

APPELLATE CIVIL.*Before Mr. Justice Shadi Lal and Mr. Justice Dundas.***JAMIAT SINGH AND OTHERS (DEFENDANTS)—
Appellants,****1919
May 23.***versus***UJAGAR SINGH (PLAINTIFF)—Respondent.**

Civil Appeal No. 1711 of 1915.

*Custom—Adoption—of brother's daughter's son—Jats—Jullundur
Tahsil—onus probandi—Riwaj-i-am.*

He'd, that the plaintiff, the adopted son, on whom the *onus* lay, had failed to prove that by custom among Jats of *Muzzi Manko, Tahsil* and District Jullundur the adoption of a brother's daughter's son is valid.

Rulla v. Budha (1), *Surain Singh v. Jawahir Singh* (2), *Rahn v. Waryam Singh* (3), *Natha Singh v. Mangal* (4) referred to; also *Sant Singh v. Megha* (5) (unpublished), and the *Riwaj-i-am*.

Uttam Singh v. Kesra Singh (6), dissented from.

Second Appeal from the decree of W. deM. Malan, Esquire, District Judge, Jullundur, dated the 20th May 1915.

TEK CHAND, for Appellants.

SHEO NARAIN, for Respondent.

The judgment of the Court was delivered by—

DUNDAS, J.—In this suit Ujagar Singh, a *Jat* of Manko, *Tahsil* and District Jullundur, claims the land and property of Bur Singh, deceased, the brother of his maternal grandfather, Khushal Singh, on the allegation that he was validly adopted as a son by the said Bur Singh, the adopting being evidenced by a registered deed of 15th November 1907, and is therefore entitled to succeed him. His suit has been decreed in the first Court and lower Appellate Court.

(1) 50 P. R. 1893 (F. B.).

(4) 90 P. R. 1914.

(2) (1913) 20 Indian Cases 839.

(5) Civil Appeal No. 1232 of 1907 (unpublished).

(3) 94 P. R. 1913.

(6) 159 P. R. 1890.

1919

JAMIAT SINGH
v.
UJAGAR SINGH.

The defendants, the collaterals of Kur Singh, have appealed, and the main question for decision is whether by custom the adoption of a brother's daughter's son is valid amongst *Jats* of the Jullundur *Tahsil*.

There is no doubt that the weight of judicial authority is very much against the plaintiff's claim as there are a number of decisions against the validity of such an adoption amongst *Jats* of the Jullundur District

In the Full Bench decision *Ralia* versus *Budha* (1), the *onus* was definitely laid on the party setting up such an adoption, namely of a daughter's or sister's son, to prove that it was authorised by custom.

The *Rivaj-i am* clearly lays down that a daughter's son cannot be adopted, the presumption attaching thereto is fortified by several recent judgments of the Chief Court to the same effect, *viz.*, *Surain Singh* versus *Jawahir Singh* (2) *Randhawa Jats* of Jullundur, *Ralia* versus *Waryam Singh* (3), *Jats of Jullundur*, and *Natha Singh* versus *Mangal* (4), a Nakodar case of a sister's son.

In view of the repeated decisions of this Court we have thought it desirable to examine closely the evidence on which two *Munsifs* and the learned District Judge have been led to decree the plaintiff's claim.

The documentary evidence is summarised at pages 8 and 9 of the paper book, and we may take each instance given in turn.

Case (1)—This is the case decided in *Uttam Singh* versus *Kesra Singh* (5). It was dissented from in the recent case of *Surain Singh* versus *Jawahir Singh* (2) decided in 1913. The view taken was that the old decision proceeded on the assumption that the *onus* lay on the party denying the validity of the adoption of a

(1) 50 P. R. 1898 (F. B.)

(2) (1913) 20 Indian Cases 839.

(3) 94 P. R. 1913.

(4) 90 P. R. 1914.

(5) 159 P. R. 1890.

daughter's son, whereas since the publication of the Full Bench ruling (*Ralla versus Budha* (1)) the *onus* is on the other side, and that if this view had been taken in 1890 the result might have been different.

1919

JAMNAT SINGH
v.
UJAGAR SINGH.

Case (2)—No particulars whatever are available, but the case is one of village Pindori Nijran, and these instances of this village have been held ineffective to prove the custom: see the Chief Court judgment in *Sant Singh versus Megha*, Civil Appeal No. 1232 of 1907, decided on 30th January 1908.

Case (3)—The suit to contest an adoption was dismissed as time-barred, but the judgment gives no particulars as to who was adopted and by whom.

Case (4)—This is a definite case of the adoption of a sister's son, and of a gift of the whole ancestral estate to the adopted son.

This occurred in Desarpur, *tahsil* Jullundur, and the suit to contest the adoption was dismissed as time-barred; and the instance is no doubt a good one, but it is isolated, and the adoption is of old date about 1880 and not contested until 1903.

Cases (5) to (8)—Are of adoptions in the village of Pindori Nijran in the years 1879 to 1884.

These have all been dealt with in the judgment in *Sant Singh versus Megha* (1908) alluded to above, and cannot be regarded as now possessing any value.

At that time a view, since believed to be erroneous, was entertained that custom regarded such adoptions with favour. Consequently several adoptions were effected in this village about the year 1880.

Case (9)—This is a case of a gift by a widow to her daughter's son—the land was ancestral *qua* the collaterals.

1919

JAMIAT SINGH
v.
UJAGAR SINGH.

It was held by the judgment to be valid against the collaterals, but the judgment is decidedly open to question, and it is very doubtful if the decision was correct on the facts disclosed as the collaterals were not bound to sue until the death of the widow who had a life interest in the property, and they did sue very shortly after her death.

Case (10)—A gift to a sister's son, but the property gifted was definitely stated not to be ancestral *qua* the reversioners, and this fact was established beyond doubt.

The wording of the gift deed lays stress on this point.

Case (11)—This is really the dispute which gave rise to *Rabia* versus *Waryam Singh* (1), and the decision was against the validity of the adoption of a daughter's son.

Case (12)—No particulars are given, but the case is of Hoshiarpur, and it has been ruled in *Sant Singh* versus *Megha* that Hoshiarpur cases are not to be considered in Juliundur.

Page 9—Cases (1) and (2)—This is a very old case of a gift by an old blind man of a portion of his property to his daughter's son.

The land gifted was found not to be ancestral *qua* the collaterals.

Case (3)—A Hoshiarpur case of gift to daughters of a brother.

This does not prove much, as apparently the donor's surviving brother was a consenting party.

Case (4)—A Pindori case of 1879.

These cases have been already treated of.

Case (5)—This appears to be a case of Sahaipur, a village in the Hoshiarpur District.

The adoption by Bhup Singh of his daughter's son took place in 1889 and a suit in 1903 to contest it was held to be time-barred.

(1) 24 P. R. 1913.

This, however, is a judgment of the Chief Court and is not new material.

Case (6)—This is a gift of land to a brother's daughter. It was at Badali Mahi in the Hoshiarpur District in 1905.

1919

 JAMIAT SINGH
 v.
 UJAGAR SINGH.

The above eighteen cases exhaust the documentary evidence, and it is evident that no new instances of the Jullundur District are available in which a daughter's son or a sister's son has successfully maintained his position by adoption.

The only instances established are old ones in which the collaterals delayed their suit and then found it time-barred.

The oral evidence is quite inadequate to support the plaintiff's case.

Gopal Singh of Sikandarpur says that Kala Singh, *Subadar*, adopted his daughter's son, but no particulars are given, and it may be surmised that the *Subadar's* property was in part at least self-acquired.

Mihan Singh of Manko (the plaintiff's village) says that he has adopted his own sister's son, but does not state what measures he has taken to provoke contest, and Gopal Singh of Manko mentions three instances but gives no details, and admits that he has been provided with a written memorandum for fear that he should forget them.

One or two other miscellaneous instances of adoption are given, but they are not supported by documentary evidence and are either irrelevant or unascertained.

Against these there are four distinct cases, apart from those which reached the Chief Court, in which adoptions of daughters' sons amongst *Jats* of Jullundur have been set aside. The judgment of Khan Ahmad Shah, *Chuhr Singh* versus *Basant Singh* (1903); Mr. Waring, *Uttam* versus *Jiwi* (1909); Mr. Leslie-Jones, *Jivan Singh* versus *Mangal Singh* (1910); and *Lala Rangil Lal, Thakar Singh* versus *Kartara* (1913), have been placed on this file.

The invalidity of such adoptions in Jullundur is treated as being hardly open to question, and it seems to be

1919

JAMIAF SINGH
v.
UJAGAR SINGH.

clear that there is no evidence adduced in the present case that can lead to a different conclusion, such evidence as there is being merely a representation of instances which have already been dealt with judicially and held not to establish the custom claimed.

It is evident that the Courts below have not fully considered the series of judicial pronouncements against the validity of such adoptions, and they hardly seem to have been aware that the instances now relied upon are not new material.

The record does not provide any ground for a re-consideration of the views consistently adopted in recent years, which are in accord with the *Ruwaj-i-am* and the adoption set up cannot be maintained.

On this view it is unnecessary to enter on any discussion as to the succession to the occupancy holding as distinct from the proprietary holding.

At the hearing it was suggested that the deed of 1907 might be regarded as a will under which Ujagar Singh could succeed as a *persona designata*.

This, however, is a new case, and we are satisfied that the deed of 1907 must be taken as what it purports to be, namely, a deed evidencing an adoption.

We accordingly accept the appeal and dismiss the suit with costs throughout.

Appeal accepted.