

in *Ayyagari v. Kouvuri* (1) and we suppose that we must be taken to dissent from it. Nevertheless the ultimate result of that case seems to uphold our view. The appeal failed and the learned Judges, although asked specifically to go behind the finding of the Court which recorded the compromise that it was agreed to by the appellant, did not do so (we have quoted the actual words of the judgment purposely) and indeed appear to have ignored the request altogether.

It will be seen also that we differ from the learned Additional Judicial Commissioner who decided *Benuka v. Onkar* (2) in his interpretation of the law and we do so with all respect for what he has written.

Mr. Dalip Singh's further contention that under section 105, Civil Procedure Code, if appeals lie, the correctness of the order on which the decrees are based can be attacked, even if that order is not appealable, need not be dealt with since we hold that appeals do not lie.

We, therefore, dismiss both appeals with costs.

A. R.

Appeals dismissed.

APPELLATE CIVIL.

Before Mr. Justice Broadway and Mr. Justice Martineau.

JAGIR SINGH (PLAINTIFF)—*Appellant,*

versus

Mst. SANTI (DEFENDANT)—*Respondent.*

Civil Appeal No. 3306 of 1917.

Custom—Succession—son and daughter in-law—Jats of Raowal, Tahsil Jagraon, District Ludhiana—Riwaj-i-am—Onus probandi.

Held, that the entry in the *Riwaj-i-am* of the Ludhiana District, being in favour of a sonless daughter-in-law succeeding along with a son, the *onus* of proving that he is entitled to succeed to the exclusion of the daughter-in-law was on him, and that he had failed to discharge that *onus*.

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Beg v. Allah Ditta (1), followed.

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Second appeal from the decree of Khan Bahadur Khawaja Tasaddug Hussain, District Judge, Ludhiana, dated the 20th August 1917, varying that of Lala Munshi Ram, Subordinate Judge, 2nd Class, Ludhiana, dated the 11th January 1917, and dismissing plaintiff's claim.

KANWAR NARAIN, for Appellant.

GANGA RAM, for Respondent.

The judgment of the Court was delivered by—

MARTINEAU J.—Punjab Singh, a *Jat* of Raowal in *Tahsil Jagraon* in the Ludhiana District had three sons, Rala Singh, Indar Singh and Jagindar Singh, of whom the first two died before their father. On the death of Punjab Singh in 1906, his land was mutated in favour of Jagindar Singh and the two widows of Indar Singh, *Mussammât Santi* and *Mussammât Ram Kaur*. *Mussammât Ram Kaur* married Jagindar Singh, and by him had a son, Jagir Singh, who has brought the present suit against *Mussammât Santi* for possession of the land standing in her name, disputing her right to succeed to a share in the land left by his grandfather. The first Court gave judgment for the plaintiff, but the District Judge on appeal has dismissed the suit, holding that by custom a daughter-in-law is entitled to succeed along with a son. The plaintiff has preferred a second appeal, having obtained a certificate from the District Judge under section 41 (3) of the Punjab Courts Act, and the only question for determination is the point of custom.

The principal piece of evidence in favour of the defendant is the entry in the *Riwaj-i-am* (contained in Dunnett's Customary Law of the Ludhiana District, compiled in 1911), in which it is stated in answer to question 32 that the heirs to the land of a deceased owner are (1) his sons subject to a right of succession by the widow and a son's widow if sonless; (2) other male lineal descendants; and (3) his widows, son's widow and mother. According to this statement of the custom a daughter-in-law succeeds along with a son, and although no instances of such succession are mentioned,

except one among *Hindu Rajputs* at page 53, the entry is, in accordance with the ruling of the Privy Council in *Beg v. Allah Ditta* (1) sufficient to throw the *onus* on to the plaintiff to prove that a daughter-in-law is excluded by a son.

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The defendant's case is also supported by a judgment of *Khwaja Tasadduq Hussain*, dated the 9th August 1917, in the case of *Mussammat Indo versus Sapuran*. It is true that the present defendant's succession to her father-in-law's property was cited in that case as an instance in support of the custom, but the judgment was based, not on that instance alone, but on other instances as well and, in particular, on a judgment given by *Lala Ram Nath* in 1907.

An instance of a widow succeeding to her father-in-law's estate is also mentioned by one of the defendant's witnesses, but we do not attach much importance to it.

Some judgments are relied upon by the plaintiffs, but only two are in point, *viz.*, a judgment of Mr. Kensington, Divisional Judge, of the year 1898 in *Ratan Singh versus Mussammat Bholi*; and a judgment of *Mirza Abdul Rab* in 1915 in *Partap Singh versus Mussammat Daya Kaur*. Very little weight can be given to either of these judgments, as Mr. Gordon Walker's Customary Law of the Ludhiana District, which was in force at the time when Mr. Kensington's judgment was given, did not provide, as the customary law compiled by Mr. Dunnett does, for the succession of a daughter-in-law in the presence of a son, while *Mirza Abdul Rab's* judgment makes no reference to the customary law at all, but mentions only the instances which were adduced in evidence. No reported cases relating to the *Jats* of the Ludhiana District have been cited.

We are of opinion, therefore, that the *onus* which the entry in the existing *Riwaj-i-am* casts on the plaintiff of proving that a daughter-in-law is excluded by a son has not been discharged, and that the lower Appellate Court's decision is correct. We accordingly dismiss the appeal with costs.

A. N. C.

Appeal dismissed.