

APPELLATE CIVIL.

Before Mr. Justice Martineau and Mr. Justice Moti Sagar.†

GHANSHAM (PLAINTIFF) Appellant

versus

RAMJI LAL AND OTHERS (DEFENDANTS)

Respondents.

Civil Appeal No. 241 of 1918.

Custom—widow—right to demand partition—Punjab Land Revenue Act, XVII of 1887, section 111—Ahrir: of Mauza Pithrawas, Tahsil Rewari—District Gurgaon—Riwaj-i-am.

Held, that a widow has a statutory right to demand partition.

Mussammat Bhag Bhari v. Wazir Khan (1) and *Sant Singh v. Mst. Basanti Kaur* (2), followed.

Abdul Qadir v. Mst. Rabia (3), disapproved.

Held, further that the *Riwaj-i-am* of the Gurgaon District was in favour of the widow's right of partition, and the *onus* of proving that such a right did not exist in the present case was on the plaintiff who disputed the widow's right to obtain partition and that he had failed to discharge that *onus*.

First appeal from the decree of Sheikh Nazir Ahmad, Assistant Collector, 1st Grade, with powers of a Munsif, 1st Class, Gurgaon, dated the 29th October 1917, dismissing the suit.

SHAMAIR CHAND, for Appellant.

G. O. NARANG, for Respondents.

The judgment of the Court was delivered by—

MARTINEAU J. — On the death of Tula Ram in 1891 his land was mutated in equal shares in favour of the plaintiff and defendants Nos. 3 and 4, who were the sons of Tula Ram by his wife, *Mussammat Rajo*, and *Khem Ram*, defendant No. 1, and *Yad Ram*, who were stated to be his sons by another wife, *Mussammat Lali*. In 1917, *Khem Ram* and *Yad Ram's* widow, *Mussammat Bholi*, applied for partition of their shares, and this has given rise to the present suit, in

(1) 70 F. R. 1912.

(2) (1922) 71 Indian Cases 28.

(3) 4 P. R. (Rev.) 1917.

which the plaintiff contends that Khem Ram was not the son of Tula Ram, and is, therefore, not entitled to a share, and disputes the right of *Mussammatt Bholi* to have her share partitioned. The suit has been dismissed and the plaintiff appeals.

The plaintiff has produced three witnesses of an ordinary type, who say that Khem Ram is the son of one Sita. On the other hand, Khem Ram himself has deposed that he is the son of Tula Ram, to whom he says his mother, *Mussammatt Lali*, was married and he is corroborated by other witnesses. Although the plaintiff was not present at the time of the mutation in 1891, his brothers, Mangal Singh and Net Ram, defendants 3 and 4, were present and admitted Khem Ram to be Tula Ram's son, and from that time no objection was ever taken by the plaintiff to Khem Ram's succeeding to a share in Tula Ram's property until Khem Ram and *Mussammatt Bholi* applied for partition in 1917. Had Khem Ram not been a son of Tula Ram, the plaintiff would not have kept silent and allowed Khem Ram to remain in possession for so many years. The plaintiff says he partitioned the property with defendants Nos. 3 and 4 and *Mussammatt Bholi* about five years before suit, and has been in possession of one-fourth of the land ever since, but we agree with the lower Court that he has failed to prove this allegation. The lower Court is right in finding that Khem Ram is the legitimate son of Tula Ram.

The second question relates to *Mussammatt Bholi's* right to a partition. The issue framed was whether she was not entitled to apply for partition, although the real question is as to her right to obtain a partition. The lower Court has held, following *Abdul Qadir v. Mussammatt Babia* (1), that she has no right to obtain a partition except under a decree of a civil Court, but we do not agree with this view. It has been held in *Mussammatt Bhag Bhari v. Wazir Khan* (2) that a widow of a deceased co-sharer has a statutory right to demand partition, and in *Sant Singh v. Mussammatt Basant Kaur* (3) that ruling was followed and it was held that the *onus* was upon the

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party who disputed the widow's right to obtain a partition to prove that such right did not exist. That *onus* in the present case has not been discharged.

Moreover, *Mussammat Bholi's* right to a partition is clear from the *Riwaj-i-am* in which it is stated (page 51 of the paper book) that any one of the persons upon whom the estate devolves, irrespective of the sex of such person or of the relationship in which such person stood to the deceased, can claim a partition as a matter of right.

The suit has been rightly dismissed and we dismiss the appeal with costs.

C. H. O.

Appeal dismissed.

APPELLATE CIVIL.

Before Sir Shadi Lal, Chief Justice and Mr. Justice Lumsden.

RAM SARAN DAS (PLAINTIFF) Appellant

versus

MULA (DEFENDANT) Respondent.

Civil Appeal No. 2284 of 1920.

Redemption of Mortgages (Punjab) Act, II of 1913—Order of Revenue Officer that mortgagor can redeem on payment of Rs. 400—suit by mortgagee for declaration that Rs. 1,336 is the proper charge on the land—whether law of Limitation or Order II, rule 2 of the Code of Civil Procedure, Act V of 1908, applies to such a suit—Post diem interest.

B mortgaged certain lands to B. S. D. in 1897 for Rs. 400. According to the deed interest was to be paid for 6 years at the rate of Rs. 1-8-0 *per cent. per mensem*. After the expiry of 6 years the land, if not redeemed, was to be considered sold to the mortgagee. On the 18th January 1905, the conditional sale clause was expunged by the Deputy Commissioner under section 9 (2) of the Punjab Alienation of Land Act, XIII of 1900. On the 12th of January 1910, the mortgagee brought a suit for possession and obtained a decree on the 16th February 1910. On the 21st of August 1912, a deed of lease was executed under which the mortgagor became a tenant of the mortgagee on a

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