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cannot be prosecuted for the violation of a condition, which is so vague and indefinite that it is difficult to hold that the licensee was bound to obey the orders of the Magistrate and the local police as to the speed of the procession, specially when it is remembered that the time limit given in the license was not exceeded.

In my opinion the accused have been rightly acquitted by the learned Sessions Judge and I would dismiss this appeal.

FORDE J.—I agree.

N. F. E.

*Appeal dismissed.*

#### APPELLATE CIVIL.

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

MUSSAMMAT NUR BANO (PLAINTIFF) Appellant  
*versus*

GHULAM MUHAMMAD AND OTHERS (DEFENDANTS)  
 Respondents.

Civil Appeal No. 1936 of 1924.

*Custom—Partition—widow—right of—to claim partition of her husband's share—in undivided estate—Sukhera Rajputs, Fazilka Tahsil, district Ferozepore—Riwaj-i-am.*

*Held*, that under the Custom prevailing among *Sukhera Rajputs* of *Fazilka tahsil*, district *Ferozepore*, a widow is entitled to her full share of the produce, and if she is obstructed in obtaining this full share, she is entitled to partition of her share, so that she may be able to enjoy without disturbance the produce she is entitled to.

And, that the defendant-collaterals, on whom the *onus* rested, had failed to prove the contrary.

*Abdul Qadir v. Mst. Rabia* (1), referred to.

*Gopali v. Mst. Shamun* (1), *Ghansham v. Ramji Lal* (2), *Sant Singh v. Mst. Basant Kaur* (3), and *Amir Hamza v. Mst. Murad Bibi* (4), followed.

Rattigan's Customary Law, para. 15, not followed.

Currie's Customary Law of the Ferozepore District, (1914) Question 101, page 289, referred to.

Sir James Wilson's Code of Tribal Custom in the Sirsa District of 1882, Question 7, relied upon.

*First appeal from the decree of Chaudhri Niamat Khan, Senior Subordinate Judge, Ferozepore, dated the 28th April, 1924, dismissing the plaintiff's suit.*

GHULAM MOHY-UD-DIN and MUHAMMAD AKBAR KHAN, for Appellant.

BASHIR AHMAD and ZAFARRULLAH KHAN, for Respondents.

The judgment of the Court was delivered by :—

ADDISON J.—The parties are *Sukhera Rajputs* of village Abobar, in the Fazilka *Tahsil* of the Ferozepore District. The plaintiff, *Mussammatt Nur Bano*, is the widow of Allah Dad. She applied before a Revenue Officer for partition of the one-third share comprising the estate of her deceased husband, the respondents being a brother of her husband and the sons of another brother. She was referred to a civil Court under the provisions of the Land Revenue Act to establish her right and accordingly she brought the present suit for a declaration that she was entitled to partition according to law and custom on the ground that the defendants were constantly disputing with her as to her share of the produce and she found it difficult to get her proper share as she was a *purdah nashin* lady.

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(1) (1926) I. L. R. 7 Lah. 346.

(3) 1923 A. I. R. (Lah.) 81.

(2) (1923) I. L. R. 4 Lah. 344.

(4) (1925) I. L. R. 6 Lah. 196.

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The defendants pleaded adverse possession since the death of her husband some 27 years before suit. They further pleaded that they had partitioned the property in equal shares between themselves in 1907, and that the plaintiff was now estopped by reason of this act from bringing the suit. Lastly, they said that she was only entitled to maintenance, and that according to law and custom she was not entitled to have her deceased husband's share partitioned so as to obtain separate possession of it.

The trial Court held that the plaintiff had been getting maintenance since the death of her husband, although the actual amount of maintenance might not have been fixed, and that she was estopped from pleading that she was entitled to get her one-third share partitioned as she had admitted in an application in 1924 to a Revenue Officer that she had been receiving maintenance in the past and would continue to receive it in the future. It was further held proved that in the family of the parties widows only got maintenance, and were not entitled to obtain partition of the share which came to them upon their husband's death. The suit was accordingly dismissed and the plaintiff has appealed.

In *Abdul Qadir v. Mst. Rabia* (1) it was held by the Financial Commissioner, Punjab, that a widow has a *locus standi* under section 111 of the Punjab Revenue Act, to apply for partition before a Revenue Officer, but that agricultural custom generally did not recognise the existence of the widow's right to obtain partition, though the widow was in all cases entitled to separate possession of her share as distinguished from a definite partition, but such possession

could only be obtained and enforced by the decree of a civil Court. It was held in *Gopali v. Mst. Shamon* (1), that it is now definitely settled that the widow has a statutory right to claim partition of her deceased husband's joint and undivided estate. In *Ghansham v. Ramji Lal* (2), the same view was taken. In *Sant Singh v. Mst. Basant Kaur* (3), the same proposition was laid down, and it was further held that the *onus* was therefore clearly upon the party who disputed her right to obtain partition to prove a custom to the contrary. In *Amir Hamza v. Mst. Murad Bibi* (4), it was held that a widow had this statutory right and that the *onus* of proving a custom by which widows were restrained from claiming partition lay heavily on the person denying the right. Article 15 of Rattigan's Digest of Customary Law was not followed by the Division Bench who decided this case.

More witnesses have given oral evidence in favour of the defendants than have done so in favour of the plaintiff, but such oral evidence is easy to obtain, and in the present case it would have been all the more easy as it is to the interest of agnates to deny the right of widows to obtain partition. It was admitted before us that the widow is entitled to succeed to her husband's share. It was denied, however, by the learned counsel for the defendants that she was entitled to get partition of that share. The trial Court did not refer to the *riwaj-i-am* of the district or the *wajib-ul-arz* of the village and no copies of these documents were placed on the record. We have, however, been referred to Currie's Customary Law of the Ferózepore

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District (1914), Question 101, page 289. The question runs as follows :—

“ Can any one of the persons on whom the estate devolves, irrespectively of the sex of such person or of the relationship in which such person stood to the deceased, claim partition as a matter of right? State particularly whether the widow or sister or unmarried daughters can claim partition. Does the right of the widow to claim partition depend on her being childless or otherwise? ”

The answer was :—

“ Generally speaking, it is admitted that every one who inherits a share in the property can, if he likes, claim partition. There is, however, a strong prejudice against partition when claimed by a widow, especially when childless, as there is the danger of her attempting to transfer it to the hands of her own kith and kin to the prejudice of her husband's relatives, her reversioners. The following deny that a widow is entitled to partition. \* \* *Rajputs of Fazilka Tahsil.* ”

The parties are *Rajputs* of the *Fazilka Tahsil*, and it was contended that this entry in the Customary Law of the District prepared in the year 1914, placed the burden upon the widow to prove that she was entitled to partition. We do not think that the answer given is so clear that the presumption arises that the custom in question is against the widow. The answer is to the effect that the custom is there, though there is a strong prejudice against it in most cases and it is denied by certain castes. The decision of the Privy Council, therefore, in *Beg v. Allah Ditta* (1), that the entry in the *riwaj-i-am* in favour

of a custom was, a strong piece of evidence in support of such custom which it lay upon the persons denying it to rebut, does not apply. The previous customary law of this *Tahsil* is contained in Sir James Wilson's Code of Tribal Custom in the Sirsa District of the Punjab, prepared in 1882. At that time Fazilka *Tahsil* was in the Sirsa District. Later it was attached to the Ferozepore District and the other portion of the Sirsa District was attached to the Hissar District and the Sirsa District ceased to exist as such. The answer to the same question in the Sirsa Code of 1882 is given as Answer No. 7 at page 159, where it is said that "any one of the persons upon whom the estate devolves, irrespectively of the sex of such person, or of the relationship in which such person stood to the deceased, can claim partition as a matter of right. A widow, whether childless or not, can claim partition of her share, if any. (All *Hindu* tribes and *Rains*)."

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"The same, except that a widow should not, unless unjustly treated, claim separate possession of her share, but should be content with her share of the income of the common property. (*Mussalman Rajputs*, etc.)."

This means that in 1882 amongst *Rajputs* a widow had a right to claim partition, but that she should not, unless unjustly treated, do so. We have no doubt that this is the correct statement of the custom amongst *Rajputs* of the Fazilka *Tahsil*.

In the present case the witnesses for the defendants have stated that *Mussammat* Nur Bano at first used to get 40 maunds of grain a year, but that this was later raised to 65 maunds, and that it was raised finally to 80 maunds of grain a year. The defen-

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dants' case is that this was maintenance and did not represent her share of the produce. In fact, they denied that she was entitled to her share of the produce and asserted that she was only entitled to such maintenance as they might give, although in the Code of 1882, it is said that she is always entitled to her full share of the income of the common property. On the evidence it cannot be held that the grain given to *Mussammat Nur Bano* was grain given by way of maintenance. It was grain which came from the tenants and which might well have been given to her as representing her share of the produce. It was, however, not her full share of the produce as is clear from the defendants' own evidence that they were gradually raising the amount they gave to her, clearly because she was dissatisfied with what they were giving. It may have suited *Mussammat Nur Bano* to accept this arrangement, but no estoppel arises by reason of her doing so. She may not have been in a position to sue for her full share of the produce or have had money enough to go in for expensive litigation to get her share separated. Nor does any estoppel arise from the fact that in 1914, she applied to a Revenue Officer for partition and withdrew from these proceedings, because the defendants agreed to treat her more favourably. The instances given by the defendants' witnesses of other widows who have accepted maintenance do not take the case any further, for in the three cases referred to the matter was compromised. In *Ghulam Fatima's* case what happened was that she applied for partition, but withdrew from it when her husband's relatives agreed to give her certain fixed maintenance. Later she sued in the civil Courts for the recovery of this maintenance and was met by the plea that the reversioners were willing to give her

husband's share of the land by partition on the condition that she should pay her husband's debts.

We hold, therefore, that the defendants have not discharged the *onus* which was upon them to prove that the plaintiff was not entitled under custom to obtain partition. Under the custom prevailing amongst *Sukhera Rajputs* of *Fazilka Tahsil* the widow is entitled to her full share of the produce, and if she is obstructed in obtaining this full share, as she has been in the present case, she is entitled to partition of her share, so that she may be able to enjoy without disturbance the produce she is entitled to.

It might be added that there was no real partition in 1912. Up to that date parties were shown as owning jointly a one-third share each. The widow was of course not in physical possession. After that date, her husband's brother and descendants of his other brother took separate possession of a half share of the holding each and got themselves recorded as owning two-thirds of half, while the widow continued to be recorded as owning one-third in each of the two holdings thus created. The fact was specially noted that the widow's share still existed in both the lots and for this reason notice was not even given to her by the Revenue authorities. Her rights were thus not affected in any way by the arrangement come to then by the 2 male branches of the family.

For these reasons we accept this appeal and decree the plaintiff's suit with costs throughout.

A. N. C.

*Appeal accepted.*

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