

APPELLATE CIVIL.

Before Mr. Justice Broadway and Mr. Justice Fforde.

GOPALI (DEFENDANT) Appellant

versus

MST. SHAMON (PLAINTIFF) Respondent.

Civil Appeal No. 1013 of 1922.

Custom—Widow's right to have her husband's joint holding partitioned.

Held, that it is now definitely settled that a widow has a statutory right to claim partition of her deceased husband's joint and undivided estate.

Mussammāt Bhag Bhari v. Wazir Khan (1), *Milkha v. Mst. Punni* (2), *Shadi v. Mst. Jeoni* (3), *Ghansham v. Ramji Lal* (4), and *Sant Singh v. Mst. Basant Kaur* (5), followed.

Parshotam v. Mst. Raj Devi (6), dissented from.

Second appeal from the decree of Sardar Sewaram Singh, District Judge, Ludhiana, dated the 16th March 1922, affirming that of Lala Har Sarup, Munisif, 1st class, Ludhiana, dated the 12th November 1921, declaring that the plaintiff is entitled, as a widow to get separate possession of the land in suit.

NAWAL KISHORE, for Manohar Lal, for Appellant.

J. G. SETHI, for Respondent.

JUDGMENT.

BROADWAY J.

BROADWAY J.—Hukmi and Gopali were two brothers who held a joint holding. Hukmi died and his widow *Mussammāt* Shamon succeeded to his estate and held jointly with Gopali. Disputes arose between her and Gopali, whereupon she claimed parti-

(1) 70 P. R. 1912.

(2) (1921) I. L. R. 2 Lah. 348.

(3) (1922) I. L. R. 3 Lah. 236.

(4) (1923) I. L. R. 4 Lah. 344.

(5) (1923) All I. R. (Lah.) 81.

(6) 219 P. L. R. 1913.

tion. The Revenue authorities found that Gopali was not treating her properly but directed her to have recourse to the Civil Courts. She thereupon instituted a suit for a declaration that she was a joint owner and in possession of one half share of the joint holding and that she had a right to get it partitioned. The suit was contested on various grounds. Gopali claiming that he had contracted a *karewa* marriage with her and also asserting that she was not entitled to partition. Her claim was decreed by the trial Court, it being held that she had not married Gopali and the appeal was dismissed by the learned District Judge. Against that decree a second appeal has been preferred to this Court on behalf of Gopali which was admitted to a hearing in view of the conflict between *Mussammat Bhag Bhari v. Wazir Khan* (1) and *Parshotam v. Mussammat Raj Devi* (2). The question whether a widow in possession of her husband's joint and undivided estate is entitled to partition was decided in the widow's favour in the first of the cases above mentioned and against her in the second. It appears, however, that this question has been set at rest by more recent authorities. The view taken in *Mussammat Bhag Bhari v. Wazir Khan* (1) was accepted as correct in *Milkhhi v. Mussammat Punni* (3) and the same view was followed in *Shadi v. Mussammat Jeoni* (4). Mr. Justice Martineau and Mr. Justice Moti Sagar came to a similar conclusion in *Ghansham v. Ramji Lal* (5) and the same Division Bench took the same view in a case not to be found in the Indian Law Reports but reported in an unauthorised report [*Sant Singh v. Mussammat Basant Kaur* (6)]. In this case the learned judges have gone very

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thoroughly into the whole question and have reviewed practically all the authorities on the point. In my opinion, the matter is now definitely settled and it must be held that a widow has a statutory right to claim partition. The present appeal must therefore be dismissed with costs.

FFORDE J.

FFORDE J.—I agree.

C. H. O.

*Appeal dismissed.***REVISIONAL CRIMINAL.***Before Mr. Justice Broadway and Mr. Justice Fforde.*

HARI SINGH, Petitioner

versus

THE CROWN, Respondent.

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March 23.

Criminal Revision No. 665 of 1925.

Criminal Law Amendment Act, XIV of 1908, section 17 (1), (2)—Difference between offences under the two sub-sections pointed out.

The accused addressed the Sikhs at *Singh Sabha Gujjar Khan* and appealed to them to organise themselves into *Jathas* and proceed to *Jaito* and *Bhai Pheru* in the name of the *Shiromani Gurdwara Parbandhak Committee* (an unlawful association).

Held, that the Sessions Judge was not justified in assuming that the accused was the Secretary of the *Akabi Dal* merely because he was in charge of the office of that Association; and that the conviction under section 17 (2) of the Criminal Law Amendment Act could not be sustained.

But held also, that on the facts found accused was guilty of an offence under section 17 (1), notwithstanding that there was no proof that the accused had been authorised by the *Shiromani Gurdwara Parbandhak Committee*, to act on their behalf or to assist in their operations. Sub-section (1) of section 17 makes it an offence not only to be a member of an unlawful association or to take part in its meetings but also to help it in any way, and it is immaterial whether the person