We also agree in the finding that the defendant's unchastity has not been proved. No doubt it appears that unchastity was imputed to her, the allegation being that a child to whom she had given birth was illegitimate, but the evidence produced against her is wholly unreliable, the statements of the witnesses in regard to her misconduct being purely hearsay.

We accordingly dismiss the appeal with costs.

C. H. O.

Appeal dismissed.

APPELLATE CIVIL.

Before Sir Shadi Lal, Chief Justice and Mr. Justice Zafar Ali.

1923

March 2.

SALIG RAM, VENDEE (DEFENDANT) Appellant,

versus

BADHAWA AND OTHERS (PLAINTIFFS) AND MANGAL, VENDOR (DEFENDANT) } Respondents.

Civil Appeal No. 1036 of 1920.

Custom—Alienation—Brahmans of Mauza Gokalgarh, District Ambala—Hindu Law.

Held, that the initial presumption in the case of *Brahmans* is that they are governed by their personal law, and that the plaintiffs had failed to prove that the *Brahmans* of Mauza Gokalgarh were governed by a custom restricting the proprietor's power of alienation.

The mere fact that a family or tribe has departed from its personal law in one respect, namely, the incompetency of a daughter to inherit her father's property, does not necessarily lead to the conclusion that it has adopted agricultural custom in all other respects.

Kapuria v. *Mangal* (1), referred to.

Second appeal from the decree of Lieutenant-Colonel A. A. Irvine, District Judge, Ambala, dated the 24th March 1920, reversing that of Sheikh *Ruknuddin, Senior Subordinate Judge, Ambala, dated the 4th March* 1919, *and decreeing plaintiffs' suit.*

JAGAN NATH, for Appellant.

DEVI DIAL, for Respondents.

(1) 149 P. R. 1908.

1923

SALIG RAM v. BADHAWA.

The judgment of the Court was delivered by—

SIR SHADI LAL C. J.—On the 19th July 1918, one Mangal, a *Brahman* of *Mauza* Gokalgarh in the district of Ambala, sold a plot of land to the defendant Salig Ram for Rs. 2,400. The plaintiffs, who are the reversioners of the vendor, contest the sale on the usual grounds, and the only question for determination is whether the *Brahmans* of Gokalgarh are governed in the matter of alienation by agricultural custom. Now it is beyond dispute that the initial presumption in the case of *Brahmans* is that they are governed by their personal law, and the *onus* is on the plaintiffs to establish a custom restricting the proprietor's power of alienation.

In support of the custom set up by them the plaintiffs rely upon the fact that almost the whole of the agricultural land in the village belongs to *Brahmans* who depend mainly on agriculture for their livelihood. They also invite our attention to the oral evidence which shows that a daughter is excluded from succession to the estate of her father, but the circumstance that a family or a tribe has departed from its personal law in one respect, namely, the incompetency of a daughter to inherit her father's property, does not necessarily lead to the conclusion that it has adopted agricultural custom in all other respects. It is conceded that there is not a single case, judicial or otherwise, in which the authority of a *Brahman* proprietor to alienate his ancestral land was ever challenged. On the other hand, we have evidence to the effect that during the last 30 years there have been no less than 130 alienations in this village, and the witnesses for the plaintiffs themselves admit that not a single alienation has been contested. In these circumstances we are of the opinion that the plaintiffs on whom the *onus* rested have failed to establish the custom invoked by them.

It is to be observed that in *Kapuria* v. *Mangal and others* (1) it was held by the Punjab Chief Court that in matters of alienations *Brahmans* of *Mauza* Sambaka in the Ambala District were governed by the Hindu Law and not by custom. As pointed out in that judgment, Ambala is ethnically and by language more connected with the United Provinces than the Punjab, and the

(1) 149 P. R. 1903.

Brahmans of that District follow their personal law and do not observe any custom like that of the agriculturists of the Punjab.

For the aforesaid reasons we accept the appeal and reversing the decree of the District Judge, restore that of the Court of first instance with costs throughout

C. H. O.

Appeal accepted.

CIVIL REFERENCE.

Before Mr. Justice LeRossignol and Mr. Justice Broadway.

1923

March 2.

PALA RAM (DEFENDANT) Petitioner,

versus

NOTIFIED AREA COMMITTEE, KOT ADDU, DISTRICT MUZAFFARGARH (PLAINTIFF) Respondent.

Civil Reference No. 9 of 1922.

Punjab Municipal Act, III of 1911, *section* 242 (1) (*a*)—*Government Notification imposing a professional tax in the Notified Area of Kot Addu—whether applicable to a* Tahsildar.

Held, that a public servant like a *Tahsildar* is not a person "exercising a profession or carrying on a trade or calling" such as would bring him within the purview of Notification No. 320, dated 12th May 1915, promulgated under section 242 of the Punjab Municipal Act, imposing a professional tax in the Notified Area of Kot Addu.

The Committee of Notified Area, Una, v. *Chatar Behari Narain* (1), approved.

Case referred by Khan Bahadur Sheikh *Siraj-ud-Din, Deputy Commissioner, Muzaffargarh, for orders of the High Court.*

The order of the High Court was delivered by—

BROADWAY J.—Acting under section 242 of the Punjab Municipal Act, the Punjab Government imposed a professional tax in the Kot Addu Notified Area

(1) 74 P. L. R. 1918.