1892

SAJEDUR RAJA v. BAIDYANATH DEB.

The plaintiffs do not sue for the establishment of their own right as worshippers or devotees of the idol. The suit seems to be one clearly contemplated by section 539, Code of Civil Procedure.

Suits under that section must be brought in the District Court after leave to institute them has been obtained from the Collector.

This suit was instituted in the Court of the Subordinate Judge and without leave obtained from the Collector, and it therefore cannot be sustained.

We are supported in the conclusions at which we arrive by the following cases, viz., *Wajid Ali Shah* v. *Dianat-Ul-lah Beg* (1) and *Rayhubar Dial* v. *Kesho Ramanuj Das* (2).

In this view of the case it is unnecessary to express any opinion on the other points raised by Dr. Rash Behari Ghose.

The appeal is allowed with costs.

Appeal allowed.

H. T. H.

Before Mr. Justice Macpherson and Mr. Justice Beverley.

RAM DAS AND TWO OTHERS (DEFENDANTS NOS. 1, 4, AND 5) v. CHANDRA DASSIA (PLAINTIFF).*

1892 *July* 21.

Hindu Law—Custom—Law governing Family adopting the Hindu religion.

In the absence of any custom to the contrary, or of any satisfactory evidence to show what form of Hindu law they have adopted, the members of a family who have adopted the Hindu religion are governed by the school of Hindu law in force in the locality where they reside.

Faninda Deb Raikat v. *Rajeswar Das* (3) referred to.

IN this suit the plaintiff, Chandra Dassia, sought to recover a one-third share of certain moveable and immoveable properties as the heiress of her deceased father. She alleged that her father

* Appeal from Appellate Decree No. 1462 of 1891 against the decree of Baboo Debendro Lall Shome, Subordinate Judge of Rangpur, dated the 4th of June 1891, affirming the decree of Mr. Syed Abdur Rohoman, Munsif of Kurigram, dated the 30th of September 1890.

(1) I. L. R., 8 All., 31. (2) I. L. R., 11 All., 18.
(3) I. L. R., 11 Calc., 463; L. R., 12 I. A., 72.

1892

RAM DAS v. CHANDRA DASSIA.

Debi Das and her uncles Ram Das (defendant No. 1) and Durga Das (the husband of defendant No. 2) were uterine brothers, and formed a joint Hindu family; that while they continued as the members of a joint Hindu family they acquired and were in possession of the properties in suit; that she was the only daughter of her father Debi Das, who died on 18th Pous 1295 (1st January 1889), and consequently his sole heiress, and as such entitled to his share.

The main defence was a denial of the allegation of joint ownership and possession by the three brothers.

At the trial before the Munsif it was further contended on behalf of the principal defendant, Ram Das, who was the sole surviving brother of the plaintiff's father, that inasmuch as the parties were admittedly Rajbansis and not Hindus originally, they were not necessarily governed by Hindu law or by the Bengal school of such law.

The Munsif found that the plaintiff's father, Debi Das, and her two uncles formed a joint undivided family, and that Debi Das continued a member of it until his death. He also found that the parties were Hindus and were governed by Hindu law; but as the evidence as to which school of Hindu law they had adopted was inconclusive and unsatisfactory, he held that the family must be taken to be governed by that school of law which prevailed in the district where they resided, and that therefore they were governed by the Bengal school. He accordingly held that the plaintiff was her father's heiress, and gave her a decree for most of the properties claimed.

The Subordinate Judge upheld the findings and decision of the Munsif, dismissing the appeal which was preferred to him.

Defendants Nos. 1, 4, and 5 appealed to the High Court.

Baboo *Grija Sunker Mozumdar* for the appellants.

Baboo *Surendro Chunder Sen* for the respondent.

The judgment of the Court (MACPHERSON and BEVERLEY, JJ.) was as follows:—

This was a suit brought by the plaintiff to recover a one-third share of certain properties on the allegation that her father and his

two brothers formed a joint Hindu family, and while so living acquired and held possession of the properties in suit. The main defence was a denial of the allegation of the joint ownership and possession of the properties by the three brothers, but this question has been decided in favour of the plaintiff by both the lower Courts, and is not now before us.

During the trial of the suit in the first Court a further point was raised by the principal defendant, who is the suriving brother of the plaintiff's father. This point does not appear to have been taken in the pleadings, unless it is referred to in the supplemental paragraph 3*a* of the written statement. It is said to form the subject of the third issue and it was no doubt argued before, and discussed in the judgment of, both the lower Courts. The point was this. The parties being admittedly Rajbansis and not Hindus originally, it was said that they were not necessarily governed by Hindu law or by the Bengal school of such law; and evidence of a kind was accordingly given by both sides with the object of showing by which school of law the family was governed. Both Courts have found that the parties are Hindus, but that the evidence as to the particular system which they have adopted was too vague and unsatisfactory to be acted upon, and they have accordingly held that in the absence of trustworthy evidence the family must be held to be governed by that school of law which prevails in the part of the country where they resided. They accordingly held that the Bengal school of law applied, and they gave the plaintiff a decree for most of the properties claimed.

It is contended before us in second appeal that this decision is bad in law ; that the Courts below were wrong in holding that the Bengal school of law applied merely on the ground that the parties lived in Rangpur, but that they were bound to find upon the evidence by what law the family was governed in matters of inheritance and succession. The case of *Fanindra Deb Raikat* v. *Rajeswar Das* (1) was cited in support of the contention, but it does not, we think, help the appellants. The question there was as to the right of succession to a large estate which had belonged to the family of the litigants for many generations. The family was of the Kooh or Rajbansi class, and had adopted Hinduism at a remote time.

(1) I. L. R., 11 Calc., 463 ; L. R., 12 I. A., 72.

1892

RAM DAS v. CHANDRA DASSIA.

It was found that although they affected to be Hindus, they had retained and were governed by family customs which, as regards some matters, were at variance with Hindu law. It was not shown that the family had become Hindus out and out, save only special custom; it was held to be in a totally different position. The plaintiff was the admitted heir unless an adoption which was set up by the defendant prevailed; and *having regard to the origin and history of the family*, the question was stated to be not whether the general Hindu law was modified by a family custom forbidding adoption, but whether, with reference to inheritance, the family was governed by Hindu law, or by customs not allowing an adopted son to inherit; and it was held that, under the circumstances of the case, the burden of proving that the adoption was permitted by the family custom lay upon those who alleged it to be so. Their Lordships added that if the family had been governed generally by Hindu law, the case would have been different; that the defendant then might have relied upon the Hindu law, and the onus of proving a family custom prohibitive of adoption would be on the plaintiff.

Now in the present case the plaintiff clearly claims as heir according to the Hindu law which is current in Bengal and in the locality in which the parties reside, and if that law does apply, her title is on the facts found established. Of the history of the family nothing is known, and it is not likely that it has a history. No customs at variance with the Hindu law are pleaded or established. There was at most on the defendants' part a general denial that the Hindu law applied at all, and an assertion that if it did apply, it was the Mitakshara and not the Dayabhaga.

The Subordinate Judge has found that the parties are undoubtedly Hindus, and that their ceremonies are performed according to the Hindu *shastras*. No exception to its general application is found to exist, and no special custom regulating succession was either set up or established. The question then was reduced to this—the Hindu law in its entirety applying, which system of that law had the parties adopted? Was it the system prevalent in Bengal and in the locality in which they resided, or the system prevalent in some other parts of India? The evidence on this point was found to be inconclusive and unsatisfactory. The

witnesses were ignorant, illiterate people who could not distinguish one system from the other, and the evidence was on the whole such that the Court could not come to any satisfactory conclusion one way or the other. This being the case it was not, we think, wrong to infer that the law of the locality prevailed, and that the inference turned the scale in the plaintiff's favour.

1892

RAM DAS v. CHANDRA DASSIA.

The case is quite distinguishable from those in which a person moving from one part of India to another, where a different law prevails, has been held to carry the personal law with him unless the contrary is shown. Here the parties are Hindus. It must be taken that they have adopted in its entirety one form or other of that law, and it being uncertain which form they adopted, it is not unreasonable to infer that they adopted the form which prevailed in he locality.

The trial has been protracted. There is no reason to suppose that if the parties were allowed to adduce further evidence, more light would be thrown upon the matter. It would be useless to remand the case in order that the Subordinate Judge might determine whether with reference to the facts any particular rule of succession had been established, because it is clear from his judgment that the evidence did not admit of his coming to any decision on the point.

The appeal is dismissed with costs.

Appeal dismissed.

C. D. P.

APPELLATE CRIMINAL.

Before Mr. Justice Prinsep and Mr. Justice Ameer Ali.

QUEEN-EMPRESS *v.* RAGHU NATH DAS.*

1893 *January* 16.

Joinder of charges—Criminal Procedure Code (Act X of 1882), ss. 233, 234, 235, and 557—Separate charges for distinct offences—Using forged documents—Charges for using eleven forged documents in three sets on three separate occasions.

The accused was charged with using as genuine eleven forged receipts which were put in by him in sets on three separate occasions, each set with a written statement in three suits pending against him. A charge was framed

* Criminal Appeal No. 808 of 1892, against the order passed by B. L. Gupta, Esq., Sessions Judge of Balasore, dated the 1st July 1892.