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such a suit is successful, the compromise shall be set aside and the decree passed thereon shall be vacated with the result that the appeal which has been compromised shall have to be reopened.

Having regard to the circumstances which exist at present, the compromise which was admittedly executed by the plaintiffs respondents cannot be considered to be otherwise than lawful. Accordingly we order the compromise to be recorded and pass a decree in accordance therewith.

Before Mr. Justice Niamat-ullah and Mr. Justice Collister

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BIHARI LAL AND ANOTHER (PLAINTIFFS) *v.* HAR LAL SAH AND OTHERS (DEFENDANTS)*

Hindu law—Kumaun customs—Succession—Vaish community —Widow's right to succeed to her husband's collaterals

While not deciding whether a custom had been established in Kumaun, among the Vaish community, of a widow succeeding to her husband's collaterals, it was *held* that if such a custom existed it was confined to the case of sonless widows only.

Dr. *S. N. Sen* and Messrs. *P. L. Banerji* and *Hari Ram Jha*, for the appellants.

Dr. *K. N. Katju* and Mr. *B. L. Dave*, for the respondents.

NIAMAT-ULLAH and COLLISTER, JJ.:—This is a plaintiffs' appeal. One Kundan Lal, a vaish by caste, owned certain property in the Kumaun district. He died in 1875, leaving a widow Musammat Gomti Sahan and also an adopted son Gopal Sah, who died without issue. Musammat Gomti Sahan remained in possession of the property up till August, 1921, when she died; but before her death she made a trust in respect to the said property. Mohan Lal and Debi Lal, defendants Nos. 1 and 2, and Musammat Chittra Sahan, defendant No. 3, sued for

*First Appeal No. 196 of 1930, from a decree of F. W. W. Baynes, Subordinate Judge of Almora, dated the 17th of June, 1929.

cancellation of the trust and they obtained a decree in 1925, since when they have been in possession. The plaintiffs in this suit were Musammat Jainti and her two sons, a nephew Daya Ram and Musammat Shyam Sundari and her three sons. There is a pedigree of the family in the judgment of the court below and it is not necessary to state it again here. The sons of the two widows and the nephew subsequently withdrew from the suit. The suit was therefore one by two widows of collaterals in equal degree with Kundan Lal and they claimed that, under a family custom, when a collateral dies, his widow represents him when succession opens to the estate of another collateral.

The defence was, in the first place, that no such custom exists, and in the second place, that if there were such a custom, it could apply only to the case of a sonless widow.

The lower court, on the strength of Mr. Panna Lal's book "Kumaun Local Customs", and on the strength of the oral evidence which has been given in the suit, finds that no such custom exists under which a sonless widow can succeed to a collateral of her deceased husband. The learned Subordinate Judge finds that Mr. Panna Lal's book is evidence of a custom that a widow has a right of succession in such a case, but he has dismissed the suit on the ground that paragraph 15(*c*) of Mr. Panna Lal's book, in which the custom is stated, is by implication confined to a widow without male issue, whereas in the present case there are sons both of Musammat Jainti and of Musammat Shyam Sundari.

In the case of *Tula Ram Sah* v. *Shyam Lal Sah* (1) a Bench of this Court had occasion to consider, in connection with a reference which was made to it by the Local Government, how far Mr. Panna Lal's book could be accepted as a definite authority on customary law in Kumaun, and the learned Judges held in that case that it was a definite evidence of the customs prevailing in

(1) (1924) I.L.R., 49 All., 848.

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Kumaun and that the statement of any custom therein was sufficient to shift the onus of proof to the other side. There can be no doubt that Mr. Panna Lal's book is admissible in evidence under section 35 of the Evidence Act and that it is valuable evidence of the customs which it recites and in certain cases it may amount to such *prima facie* evidence as would suffice to throw the onus of proof on to the party denying the alleged custom; but, in our opinion, it does not avail in the present case to prove the custom which has been propounded by the plaintiffs. Paragraph 15(*c*) of the book merely recites that "A widow represents her deceased husband in inheriting to collaterals." In paragraph 262 we find Mr. Panna Lal's commentary on this custom and he there states: "Instances have been found of a widow representing her husband in inheriting to collaterals. For instance, where there were three brothers and one of them had died and his widow had got mutation in his place. Later, when a distant kinsman died to whom these brothers were reversioners, the property was divided in three equal shares, one of which was given to the widow." The fact that the widow had obtained mutation of her name on the death of her husband clearly suggests that Mr. Panna Lal was referring to sonless widows. Paragraph 15(*a*) of Mr. Panna Lal's book recites that "A widow inherits her deceased husband's estate even in a joint family." It is conceded before us—and it cannot be otherwise in view of Mr. Panna Lal's commentary at paragraph 260—that this refers to sonless widows; and we have no doubt whatsoever that paragraph 15(*c*) is equally concerned with widows who have no sons. We agree with the view of the court below that a custom whereby a widow excludes her sons is a violation of the spirit and letter of Hindu law, and very cogent and convincing evidence would be required to convince us of the existence of any such extraordinary custom; but no such evidence is to be found on the record. On the contrary, seven respect-

able witnesses have been examined by the defendants, all of them being of the Vaish community and residents of the Almora district, and they are unanimous in stating that they have never heard of any such custom. Rai Bahadur Dharma Nand is a retired Deputy Collector and was Mr. Panna Lal's right-hand man when the latter was pursuing his inquiries. He is a gentleman of unassailable credibility and he states: "I never had such a case in which a woman who had sons claimed the right of inheritance in the brotherhood. In this way a woman who has got sons gets no right . . . . This idea seems to be very extraordinary to me."

On behalf of the plaintiffs we merely have the evidence of a son of one of the plaintiffs and he admits that he has no personal knowledge of the custom which has been propounded by the plaintiffs. He says: "I came to know from Mr. Panna Lal's book that women have such sort of claim." The onus of proving the alleged custom was admittedly on the plaintiffs and in our opinion they have completely failed to discharge it.

It is not necessary for us to consider how far it has been established that a childless widow in Kumaun has a right of succession to a collateral of her husband and whether such custom applies to the Vaish community in general or to this family in particular.

For the reasons which we have given we are of opinion that the finding of the court below is correct and we accordingly dismiss this appeal with costs.