APPELLATE CIVIL.

Before Mr. Justice Fforde and Mr. Justice Campbell.

1926

May 19.

RAM SARAN (DEFENDANT), Appellant

versus

MUSSAMMAT PUNJAB KAUR AND ANOTHER (PLAINTIFFS), Respondents.

Civil Appeal No. 1546 of 1922.

Custom—Succession—Jats *of Ludhiana District—widow of grandson—whether entitled to share equally with sons—Riwaj-i-am*—onus probandi.

Held, that the entry in the *Riwaj-i-am* being in favour of the widow of a grandson among *Jats* of the Ludhiana District succeeding along with a son, the *onus* of proving the contrary was upon the latter and that he had failed to discharge that *onus*.

Jagir Singh v. *Mst. Santi* (1), followed.

Second appeal from the decree of Sardar *Sewaram Singh, District Judge, Ludhiana, dated the 2nd May 1922, affirming that of* Lala *Harsarup, Munsif, 1st class, Ludhiana, dated the 10th November 1921, awarding the plaintiffs possession of the land in dispute.*

BALWANT RAI, for Appellant.

BADRI DAS, for Respondents.

JUDGMENT.

FFORDE J.

FFORDE J.—The appellant is a son of Bishen Singh, deceased, and the respondent is the widow of Basanta, one of Bishen Singh's grandsons. Both Basanta and his father had predeceased Bishen Singh.

On the death of Bishen Singh his land was mutated in the name of the appellant, and the suit out of which this appeal arises was thereafter brought by the respondent, claiming possession of this land on

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the ground that by a special custom obtaining amongst the *Jats* of Ludhiana District the widows of predeceased sons and grandsons of a male proprietor are entitled to share equally with his sons in his property. The trial Court gave a decree in favour of the respondent, finding that this custom had been established, and this decree was affirmed on appeal to the District Judge.

The only question which arises for our determination in this appeal is whether amongst the *Jats* of the Ludhiana District the widow of a grandson of a deceased owner of property is entitled to share equally in his property with his sons. The principal evidence relied upon by the respondent in her suit was the *Riwaj-i-am* of the Ludhiana District, compiled by Mr. J. M. Dunnett, dated the 6th of July 1911. On page 69 of this volume under the heading: "Right of Representation" appears this question (36):—

"Where a deceased leaves sons and also sons of deceased sons, are the latter entitled to a share as well as the former?"

Answer.—There is no question about this. The right of succession by representation is established and admitted among all tribes. It extends to the recognition of daughters-in-law and grand-daughters-in-law in presence of sons. In this respect all Muhammadans disregard the *Shara*. The custom is so well established (it has also the sanction of 91 Punjab Record, 1879) that I need not quote examples beyond instances where grand-daughters-in-law succeeded."

Three examples are then given. This piece of evidence in favour of the respondent placed the *onus* upon the appellant to show that the custom as alleged in this *Riwaj-i-am* was not followed by the parties to this litigation. This *onus* the appellant has wholly

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failed to discharge. The instances upon which he has relied have obviously no bearing upon the question at issue. On the other hand, in a recent judgment of a Division Bench of this Court in *Jagir Singh versus Mussammat Santi* (1) it was 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 was entitled to succeed to the exclusion of the daughter-in-law was on him, and that he had failed to discharge that *onus*. The *Riwaj-i-am* there referred to is the above mentioned *Riwaj-i-am* by Mr. Dunnett and it appears to me that that decision concludes this case. That also was a case of *Jats* of Ludhiana District, and the same point was there raised as has been raised in the present suit, with this exception, that the claimant in that case was the widow of a deceased son whereas in the present case she is the widow of a grandson.

It was admitted in both the lower Courts that on this question of custom there is no difference between the case of a daughter-in-law and a grand-daughter-in-law, but counsel for the appellant refuses to accept this admission made by a counsel for his client in the lower Courts and he urges that there is a distinction. In support of his argument, however, he has failed to produce any evidence whatsoever, and as the entry in the *Riwaj-i-am* in this regard has not been rebutted, the respondent would be entitled to succeed in her contention even if there were no other evidence on the record. In *Jagir Singh* v. *Mussammat Santi* (1) the judgment states that the *Riwaj-i-am* is not supported by instances, it having apparently been overlooked that in fact three instances are given under Question 36. The *Riwaj-i-am* therefore is an even stronger and

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

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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.

FFORDE J.

CAMPBELL J.—I agree.

A. N. C.

Appeal dismissed.

APPELLATE CIVIL.

Before Mr. Justice Fforde and Mr. Justice Campbell.

SIDHRAMI AND OTHERS (PLAINTIFFS), Appellants

versus

KHARKU AND OTHERS (DEFENDANTS), Respondents.

1926

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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(1) 27 P. R. 1880.