to another religion—has a peculiar importance not because of tribal law but because it represents the impact on law of the social developments that have taken place during the last hundred years or so in this area.

Grounds of exclusion

Cantlie³⁹ enumerates the grounds of disqualification for inheritance as under:—

1. Commission of a *sang* (sacrilege, taboo). According to him, the *sangs* especially affecting inheritance are—
 - (a) marriage to a person of the same clan or to a person of the clan with which inter-marriage is forbidden;
 - (b) murder by a mother of her own child.

39. *Supra* note 1 at 30-31.

2. Misconduct. As enumerated by Cantlie, this ground of disqualification would cover the case of (i) a child who is disobedient and undutiful, or who is of bad moral character, and also (ii) a *ka khadduh* going to live in a distant place from where she cannot, or does not, come to perform the ceremonies.
3. Conversion to another religion. [This topic deserves separate attention, because of the obscurity of the legal position on the subject.⁴⁰]
4. *Khang apot* is a War custom of deprivation of the right of inheritance for failure to bear a share of expenses for religious ceremonies or in times of difficulty. The right of inheritance may be subsequently re-gained when payment (of the expenses) is made.
5. Illicit sexual intercourse by a Synteng widow results in deprivation of property allowed to the widow for her maintenance. The same would be the position, in certain circumstances, amongst Khasis.
6. Re-marriage within the prohibited period. As pointed out by Cantlie, "the Khasi custom is that a woman cannot re-marry after the death of her husband until one year has passed and until she has given the bones of her husband to his *kurs*. If she breaks this custom, she loses her right to the property of her husband. If there are children, they will take the property and make over the bones. The widow who acts in this way has to pay a fine (*jyngsang*) to the *kurs* of the husband, who will perform a ceremony of divorce between her and the deceased."⁴¹

Khongphai⁴² adds one more ground of exclusion from inheritance *viz*, lunacy which need not be congenital or incurable; it is enough if it exists at the time when succession opens.

Some of the grounds of disqualification mentioned above merit detailed treatment.

Murder

As regards murder as a ground for disqualification, it may be noted that the situation raises very interesting questions of comparative law, as also issues with considerable juristic interest. Speaking of comparative

40. See chapter 17 *Infra*.

41. *Supra* note 1 at 31.

42. Khongphai, *Principles of Khasi Law* 21-22 (1974).

law, it will be observed that the question of how far a murderer ought to be allowed to succeed to the estate of a person whom he has murdered has been debated at length in English and American case law; nearer home, we have the provision on the subject in section 25 of the Hindu Succession Act, 1956. The Act, of course, does not apply to the tribal areas, but the rule codified in the section had been recognised by uncodified Hindu law for a long time. Here, then, we have a rule running on substantially similar lines in—

- (a) uncodified Hindu law,
- (b) codified Hindu law, and
- (c) tribal law.

In a recent English case, a widow who had been convicted of manslaughter (after stabbing her husband to death) subsequently applied for the widow's allowance under section 24, Social Security Act, 1975. Refusal of the application on the ground of public policy was upheld by the Divisional Court.⁴³

As a matter of juristic interest, it is worth mentioning that what is meant by "killing" (or "causing death") in the context of the disqualification mentioned above, may require interpretation.⁴⁴ In one case,⁴⁵ a mother and a daughter had an encounter, in the course of which the mother was attacked by the daughter and she died. The daughter was debarred from inheriting the mother's properties on the ground that she had killed her mother. The Village Court and the Subordinate District Council Court, on a detailed examination, however came to conclusion that there was no proof to show that it was an act of "killing". It was argued for the appellant that even if it was not a case of murder, it was a case of misconduct, in that she beat her mother. Cantlie⁴⁶ was quoted in support:

A mother may consider a child to be disobedient and undutiful or of defective moral character. If she divided her property during her lifetime, she may give no share to this child. Even among the War, where equal division is the rule, a child can be so deprived .

The High Court, however, held that it was not a case of misconduct, either. The daughter was only acting in self-defence against the mother,

43. *R v. Chief National Commissioner*. (1980) 124 Solicitor's Journal 478 (D. C.) as noted in 7 *Current Law*, item 309. (1980).

44. For detailed discussion, see Cantlie, *supra* note 1 at 30-31.

45. *Ka Lisimai Phawa v. Ka Neli Phawa*, S. A. No. 90 (H) of 1964.

46. *Id.* note 1 at 30.

on being attacked by her (the mother).

Unfit for management

If the *ka khadduh* is considered unfit for management of the family property, an elder daughter may be made the keeper of the *ing khadduh* and heir of the property. So also, if the *ka khadduh* goes to a distant place wherefrom she cannot, or does not, return to perform the religious ceremonies, she may be disqualified. A *khadduh* is liable to be removed from her *khadduship* if she fails to perform her duties or commits a *sang*. In a case decided by the High Court in 1973,⁴⁷ the plaintiffs filed a suit in the Subordinate District Council Court, United Khasi and Jaintia Hills, Shillong⁴⁸ for a declaration that the opposite party, Ka Shelot, who was the *khadduh* of their family had failed in her duties and obligations to certain living and dead members of the family and had committed some act of *sang*, and therefore should be removed from *khadduship* and instead, someone else, Ka Thiew, should be substituted. Preponderance of evidence regarding the performance of certain duties and obligations was in favour of the defendant, Ka Shelot. However, regarding the *sang* committed by her, it was held that if there really had been a *sang*, the members of the family or clan would have convened a *kur durbar* to consider the case and ex-communicated her from the clan, but this was never done. In the light of all these facts, it was held that the defendant did not forfeit her position as a *khadduh*. An appeal was preferred to the District Council Court, Jowai,⁴⁹ but was dismissed. It was held that even if there were any lapses on the part of the defendant in the performance of the religious rites enjoined on her, the plaintiffs were not entitled to the relief in the present suit which was filed by them in their personal capacity. The office of the *khadduh* pertains to the entire clan and to remove her, a representative suit is required. The High Court affirmed the ruling on this point. A reference was made to an observation made by Cantlie⁵⁰ in this context:

In cases of dispute, the courts would have to decide whether the deprivation was bonafide. In a case of deprivation by *kurs* after death of a parent, the most important point for enquiry by a court is *whether the family as a whole desired it*.

In the instant case, there was nothing in the evidence to show that

47. *U Shruin Kharpran & others v. Ka Shilot Kharpran*, C.R. No. 8(H) of 1969.

48. Title Suit No. 23 of 1966.

49. Title Case Appeal 15 of 1966.

50. *Supra* note 1 at 31.

the expulsion of Ka Shilot was desired by the whole family and hence the appeal was dismissed.

Christians

Khasis who are Christians follow the same rules of succession as non-Christians in the tribal areas. Application of the Indian Succession Act, 1865, in respect of Khasis and Syntengs was excluded by a Government of India notification issued in 1887.⁵¹ Presumably, the notification still continues to be in force, so as to exclude the application of the Indian Succession Act, 1925 (which has replaced the Act of 1865) to Khasis and Syntengs in the areas in question.

51. Government of India, Home Department Notification No. 1671 dated 20th October, 1887.