APPELLATE CIVIL.

Before Mr. Justice Martineau and Mr. Justice Zafar Ali.

1923

March 12.

Mussammat BAL KAUR (PLAINTIFF) Appellant,

versus

Mst. DEVKI AND ANOTHER (DEFENDANTS) Respondents.

Civil Appeal No. 2907 of 1918.

Custom—Succession—Joshi Brahmins of Hoshiarpur—whether widow and daughter of a pre-deceased son succeed in preference to daughters.

One M. L., a Joshi Brahmin of Hoshiarpur, had a son and two married daughters. The son died in May 1914, leaving a widow and a daughter. M. L. died 3 months later, in July 1914, leaving a house and 3 shops at Hoshiarpur besides cash and goods. The daughters claimed the inheritance under Hindu law, while the widow and daughter of the pre-deceased son relied upon custom.

Held, that high caste Hindus living in towns and working as traders are presumably governed by Hindu Law, and that the defendants had failed to prove a special custom among Joshi Brahmins of Hoshiarpur entitling the widow and daughter of a pre-deceased son to succeed in preference to daughters.

First appeal from the decree of Rai Sahib Lala *Diwan Chand, Senior Subordinate Judge, Hoshiarpur, dated the 16th July* 1918, *dismissing the plaintiff's suit.*

FAQIR CHAND, for Appellant.

MANOHAR LAL AND BADRI DAS, for Respondents.

The judgment of the Court was delivered by—

ZAFAR ALI J.—The main question for decision before us in this first appeal from the judgment and decree of the Senior Subordinate Judge, Hoshiarpur, is whether there obtains a special custom among the Joshi *Brahmins* of Hoshiarpur which overriding Hindu Law entitles the widow and daughter of a predeceased son to succeed in preference to daughters. The facts are briefly as below :—

One Mokand Lal, a Joshi *Brahmin* of Hoshiarpur, was the father of one son and two daughters who were all married. The son died on the 1st May 1914 leaving a widow and a daughter. Mokand Lal survived him for some three months and died on the 23rd July 1914.

He left three shops, one house, Rs. 1,600 cash, and goods valued at Rs. 1,500. As his son's widow *Mussammat* Devki and her minor daughter *Mussammat* Ram Vanti lived with him in the residential house, they remained in possession thereof after his death. The daughters claimed to be his heirs according to Hindu Law and obtained a succession certificate for realising the money payable to him, and subsequently instituted the present suit for possession of the house and shops, and also to obtain a declaration that they were entitled to the money (Rs. 3,100) left by Mokand Lal out of which Rs. 2,900 were lying in deposit with the firm of Thakarya Mal-Gujar Mal. The defendant *Mussammat* Devki set up in defence the special custom stated above and further raised the alternative plea that she and her daughter had the right of residence and maintenance in the estate of Mokand Lal, and that the money required for the marriage of her daughter was also to be paid out of that estate. Their right of residence, etc., was conceded but there was disagreement as to the amount of the maintenance allowance and the sum to be paid for marriage expenses.

On the question of custom the defendants examined 15 witnesses whose evidence coupled with the judicial instances cited by the defendants was considered sufficient by the Court below to establish it. We are of opinion that this evidence is quite insufficient. Of the 15 witnesses examined by the defendants there was only one Joshi *Brahmin*. The remaining 14 included five *Khatris*, four *Brahmans*, two *Suds*, one *Kalal*, one *Bania* and one *Bhabra*. Ten of these witnesses Nos. 1, 2, 3, 6, 8, 9, 12, 13, 14 and 15, could cite no instance in support of the alleged special custom, and the instances cited by the rest and judicial instances were not in point. The learned Senior Subordinate Judge himself expressed the following opinion about these instances :—

"Taken as a whole the above instances do not serve as a proper guide in the present case. None of them except the Chief Courts' Appeal of 1914 (which related to a case from the Jullundur District) were between a daughter and a daughter-in-law. They were between daughter-in-law and collaterals or others and do not exactly fit in the present case."

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It is difficult to follow the line of argument adopted by the learned Subordinate Judge to arrive at the conclusion that in spite of no instances the oral testimony of the defendants' 15 witnesses of different castes was sufficient to prove the existence of the alleged custom among Joshi *Brahmins* as well as other high caste *Hindus* of Hoshiarpur. All that the learned counsel for the defendant-respondents could say in support of the finding of the lower Court was that Hindu Law was not so rigorously applied in the Punjab as in Bengal and the United Provinces, and that the oral evidence indicated the prevailing sentiments of Hindus generally in favour of the rights of the widow of the predeceased son as against daughters. But high caste Hindus living in towns and working as traders are presumably governed by Hindu Law and in the absence of sufficient evidence it cannot be said that that law is superseded on any particular point by custom.

On the question of maintenance, etc., the parties are not much at variance. Counsel for the plaintiff-appellants agrees that the family residential house may be left wholly in the occupation of the defendants till the death of the widow and marriage of her daughter, that Rs. 1,000 be allowed for the marriage of the daughter, and that the shop whose rent is Rs. 10 or ¼2 *per mensem*, be allotted to them for their maintenance. The defendants' counsel claims Rs. 1,500 for marriage expenses and Rs. 20 *per mensem* for maintenance. We are of opinion that the sum of Rs. 1,000 will be quite sufficient for the marriage expenses and that Rs. 16 *per mensem* should be allowed for maintenance. The rent of one of the shops situate in Khara-Khu, of which Sardari Lal is at present the tenant, is Rs. 10 as already stated and that of another shop is Rs. 6. We consider that these two shops should be allotted to the defendants so that they may live on the rent thereof. They themselves will be responsible for keeping them in proper repair. After the marriage of her daughter the widow will be entitled to retain only the shop whose rent is Rs. 10, and the other shall then go to the plaintiffs, Rs. 1,000 will be payable to the defendants from the sum of Rs. 3,100 left by Mokand Lal. If they have not already received this amount and are not able to realise it they

will be entitled to raise it on the security of the house or shops. We accept the appeal and reversing the judgment and decree of the Court below pass a decree in the terms stated above and decree the plaintiff's suit with the said reservations. Parties to bear their own costs throughout.

A. R.

Appeal accepted.

LETTERS PATENT APPEAL.

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

LIQUIDATOR, UNION BANK OF INDIA (PLAINTIFF) Appellant

versus

GOBIND SINGH (DEFENDANT) Respondent.

1923

March 30.

Letters Patent Appeal No, 240 of 1922.

Companies in Liquidation—Indian Companies Act, VII of 1913, sections 186, 234—Recovery of money due by a Firm in which a contributory is a partner—whether the money can be recovered by summary process from that partner — Indian Contract Act, IX of 1872, section 43—Compromise with liquidator—when binding upon the Company.

One G. S. who was a shareholder of the Union Bank of India, was also a partner in the Firm of R. R.-D. R. to whom the Bank had advanced certain money on promissory notes. These notes were signed by G. S. and he got the money. After the Bank went into voluntary liquidation, the liquidator called upon G. S., as a contributory, to pay up the money due on the promissory notes besides a sum due for unpaid calls on the shares. It was objected that there had been a compromise between the liquidator and the Firm and that in any case the debt could not be recovered from G. S., one of the partners of the Firm who had borrowed the money, by summary process under section 186 of the Companies Act.

Held, that a compromise between the liquidator of a Company in liquidation and a contributory is not binding on the Company in a voluntary winding up unless and until sanctioned by an extraordinary resolution of the Company as provided in section 234 of the Companies Act.

Cyclemakers' Co-operative Supply Co. v. *Sims* (1), distinguished.

(1) (1903) 1 K. B. 477.