

**APPELLATE CIVIL.**

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*Before Mr. Justice Broadway and Mr. Justice Zafar Ali.*

**BHAGWAN SINGH AND OTHERS (PLAINTIFFS)**

Appellants,

*versus*

**NIHAL SINGH AND OTHERS (DEFENDANTS)**

Respondents.

Civil Appeal No. 2819 of 1922.

*Custom—Succession—Pagwand or Chundawand—Jagirdar Jats of village Garangan, tahsil Kharar, district Ambala.*

*Held*, that the plaintiffs had succeeded in proving that by custom in the family of *Jagirdar Jats* of village Garangan, the rule of succession is that of *Chundawand*.

*Second appeal from the decree of A. H. Parker, Esquire, District Judge, Ambala, dated the 26th July 1922, affirming that of Sardar Narindar Singh, Munsif, 1st class, Rupar, district Ambala, dated the 28th April 1922, dismissing the plaintiffs' suit.*

T. D. KHANNA and MAN SINGH, for Appellants.

KISHAN BAL, for Respondents.

JUDGMENT.

BROADWAY J.—This second appeal has arisen out of a suit instituted by Bhagwan Singh and others against Nihal Singh and others claiming a declaration that they and *Mussammat Chand Kaur*, defendant No. 5, were the joint owners of the land in suit, and that the other defendants could not claim partition of the same. The parties are all descendants of one Gurmukh Singh and are *Jagirdar Jats* of village Garangan in the Kharar tahsil of the district of Ambala. The land in suit belonged to one Jiwan Singh and on his death passed to *Mussammat Partap Kaur*, his widow. *Mussammat Partap Kaur* having died, the plaintiffs claimed to

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be entitled to succeed to this estate, whereas the defendants claimed to be entitled to a share thereof on the ground that they are also descended from Gurmukh Singh. Now Gurmukh Singh died in *Sambat* 1801, leaving him surviving two widows *Mussammatt* Bhagan and *Mussammatt* Daya Kaur. Each of these widows had three sons. In 1852 during the settlement the *wajib-ul-arz* was prepared of the village of Garangan, in which it was stated that the rule of succession among the *Jat* proprietors of this village was *pagwand*. Some of the descendants of Gurmukh Singh, by both his wives, attested this *wajib-ul-arz*.

In 1853 also during the settlement that was then in progress a pedigree-table or *shajra-nasb* relating to this particular family was prepared. The pedigree-table was attested by the then existing descendants of Gurmukh Singh by both his wives. There is a note attached to this pedigree-table to the effect that the family were *Jat Sikhs* of *Hit Got*, *riwaj taksim chundawand*. The property of Gurmukh Singh was accordingly divided into two shares, the descendants of one wife taking one share, and the descendants of the other wife taking the other share.

In 1854 *Mussammatt* Ramon the widow of Suba Singh died without issue. The descendants of Gurmukh Singh by his wife *Mussammatt* Bhagan claimed to be entitled to a share in the estate, succession to which opened out on the death of *Mussammatt* Ramon. The descendants of Gurmukh Singh by his wife *Mussammatt* Daya Kaur objected to this and filed an application before the Revenue Authorities definitely referring to the pedigree-table and the note thereon and stating that their family was governed in matters of succession by the rule of *chundawand*. Their claim was given effect to and the estate in question was made

over to them, the descendants of Gurmukh Singh by his wife *Mussammat* Bhagan obtaining no share whatever. In 1887 a *jamabandi* was prepared of a certain portion of the estate left by Gurmukh Singh which had not been divided up. That *jamabandi* shows that the property had been divided into two shares and that the descendants of each of the two wives held one share between them.

In December 1919 *Mussammat* Partap Kaur, the widow of Jiwan Singh, died. The descendants of Gurmukh Singh by *Mussammat* Daya Kaur preferred a claim to a share in the estate, succession to which had then opened out. (Incidentally it may be mentioned that the estate amounted to  $\frac{1}{3}$ rd of the half of Gurmukh Singh's estate, which was exactly the case when *Mussammat* Ramon died.) The plaintiffs who are Gurmukh Singh's descendants by *Mussammat* Bhagan, thereupon instituted this suit, claiming that their family was governed in matters of succession by the rule of *chundawand* and that therefore they alone were entitled to succeed to the estate now in question, and that the defendants who are descendants of Gurmukh Singh by *Mussammat* Daya Kaur had no right or title to the same.

The Courts below examined this question of custom and came to the conclusion that the plaintiffs had failed to prove that their family were governed by the rule of *chundawand* and dismissed their suit accordingly. At the same time the learned District Judge granted the plaintiffs a certificate under section 41 (3) of the Punjab Courts Act. Armed with this certificate the plaintiffs have come up to this Court in second appeal.

It has been contended that the documentary evidence on the record clearly establishes that this family

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is governed by the rule of *chundawand*. On the other hand it has been urged that having regard to the conditions on which the *jagir* was sanctioned and to the other evidence on the record the view taken by the Courts below is correct. The learned District Judge has been influenced by the fact that subsequent to the death of Gurmukh Singh none of his descendants appears to have more than one wife. There has therefore been no occasion for distribution according to any particular rule of custom. It appears to me however that the Courts below have not given due weight to the fact that on the one and only occasion when the question of succession arose, it was the defendants-respondents themselves or their ancestors who set up the existence of this custom as to *chundawand* and succeeded in obtaining the decision in their favour in the Courts that then existed. The learned District Judge also appears to have lost sight of the fact that in 1887 a *jamabandi* was prepared showing that property which was held jointly was held by all the descendants of Gurmukh Singh according to shares showing that the distribution on Gurmukh Singh's death had been according to the rule of *chundawand*. The learned District Judge has also expressed his doubt as to whether the note on the pedigree-table had been read out to the persons who signed it and had assented to it.

In this connection however it seems to me that the making of that note was due to the fact that this family was departing from the custom that was prevalent in this village. Some of the descendants of Gurmukh Singh by both his wives had, as already stated, attested the *wajib-ul-arz* of their village. This *wajib-ul-arz* deals with other matters as well as those of succession and no doubt this family would be governed by the *wajib-ul-arz* in these other matters. As

however they followed another rule as to succession it was considered advisable to note that fact when the pedigree-table of their particular family was drawn up.

Having regard to these facts, I am of opinion that the plaintiffs had succeeded in making out their case and that on the evidence on the record it should be held that the rule of succession in this family is that of *chundawand*. I would further point out that having regard to the fact that it was the defendants' ancestors who clearly set up this custom in 1854, it scarcely lies in their mouths to deny the existence of that custom now that it affects them adversely.

I would therefore accept this appeal and grant the plaintiffs a decree as prayed for in their plaint. The plaintiffs will also be entitled to their costs throughout.

ZAFAR ALI J.—I agree.

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*Appeal accepted.*

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