

## APPELLATE CIVIL.

1912.  
February 20.*Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Banerji.*RISALI AND ANOTHER (PLAINTIFFS) V. BALAK RAM AND OTHERS  
(DEFENDANTS). \**Pleadings—Suit for cancellation of father's will brought by daughters—Plea of custom excluding daughters from inheritance—Custom not allowed to be raised in this suit.*

On suit by the daughters of the testator for a declaration that a will alleged to have been executed by their father was a false and fraudulent document and not binding on them, the defendants set up a custom by virtue of which the daughters, but not apparently daughters' sons, were excluded from inheritance to their father's property.

*Held*, that, as members of their father's family, the daughters, who but for the will, on the death of their mother, would take the property of their father, had a cause of action which entitled them to bring the suit, and the issue whether or not a custom existed excluding them from inheritance was not a fit and proper issue to be determined in the present suit.

The facts of this case were as follows :—

This appeal arose out of a suit in which the plaintiffs sought a declaration that a will said to have been executed by one Ramji Lal shortly before his death was not a genuine document, but was a false and fraudulent will. The plaintiffs in the suit were Musammat Shibbo, the widow of Ramji Lal, and Musammats Baldai and Risali, his minor daughters, under the guardianship of their mother. The defendants were fifteen persons who would take the property under the will of Ramji Lal, if genuine. It is admitted that possession is still with the widow, Musammat Shibbo. The defendants pleaded that the will was genuine and also that there was a custom prevailing amongst *Jats*, to which class Ramji Lal belonged, which prevented the daughters inheriting any right in their father's property. They also pleaded, as to Musammat Shibbo, that she had no interest in the suit because her rights as widow were not interfered with by the alleged will.

The Subordinate Judge dismissed the suit. As against the widow he dismissed it on the ground that she was entitled to the property under the will, and therefore she had no cause of action. He further decided that the will was a forgery, but that the daughters had no right to maintain the suit, because he found that a custom prevailed amongst the community which prevented daughters inheriting. The plaintiffs appealed.

\* First Appeal No. 229 of 1910, from a decree of Muhammad Husain, Additional Subordinate Judge of Meerut, dated the 19th of April, 1910.

1912.

RISALI  
v.  
BALAK RAM.

Babu *Balram Chandra Mukerji*, for the appellants.

The Hon'ble Pandit *Moti Lal Nehru* and Pandit *Mohan Lal Nehru*, for the respondents.

RICHARDS, C. J., and BANERJI, J. :—This appeal arises out of a suit in which the plaintiffs sought a declaration that a will said to have been executed by one Ramji Lal shortly before his death was not a genuine document, but was a false and fraudulent will. The plaintiffs in the suit were Musammat Shibbo, the widow of Ramji Lal, and Musammats Baldai and Risali, minors, under the guardianship of their mother. The defendants were fifteen persons who would take the property under the will of Ramji Lal, if genuine. It is admitted that possession is still with the widow, Musammat Shibbo. The defendants pleaded that the will was genuine and also that there was a custom prevailing amongst *Jats*, to which class Ramji Lal belonged, which prevented the daughters inheriting any right in their father's property. They also pleaded, as to Musammat Shibbo, that she had no interest in the suit because her rights as widow were not interfered with by the alleged will.

The learned Subordinate Judge dismissed the suit. As against the widow he dismissed it on the ground that she was entitled to the property under the will, and therefore she had no cause of action. He further decided that the will was a forgery, but that the daughters had no right to maintain the suit, because he found that a custom prevailed amongst the community which prevented daughters inheriting.

Musammat Shibbo has not appealed, but the daughters have appealed, and it is contended on their behalf that the learned Subordinate Judge ought not to have gone into the question of the existence or non-existence of the alleged custom. All that they asked in their plaint was to have the question of the validity of the will decided, and that if that question was decided in their favour, the court ought to have made a decree in the terms of the prayer in the plaint.

In our opinion the contention of the appellants is sound. It is quite clear that the widow had an interest in bringing the suit. The estate that she would take under the will would be quite a different estate from what she would take under the ordinary Hindu law. The latter would entitle her to alienate the property for pious purposes and for legal necessity. As, however, she has not appealed, we are not concerned with her.

[The judgement after discussing the evidence thus proceeded :—]

It is strongly contended on behalf of the defendants that, notwithstanding this finding, the decree of the court below ought to be upheld because the learned Subordinate Judge has found that a custom exists which excludes the daughters from inheriting their father's property. In our opinion this issue ought not to have been gone into at all. *Prima facie* and until the defendants succeed in showing that a custom exists which excludes them, they are entitled upon the death of their mother to succeed to the property, unless, of course, a valid will stands in their way. They are, in our opinion, entitled to get rid, by a declaration of the court, of a false and fraudulent document interfering with the rights which they would have under the ordinary law. Furthermore, the custom as alleged in the defence was merely a custom which excluded them from inheritance. The custom, as stated in the defence, did not disentitle the sons of daughters. We have already mentioned that the fifteen persons referred to in the will are not the persons who would take even if the alleged custom were proved. Therefore it might fairly be said that the daughters, as members of their father's family, had an interest in getting rid of a false and fraudulent will under which persons not entitled under the ordinary or customary law would take the family property. They claim that on the death of the widow, their mother, they would be entitled to the property; and therefore this alleged will casts a cloud upon their title which they are interested in having removed. In our opinion the appellants, the daughters of Ranji Lal, had a cause of action which entitled them to bring the suit, and the issue as to whether or not a custom existed excluding them from inheritance was not a fit and proper issue to be tried and determined in the present suit. We express no opinion as to the existence or non-existence of the alleged custom, or on the question whether or not, assuming some custom to exist, it excludes not only daughters but daughters' sons. These are questions which may have to be tried at some future time.

We allow the appeal, set aside the decree of the court below, and decree the plaintiffs' claim with costs in both courts. The objections filed on behalf of the respondents must be disallowed, and we dismiss them.

*Appeal allowed.*

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RISALI  
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