

more conclusive piece of evidence than it was deemed to be in that case.

As the *onus* cast on the appellant of proving that a grand-daughter-in-law is excluded by a son has not been discharged, the appeal must fail and I would accordingly dismiss it with costs.

CAMPBELL J.—I agree.

A. N. C.

Appeal dismissed.

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RAM SABAN

MST. PUNJAB

KAUR.

EFORDE J.

APPELLATE CIVIL.

Before Mr. Justice Eforde and Mr. Justice Campbell.

SIDHRAMI AND OTHERS (PLAINTIFFS), Appellants
versus

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KHARKU AND OTHERS (DEFENDANTS), Respondents.

May 25.

Civil Appeal No. 1339 of 1922.

Custom—or Hindu Law—Bhojkis (hereditary priests)—Palampur Tahsil, Kangra District—Riwaj-i-am.

Held, that there is a strong presumption that a Hindu priestly class like the *Bhojkis* of the Kangra District follows Hindu law, and that the *Bhojkis*, parties to the suit, had not been proved to have adopted agricultural custom.

Bhag Mal v. Sant (1), referred to.

Second appeal from the decree of M. V. Bhide, Esquire, District Judge, Hoshiarpur, dated the 20th February 1922, affirming that of Maulvi Muhammad Shafi, Munsif, 1st class, Dharmsala, District Kangra, dated the 13th December 1920, dismissing the plaintiff's suit.

GHULAM RASUL, for Appellants.

MEHR CHAND MAHAJAN, for Respondents.

JUDGMENT.

CAMPBELL J.—The suit is by a first cousin to contest a gift in favour of the donor's alleged sister's

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sons. The suit has been dismissed by both Courts below, and the plaintiff has come here on second appeal furnished with a certificate under section 41 (3) of the Punjab Courts Act enabling him to agitate the question whether *Bhojkis* in the Palampur Tahsil of the Kangra District are governed by agricultural custom.

According to the Kangra District Gazetteer, page 69, the *Pujaris* of the shrines in the Kangra and Simla hills have grown into a distinct caste which is said to have originated in a mixture of *Nais*, *Brahmans*, *Rajputs* and *Jogis* who all intermarried. The *Pujaris* of the big shrines in the Kangra District, such as Jawalamukhi and Bhawan, are called *Bhojkis*. The *Bhojkis* are the hereditary priests of these and other temples, but their claim, sometimes made, to be *Brahmans* has not been established.

The case for the plaintiff-appellant is based upon Middleton's Customary Law of the Kangra District which presumably reproduces accurately the *Riwaj-i-am*, and, according to the answer to Question 92 on page 153, a gift to a sister's son requires the consent of the male lineal descendants or near collaterals, and, if there are none, requires no consent. This book on Customary Law does not state the particular tribes to which the *Riwaj-i-am* relates; but it has been argued before us on the strength of eight references to *Bhojkis* in the book that the *Riwaj-i-am* must embody the customs observed by the *Bhojkis*.

On page 10 an instance is quoted of Rs. 350 being paid for the breach of a *Bhojki* betrothal. This has no significance.

On page 56 an instance is quoted where succession to a *Bhojki* of the Kangra Tahsil took place by the *chundawand* rule. Much reliance is placed upon this entry by the learned counsel for the appellant.

On page 62 it appears that a *Bhojki* of Jawalamukhi tried to exclude one of his six sons unsuccessfully. The son sued and got his share. This does not help the appellant.

On page 65 a *Bhojki* predeceased son's widow is quoted as succeeding under the special custom described in the answer to Question 43.

On page 82 the *Bhojkis* of Kangra Tahsil are reported to have declared that widows are entitled to life estates even if their husbands lived jointly with their brothers. This is not necessarily repugnant to Hindu Law, which recognises the rights of such widows to maintenance.

On page 121 a *Bhojki* is said to have lost his rights of succession by keeping a *Chamar* woman, an incident which indicates adherence not to custom but to the strict tenets of the Hindu religion.

On page 143 a husband is reported to have succeeded to his wife's special property but no other details are given and this instance is inconclusive.

Finally, on page 158 a decision by the Divisional Judge is mentioned which is stated to have set aside at the instance of brothers a gift of ancestral land to a daughter or son-in-law by a *Bhojki* of Kangra. This decision was searched for unsuccessfully by the trial Court in this case.

It is contended for the appellant that these allusions to *Bhojkis* in the *Riwaj-i-am* give rise to a presumption that they were a tribe whose customs are recorded in it and that the answers to Question 92 above quoted, although unsupported by instances as regards *Bhojkis*, casts upon the defendants the *onus* of proving that it does not state a rule applicable to all *Bhojkis* of the Kangra District including the parties. In my view the presumption, if it arises, is rebutted

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by the evidence given in this case by the plaintiff himself. That evidence proves that the *Bhojkis* are a priestly class and that the present parties are attached as *Pujaris* to a temple called Asa Puri or, at any rate, that the *Pujaris* of that temple are recruited from among the parties' kinsmen. The priestly character of the *Bhojki* tribe or community is emphasized in a decision by the Chief Court in *Bhag Mal and others v. Sant and others* (1). The plaintiff's witnesses have stated that the *Bhojkis* of the locality plough with their own hands and "mostly follow agriculture", but not one of those witnesses has ventured to say that they have abandoned Hindu Law and followed custom. The profession of the plaintiff himself is proved by the admission of his own witnesses to be shop-keeping, and there is no evidence that *Bhojkis* have abandoned their hereditary priestly occupations and have merged themselves in an agricultural community. On the other hand witnesses for the defendants have declared that these *Bhojkis* follow Hindu Law, and there must necessarily be a strong presumption that a Hindu priestly class does so. There is no evidence about the extent of the plaintiff's land, if any, or about its capacity to support him or his family, and without definite instances of *Bhojkis* following the custom set up, of which there are none, I am unable to disturb the concurrent decisions of the Courts below.

The appeal must fail and is dismissed with costs.

FFORDE J.

FFORDE J.—I agree.

A. N. C.

Appeal dismissed.