

## APPELLATE CIVIL.

Before Mr. Justice Zafar Ali and Mr. Justice Dalip Singh.

GANGA RAM (DEFENDANT) Appellant

versus

RAJA SINGH AND OTHERS

(PLAINTIFFS)

DIWAN SINGH AND OTHERS

(DEFENDANTS)

} Respondents.

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Jan. 11.

Civil Appeal No. 2397 of 1922.

*Custom—Alienation—Ancestral land—Mohyal Brahmans of village Karimpur, tahsil Pind Dadan Khan, district Jhelum—Evidence that land is ancestral.*

*Held*, that Mohyal Brahmans of village Karimpur, tahsil Pind Dadan Khan, district Jhelum, are governed by agricultural custom.

*Held also*, that the lower Courts were justified in inferring that the land in dispute is ancestral *qua* the plaintiffs from the facts, (1) that the Mohyal Brahmans were among the early settlers in the village, (2) that the name of the common ancestor was given in the pedigree-table at first regular settlement, and (3) that the branches of his descendants held almost equal lands in 1860 and the land sold formed part of the joint holding in which either branch had one-half share in that year.

*Second appeal from the decree of W. deM. Malan, Esquire, District Judge, Jhelum, dated the 5th June 1922, affirming that of Lala Prabhu Dayal, Senior Subordinate Judge, Jhelum, dated the 31st October 1921, granting the plaintiffs a declaratory decree.*

NANAK CHAND, for Appellants.

BADRI DAS, for Respondents.

The judgment of the Court was delivered by—

ZAFAR ALI J.—The two questions that have been argued before us in this second appeal are (1)

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whether the land in dispute was ancestral *qua* the plaintiffs, and (2) whether the alienor of the land, who is a Mohyal Brahman of village Karimpur in the Pind Dadan Khan tahsil of the Jhelum district was governed by agricultural custom which restricted his power of alienation. On both these questions the concurrent findings of the Courts below are in favour of the plaintiffs, and we are of opinion that there is sufficient evidence on the record in support of either finding.

As regards (1), the evidence is :

(a) that Mohyal Brahmans were among the early settlers in this village as stated in the history of its foundation;

(b) that the name of Hazari, the common ancestor of the plaintiff and the alienor, is given in the pedigree-table of the proprietors of the village prepared at the first regular settlement; and

(c) that the two branches of the descendants of Hazari held almost equal lands in 1860 and that the land sold formed part of the joint holding in which either branch had one-half share in that year.

We are of opinion that this three-fold evidence taken as a whole fully justified the inference that the land had descended from Hazari. The history of the foundation of the village militates against the theory that Hazari's two sons might have acquired the land jointly by purchase in equal shares.

On the other point the evidence is that Mohyal Brahmans are primarily agriculturists and cultivate land with their own hands. They have been gazetted under the Punjab Alienation of Land Act as an agricultural tribe in the Jhelum district.

They settled in the village along with *Mussalman* agriculturists of the Jalab tribe and their only occupation was to cultivate land and not to perform priestly functions. Not unlike several other agricultural tribes they possess a martial spirit and many of them serve in the army. In Rose's Glossary of Tribes, Vol. II, Mohyals are described as secular Brahmans. In the Gazetteer of the Jhelum District, Part A, published in 1904, the following occurs at page 120 :—

“ The Muhials do not number more than some eleven thousand souls in the Province, and they are rather widely distributed, though their principal habitat is the Jhelum District :

\* \* \* \* \* Though numerically unimportant, they are a stirring and enterprising race, and frequently rise to prominence in the service of Government, which they enter in large numbers : they make excellent soldiers, but it is chiefly in civil appointments that they have earned distinction. They are remarkable amongst the Hindu population in being *hereditary agriculturists*, seldom, if ever, practising trade or usury, and especially despising the life of indolence led by the ordinary Brahman, who lives by charity, and with whom the Muhial, though admitting a common origin, strongly objects to be classed. \* \* ”.

In view of all that has been stated above, we are of opinion that Mohyals are governed by agricultural custom.

These being our findings, we dismiss the appeal with costs.

A. N. C.

*Appeal dismissed.*

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