APPELLATE CIVIL.

Before Mr. Justice Tek Chand and Mr. Justice Johnstone.

1928

May 28.

SOHAN SINGH AND OTHERS (PLAINTIFFS) Appellants

versus

KABLA SINGH AND OTHERS (DEFENDANTS) Respondents.

Civil Appeal No. 2616 of 1923.

Marriage—between Jat *male and* Mazhabi *female—Validity of—Anand Marriage Act, VII of 1908, section 2—Hindu Law.*

Held, that a marriage between a *Jat* male and a *Mazhabi* female is valid, whether performed in the *Anand* form or according to the ordinary Hindu ceremonies.

Held also, that under Hindu Law, as administered by the Courts in British India, marriages *inter se* between different sub-divisions of the *Sudra* caste are legal.

Held further, that for the purposes of the aforesaid rule *Mazhabis, Chamars* and the other so-called "untouchable" classes are treated as *Sudras.*

Chanda Singh v. *Mela* (1), *Sahib Ditta* v. *Bela* (2), *Ranjit Singh* v. *Isa* (3), *Mussammat As Kaur* v. *Sawan Singh* (4), *Mussammat Dalip Kaur* v. *Mst. Fatti* (5), *Sodhi Kartar Singh* v. *Sher Singh* (6), *Lachhman Singh* v. *Partap Singh* (7), *Inderun Valungypooly Taver* v. *Ramasawmy Pandia Talaver* (8), *Rammamani Ammal* v. *Kulanthai Natchear* (9), *Upoma Kuchain* v. *Bholaram Dhubi* (10), *Garish Chandra Roy* v. *Mahomed Shajed Chowdhry* (11), *Biswanath Das Ghose* v. *Shorashibala Dasi* (12), *Fakirgauda* v. *Gangi* (13), *Mahantava Irappa* v. *Gangava Mallappa* (14), *Har*

(1) 73 P. R. 1897.
(2) 50 P. R. 1900.
(3) 15 P. L. R. 1907.
(4) 79 P. R. 1910.
(5) 99 P. R. 1913, p. 379.
(6) 50 P. R. 1895.
(7) (1921) 3 Lah. L. J. 366.
(8) (1869) 13 Moo. I. A. 141.
(9) (1871) 14 Moo. I. A. 346.
(10) (1888) I. L. R. 15 Cal. 708.
(11) (1921) 25 Cal. W. N. 634.
(12) (1921) I. L. R. 48 Cal. 926.
(13) (1896) I. L. R. 22 Bom. 277.
(14) (1909) 11 Bom. L. R. 822.

1928

SOHAN SINGH
v.
KABLA SINGH.

Prasad v. *Kewal* (1), *Haria* v. *Kanhya* (2), *Rajani Nath Das* v. *Nitai Chandra Dey* (3), *Muthusami Mudaliar* v. *Musilamani* (4), Macauliffe's *Sikh Religion*, Volume II, pages 334-5 ; Hari Kishen Kaul's *Census Report* (Punjab) 1911, part 1, page 277 ; Mayne's *Hindu Law*, 9th Edition, pages 106 and 107 ; Bannerji's *Hindu Law of Marriage and Stridhana*, 2nd Edition, page 71 ; Ganpathi Iyer's *Hindu Law*, Volume I, page 454 and page 458, section 632 ; Golap Chandra Sarkar's *Hindu Law*, 6th Edition, page 146 ; Gour's *Hindu Code*, 2nd Edition, page 199, section 294 (4) and page 271, sections 483, 486, and Mulla's *Hindu Law*, 4th Edition, page 421, section 531, referred to.

Second appeal from the decree of Sardar *Sewaram Singh, District Judge, Sheikhupura, at Lyallpur, dated the 2nd August, 1923, affirming that of* Lala *Rala Ram, Senior Subordinate Judge, Sheikhupura, dated the 9th April 1923, dismissing the plaintiff's suit.*

MEHR CHAND MAHAJAN and ANANT RAM, for Appellants.

M. L. PURI and JAGAN NATH MALHOTRA, for Respondents.

JUDGMENT.

TEK CHAND J.—The land in dispute was owned by one Khushal Singh, a *Sikh Virk Jat* of *Mauza* Sawanke in the Khankah Dogran, *Tahsil* of the Sheikhupura District. Khushal Singh died in 1918 and on his death mutation was effected in the names of defendants Nos. 1 and 2, Kabula Singh and Tilok Singh, minors, who were described as his sons, under the guardianship of their mother *Mussammat* Isher Kaur. TEK CHAND J.

Three years later Khushal Singh's collaterals sued for a declaration that they were the owners in

(1) (1925) I.L.R. 47 All. 169. (3) (1921) I.L.R. 48 Cal. 643, 714 (F.B.).
(2) 72 P.R. 1908 p. 133. (4) (1910) I.L.R. 38 Mad. 342.

1928

SOHAN SINGH
v.
KABLA SINGH

TEK CHAND J.

possession of the land left by him and that defendants Nos. 1 and 2 " had nothing to do with it." It was alleged that *Mussammat* Isher Kaur, the mother of defendants Nos. 1 and 2, belonged to the *Mazhabi* caste and was not in fact, nor could she be in law, married to Khushal Singh, and that the defendants Nos. 1 and 2 being his illegitimate children were not entitled to succeed to his property.

The defendants admitted that *Mussammat* Isher Kaur was of the *Mazhabi* caste but pleaded that she was the lawfully wedded wife of Khushal Singh, that they were his legitimate sons and that Khushal Singh and the brotherhood had throughout recognised them as such.

Both the Courts below have concurrently found that Khushal Singh was married to *Mussammat* Isher Kaur in the *Anand* form and this finding has not been challenged before us. As to the validity of the marriage, the Subordinate Judge held on the evidence that marriages between *Jats* and *Mazhabis* were valid according to the custom prevailing in the locality, and, further, that they were not prohibited by Hindu Law to which resort must be had, if no well-established custom be held to have been established. On appeal the learned District Judge, *Sardar* Sewa Ram Singh, did not rest his decision on actual proof of custom, but following *Mussammat Dalip Kaur* v. *Mst. Fatti* (1), held the marriage to be legal under the ' Sikh law of marriage ', as well as under Hindu Law, according to which inter-marriages between *Jats* and *Mazhabis* are lawful, both being sub-divisions of the *Sudra* caste. On these findings the suit has been dismissed and the plaintiffs have preferred a second appeal to this Court.

(1) 99 P. R. 1913.

The only question which has been agitated before us relates to the validity of the marriage of Khushal Singh with *Mussammat* Isher Kaur. As stated above the marriage was performed according to the *Anand* ceremony, which is now one of the recognised forms of marriage among the *Sikhs*. According to the *Sikh* tradition *Anand* marriage was first introduced by the third *Guru*, and his immediate successor *Guru* Ram Das composed the four *Lawans* given in the *Suhi Rag* of the *Granth Sahib*, which are recited at the ceremony, and which will be found translated in Macauliffe's *Sikh Religion*, Vol. II, pages 334-5 and Hari Kishen Kaul's *Census Report* (Punjab) 1911, Part I, page 277. At one time doubts were entertained about the legality of marriages performed in this form but the matter was set at rest by the enactment of the Anand Marriage Act, VII of 1909, section 2 of which provides that "all marriages which may be or may have been duly solemnized according to the *Sikh* marriage ceremony called *Anand* shall be, and shall be deemed to have been, with effect from the date of the solemnization of each respectively, good and valid in law."

The learned counsel for the appellants, however, contends that the Anand Marriage Act is a permissive legislation, which merely authorises a change in the *ritual*, observed at the marriage ceremony and does not deal with the qualifications of the spouses, which continue to be regulated by the personal law of the parties or the rules of custom (if any) prevailing among them. His argument is that all that the Act did was to dispense with the necessity of performing the ceremonies prescribed in the *Shastras*, like circumambulations round the sacred fire and the chanting of Sanskrit texts, and to substitute therefor the *prakriman* round the *Granth Sahib* and recitation of

1928

SOHAN SINGH v. KABLA SINGH.

TEK CHAND J.

verses from it, and that the Act being silent about marriages between persons of different castes cannot be said to have legalised inter-caste marriages, even though performed according to the *Anand* ritual. As at present advised, I am not prepared to accept this argument as sound, but I do not wish to express a definite opinion, so far as inter-marriages between persons belonging to the higher castes are concerned. At the trial the enquiry was not directed towards that aspect of the matter nor is it necessary for the purposes of this case to give a decision on it. The parties to the marriage, the legality of which is under consideration, were a *Jat* male and a *Mazhabi* female and I have no doubt that marriages between them are valid, whether performed according to the *Anand* or the ordinary Hindu ceremonies.

It is well-known that *Jats*, especially *Sikh Jats*, hold very liberal views on questions relating to marriage and even at the height of the Brahmanical supremacy they did not show much inclination to be bound by the cast-iron rules laid down in the later Hindu *Smritis*, interdicting marriage outside the caste and prescribing elaborate ritual for the performance of the marriage ceremony. Among them re-marriage of widows has all along existed commonly, and *Chadar Andazi*, in which the ceremonial has been reduced to the very minimum, is one of the recognised forms of marriage. Indeed the *Riwaj-i-ams* of several districts (*e.g.*, Ludhiana (1884-85) page 46 and Kaithal, page 4) and the records of cases decided judicially are full of instances in which mere co-habitation as man and wife for a long period without any strict matrimonial ceremony, has been considered sufficient to validate the marriage. It will perhaps be no exaggeration to say that nowhere has the doctrine of *factum valet* been more

liberally applied to marriage than in the Punjab, and here, in no tribe so freely as among the *Jats* In this connection reference may, *inter alia*, be made to the following decisions in which marriages between *Jats* and females of other castes have been held to be valid:—*Chanda Singh* v. *Mela* (1), (*Jat* with a *Jhiwar*, *Nai or Kalal* woman); *Sahib Ditta* v. *Bela* (2), (*Jat* with a *Brahman* woman); *Ranjit Singh* v. *Isa* (3), (*Khatri Kuka Sikh* with a *Jat* woman); *Mussammat As Kaur* v. *Sawan Singh* (4), (*Jat* with a woman of the *Koli* (*Chamar*) caste) and *Mussammat Dalip Kaur* v. *Mussammat Fatti* (5), (*Jat Sikh* with an *Arain* woman converted to Sikhism).

Incidently it may be mentioned that the last two rulings are of particular importance as affording a complete answer to the argument of the appellants' counsel, that howsoever lax *Jats* might be in their notions of marriage, a union of a *Sikh Jat* with a woman of one of the so-called " impure " castes, even if performed in the *Anand* form, will not be valid. In the first of these cases the woman belonged to one of the *Chamar* tribes, and in the latter she was a born Muhammadan, who had been converted to Sikhism. Other cases bearing on the point are *Sodhi Kartar Singh* v. *Sher Singh* (6), and *Lachhman Singh* v. *Partap Singh* (7). It should also be noted that such marriages are not mere recent innovations but seem to have been recognised as valid long before the British occupation. See, for example, Macauliffe's *Sikh Religion*, Volume V, page 249, where an account is given of a number of Muhammadan women having been converted to Sikhism by Banda Sahib and

(1) 73 P. R. 1897.
(2) 50 P. R. 1900.
(3) 15 P. L. R. 1907.
(4) 79 P. R 1910.
(5) 99 P. R. 1913.
(6) 50 P. R. 1895.
(7) (1921) 3 Lah. L. J. 366.

1923

SOHAN SINGH v. KABLA SINGH.

TEK CHAND J.

married to *Sikh* soldiers (mostly *Jats*) by the ceremony of *Anand*.

I am also in complete agreement with the learned District Judge, that the marriage in question would be valid under Hindu Law, as administered by the British Indian Courts. As pointed out by Mayne in his *Treatise on Hindu Law* (ninth edition, page 106) the prohibition against marriages between persons of different castes is of comparatively modern origin. It was not in force in ancient times, as then caste was not regulated by birth, but according to some orientalists, was determined by the personal qualities of each individual, and according to others it was an "ethnological distinction" (*Bannerji's Hindu Law of Marriage and Stridhana*, 2nd Edition, page 71). Gradually the caste system in its present form grew up, but for centuries inter-caste marriages were allowed. Among the earlier *Sutra* writers the validity of such marriages was undisputed (Mayne, page 107) and later on the marriage of a male of a higher caste with a woman of a lower caste (*Anuloma*) but not the reverse (*Pratiloma*) was recognised (See Ganpathi Iyer's *Hindu Law*, Volume I, page 454, and Golap Chandra Sarkar's *Hindu Law*, 6th Edition, page 146, where numerous quotations are given from law-givers like *Yajnawalikya*, *Manu*, *Baudhayana*, *Gautama*, *Vasishta*, *Narada*, *Brihaspati* and the *Mitakshra*, permitting such marriages. It was only in the time of *Apastamba* that the rule was made more rigid and marriages outside the caste were prohibited. But even then the prohibition was applicable to the three regenerate or the *Dwija* castes and did not apply to the *Sudras* (Ganpathi Iyer's *Hindu Law*, page 458, Section 632), (Gour's *Hindu Code*, 2nd Edition, page 271, sections 483, 486); and (Mulla's *Hindu Law*, 4th Edition, page 421, section 531).

1928

SOHAN SINGH v. KABLA SINGH.

TEK CHAND J.

But whatever conflict might have existed among the mediæval Sanskrit writers on the subject, it may be taken as settled law, at any rate so far as British India is concerned, that marriages *inter se* between different sub-divisions of the *Sudra* caste are valid and must be recognised as such. The matter has been put beyond all controversy by the decisions of their Lordships of the Privy Council in two cases from Madras reported as *Inderun Valungypooly Taver* v. *Ramasawmy Pandia Talaver* (1), and *Rammanni Ammal* v. *Kulanthai Natchear* (2). The rule laid down in these rulings has since been applied to *Sudras* in other provinces as well. See *Upoma Kuchain* v. *Bholaram Dhubi* (3), *Garish Chandra Roy* v. *Mahomed Shajed Chowdry* (4), *Biswanath Das Ghose* v. *Shorashibla Dasi* (5), *Fakirgauda* v. *Gangi* (6), *Mahantava Irappa* v. *Gangava Mallappa* (7), *Har Prasad* v. *Kewal* (8), *Mussammat Dalip Kaur* v. *Mussammat Fatti* (9) ; *cf. Haria* v. *Kanhya* (10), and *Rajani Nath Das* v. *Nitai Chandra Dey* (11).

The learned counsel for the appellants, while conceding that the statement of the law enunciated above could not be challenged, contended as a last resort that the rule could not be extended to inter marriages of males of the 'pure' *Sudra* caste like the *Jat* with women of the "unclean" classes, "touch with whom was pollution." He was, however, unable to cite any authority in support of this contention. In Gour's *Hindu Code* at page 199, section 294 (4) the so-called 'untouchable' classes including *Chamars*, *Pariahs* and *Mehtars* are described

(1) (1869) 13 Moo. I. A. 141.
(2) (1871) 14 Moo. I. A. 346.
(3) (1888) I. L. R. 15 Cal. 708.
(4) (1921) 25 Cal. W. N. 634.
(5) (1921) I. L. R. 48 Cal. 926.
(6) (1896) I. L. R. 22 Bom. 277.
(7) (1909) 11 Bom. L. R. 822.
(8) (1925) I. L. R. 47 All. 169.
(9) 99 P. R. 1913, p. 379.
(10) 72 P. R. 1908, p. 133.
(11) (1921) P. L. R. 48 Cal. 643, 714 (F. B.).

1928

SOHAN SINGH
v.
KABLA SINGH

TEK CHAND J.

as *Sudras* and in the leading case of *Muthusami Mudaliar* v. *Musilamani* (1), it was held by Sankaran Nair J. (Abdur Rahim J. concurring) that for the purposes of the rule aforesaid, all Hindus other than those belonging to the three regenerate classes were to be treated as *Sudras*, marriages between different sub-sections of whom were valid. In that particular case one of the parties was a Christian who had before marriage been converted to Hinduism. She was classed as a *Sudra* and her marriage with a male of the *Kaikolar* caste was held to be legal under Hindu Law. As regards the *Mazhabis* it is interesting to note that " many of them have the same *gots* as those of the *Jats* * * * * and in their customs too, at weddings, etc., they conform to a great extent to those prevalent among the *Jats*," (*Rose's Glossary of Tribes and Castes in the Punjab*, Volume III, page 76).

I am of opinion, that the marriage between Khushal Singh and *Mussammat* Isher Kaur was valid and the defendants Nos. 1 and 2, being his legitimate sons, have lawfully succeeded to his property.

The appeal fails and is dismissed with costs.

JOHNSTONE J. JOHNSTONE J.—I concur.

A. N. C.

Appeal dismissed.

(1) (1910) I. L. R. 33 Mad. 342.