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JUG LAL

v.

JOT RAM.

SHADI LAL C.J.

Mr. Garbett. The entry in the *riwaj-i-am*, reinforced as it is by the general principles governing formal adoption, negatives the claim of the descendants of Ghisa; and no evidence has been produced to prove a custom at variance with that recorded in the *riwaj-i-am*.

I would accordingly affirm the decision of the learned District Judge dismissing the plaintiffs' suit and dismiss their appeal with costs.

ABDUL QADIR J.

ABDUL QADIR J.—I concur.

A. N. C.

*Appeal dismissed.***APPELLATE CIVIL.***Before Tek Chand and Tapp. JJ.*

SHIV CHARN DAS (PLAINTIFF) Appellant

versus

JAGIRI AND OTHERS (DEFENDANTS) Respondents.

Civil Appeal No. 2262 of 1924.

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April 9.

Custom—Succession—Eldest son—whether entitled to get larger share than his brothers as haq sardari—Lath Brahmans, village Takarla, Tahsil Una, District Hoshiarpur.

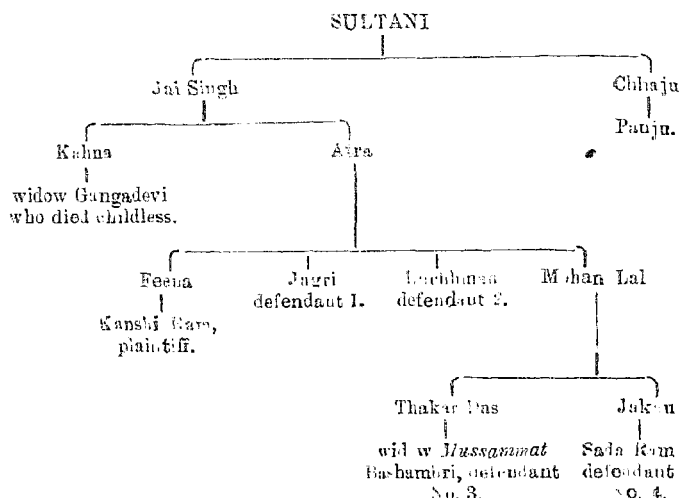
Held, that the plaintiff, on whom the *onus* lay, had failed to prove a family, tribal or local custom, by which among *Lath Brahmans* of village Takarla in the *Una Tahsil* of the Hoshiarpur District, the eldest son is entitled to a larger share in his father's estate as *haq sardari*.

First appeal from the decree of Lala Munshi Ram, Subordinate Judge, 2nd Class, Hoshiarpur, dated the 24th of June 1924, dismissing the plaintiff's suit.

FAKIR CHAND and CHANDRA GUPTA, for Appellant.

S. L. PURI, for JĀGAN NATH AGGARWAL, and NAND LAL, for Respondents.

TEK CHAND J.—The parties to this litigation are *Lath Brahmans* of *Mauza Takarla* in the *Una Tahsil* of the *Hoshiarpur District* and are related to each other as follows:—



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Atra died in 1882, leaving a fairly large landed estate which, on his death, was mutated in the names of his four sons in equal shares. The eldest son Feena died in 1918, leaving him surviving a son Kanshi Ram, plaintiff. Kanshi Ram's name was duly substituted in the revenue papers for that of his father as owner of one-fourth share.

In 1920-21 partition proceedings were started before the revenue authorities at the instance of the defendants, who claimed a one-fourth share in the estate for each of Atra's sons. Kanshi Ram, son of Feena, resisted this claim on the ground that by custom his father, being the eldest son, was entitled to a larger share as *haq sardari* than his three younger brothers. The revenue authorities disallowed this contention.

Thereupon the plaintiff brought an action in the civil Court for a declaration that he was owner of an

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extra share, as given in detail in paragraph 9 of the plaint. He based his claim principally upon the fact that on a partition between Jai Singh and Chhaju, the elder brother, Jai Singh, got 11/20 as against 9/20 allotted to Chhaju. The claim was denied by the defendants and has been disallowed by the Lower Court. The plaintiff appeals.

In the plaint it was not made clear whether the custom set up by the plaintiff was a special family custom or a tribal or local usage. Before us the appellant's learned counsel urged that in this family as well as in the tribe and locality the eldest son got an excessive share as *haq sardari*. It was, however, conceded that there were no instances proved in the family bearing on the point save and except that of Jai Singh and Chhaju. With regard to this so-called instance, however, the matter is put beyond all dispute by a reference to the proceedings of the litigation, which these two brothers had before certain arbitrators and the Assistant Commissioner in 1859. After a detailed enquiry it was found that Jai Singh had spent Rs. 4,071-5-0 "on account of revenue profits and losses" of the joint estate from *Sambat* 1901 to 1910 and that Chhaju had not contributed anything as his share of these expenses. Chhaju was accordingly held liable for one-half of this sum, but as he expressed his inability to pay it in cash, it was mutually agreed that he would take 9/20th share only in the estate and that the remaining 11/20th would go to Jai Singh. This arrangement was accepted by the Assistant Commissioner and the agreement was duly given effect to in the revenue papers. It will thus be seen that the excessive 2/20th share was not taken by Jai Singh as *haq sardari*. This instance

therefore cannot support the plaintiff's claim. There being no other instance in the family, the finding on this point must clearly be against the plaintiff.

It was next contended that among *Lath Brahman*s generally, as in all agricultural tribes in the *Una Tahsil*, a well recognized custom of *haq sardari* in favour of the eldest son exists. There have been three settlements in this district, but no entry of the *riwaj-i-am* has been produced in support of the alleged custom. The appellant's main reliance is on the oral testimony of the witnesses produced by him, but their evidence is of the vaguest possible kind. The first witness Nand Lal, who is a *Brahman* of Tusara, stated that he gave 15 *ghumaons* of land as *haq sardari* to his uncle Munna by a registered deed. But this deed has not been produced nor any explanation furnished for its non-production. In cross-examination the witness admitted that he did "not remember whether the 15 *ghumaons* was given as a gift or not." This evidence is obviously too vague to be of any value.

The second instance is that deposed to by Lachhman (P. W. 2) who is stated to have given 2 *ghumaons* of land to his uncle Dheru. It appears, however, from Exhibit P/8 which is a deed of compromise filed in a certain litigation between Lachhman and his uncle Dheru in 1892, that Lachhman had been adopted by one Gandu. Dheru, who apparently was a collateral of Gandu, contested this adoption. Eventually the parties came to terms, Dheru withdrawing his opposition to the adoption on receipt of 2 *ghumaons* of land and a promise that he will be allowed to succeed to Gandu's *lambardari*. This

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compromise cannot possibly be called an instance in support of the alleged custom.

The third witness Sawan is a *Bhati* by caste who alleged that he had got 4 *kanals* of land as *sardari* from his brothers. He stated that this fact was recorded in the papers but no copy of the relative mutation or other revenue entry bearing on the point has been produced. Moreover, the witness admitted that the custom of *Bhatis* was not the same as that of *Brahmans* or *Rajputs*.

The last witness Agya Ram (P. W. 5) deposed that a gift of a certain plot of land had been made by his grandfather Jowahar Singh in his life-time to his eldest son Moti Singh. Mr. Faqir Chand admitted that this gift could not be invoked as an instance in support of the alleged custom. Reliance was, however, placed on Exhibit P/11 which is an extract from the *kafiyat* of *Mauza* Pandoga prepared during the settlement of *Sambat* 1926. In this document it is recited that by order of the Commissioner a certain area of land was given to one of the members of a particular family of *Rajputs* as *haq sardari*, and it had been agreed that in future this area would descend on the eldest son as *haq sardari*. The circumstances under which the additional grant was made have not been proved and the document does not state that it was done in recognition of any well-recognised family, tribal or local custom. Nor is there anything on the record to show that in the particular family to which the entry relates, the eldest son had actually taken a larger share.

The footnote appended to Exhibit P. 12, which is the pedigree-table of a particular family of *Lath Brahmans* of *Mauza* Baheri and which records a certain

family arrangement whereby an additional 1/5th share was given to the elder brother Nanak, is of no assistance, as it appears from the entry itself that this was done because Nanak had been paid a large share of the family debts.

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It will thus be seen that there is not a single instance in the family, tribe or locality which can be said to have been proved in support of the extraordinary custom set up by the appellant. Moreover, it is significant that though Atra died as far back as 1882 and the mutation of his estate was effected in equal shares in the names of his four sons, Feena (who was the eldest, and who is stated by the witnesses for both parties to have been a literate and influential person being a *Zaildar*, *Lambardar* and *Sufedposh*) never questioned the correctness of this mutation though he lived till 1918. It seems inconceivable that, if any custom like the one alleged by the appellant had been in existence, Feena would have kept quiet for such a long time. In my opinion the plaintiff's claim is devoid of any substance and was rightly rejected by the learned trial Judge. The appeal fails and I would dismiss it with costs. No Pleader's fee will, however, be allowed to the respondents in this Court, as their counsel after consulting their client Jagiri, who was present in person, agreed to the request of the appellant's counsel to forego it.

TAPP J.—I agree.

TAPP J.

A. N. C.

Appeal dismissed.