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I would, therefore, accept the appeal, reverse the decree of the learned District Judge and restore that of the trial Court, with costs throughout.

AGHA HAIDAR J. AGHA HAIDAR J.—I agree.

N. F. E.

Appeal accepted.

APPELLATE CIVIL.

Before Addison J.

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Jan. 30.

BHAJNA (DEFENDANT) Appellant

versus

MST. BHEOLI (PLAINTIFF) Respondent.

Civil Appeal No. 464 of 1930.

Custom—Widow's estate—unchastity or re-marriage—whether causes forfeiture —Ahirs— Tahsil *Rewari—District Gurgaon*—Riwaj-i-am.

Held, that as according to the *Riwaj-i-am* of tha Gurgaon district, the unchasity or re-marriage of a widow among *Ahirs* of *Tahsil* Rewari, District Gurgaon, causes a forfeiture of her life estate, the *onus* of rebutting the correctness of this statement was upon the widow and that she had failed to do so.

Beg v. *Allah Ditta* (1), and Rattigan's Digest of Customary Law, 11th Edition, paragraph 31, referred to.

Labh Singh v. *Mst. Mango* (2), *Kahan Singh* v. *Gopal Singh* (3), and *Labha Ram* v. *Raman* (4), relied upon.

Mussammat Bhurian v. *Mst. Puran* (5), distinguished.

Second appeal from the decree of Rai Sahib Lala *Ghanshyam Das, District Judge, Gurgaon at Hissar, dated the 17th December 1929, reversing that of* Pandit *Rajindar Kishen Kaul, Subordinate Judge, 4th Class, Gurgaon, dated the 12th August 1929, and decreeing the plaintiff's suit.*

(1) 45 P. R. 1917 (P.C.).
(2) (1927) I. L. R. 8 Lah. 281.
(3) (1927) I. L. R. 8 Lah. 527.
(4) (1928) I. L. R. 9 Lah. 1.
(5) 105 P. R. 1885.

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NANWA MAL, for Appellant.

DEVI DAYAL, for Respondent.

ADDISON J.—The parties are *Ahirs* of *Tahsil* Rewari, District Gurgaon. One Man Singh died without issue and without a widow. His mother *Mussammat* Bheoli claimed to succeed to his estate and so did his minor cousin Bhajna. The Collector, relying on the *Riwaj-i-am*, mutated the land in favour of Bhajna. *Mussammat* Bheoli then sued Bhajna for possession. The defendant pleaded that she had re-married one Nahar by *karewa*, that she was, in any case, unchaste and that, according to custom, she thus had forfeited her right to succeed to the estate of her deceased son, whether it was established that she had re-married by *karewa* or whether it was established that she was only unchaste. The trial Court, holding that she was unchaste, gave effect to the *Riwaj-i-am* and dismissed the suit. On appeal the District Judge, also holding that she was unchaste, decreed the suit and the defendant has preferred this second appeal having obtained a certificate under section 41 (3) of the Punjab Courts Act.

The entry in the *Riwaj-i-am* is quite clear and is not challenged. It is to the effect that if a woman is unchaste or re-marries then she forfeits all right to her husband's estate. The District Judge admitted that this entry placed the burden upon the plaintiff to rebut it, but he stated that that burden was a light one as the rule expressed in the *Riwaj-i-am* was opposed to general custom and was adverse to the interests of females. Further, he considered that the burden upon the plaintiff was discharged by three decisions of certain Subordinate Judges in Gurgaon District to the

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effect that unchastity in a widow did not cause forfeiture of her life estate. He did this although he had to point out that the *Riwaj-i-am* was not followed in those three cases (two of which were decided in 1922 and one in 1913) on the ground that there were no instances in support of the rule in the *Riwaj-i-am*.

The general rule for the Punjab is given in paragraph 31 of Rattigan's Digest of Customary Law, 11th edition. It is to the effect that unchastity of a widow sometimes causes a forfeiture of her life interest but the *onus* is on those who assert the existence of such a custom. On the other hand, the *Riwaj-i-am* is clear that in the Gurgaon District unchastity does cause a forfeiture of the life estate. It was at one time held that a *Riwaj-i-am*, which was not supported by instances or which was opposed to general custom, should be considered unreliable but since the Privy Council judgment, *Beg* v. *Allah Ditta* (1), this can no longer be held to be good law. Their lordships were of opinion that an entry in the *Riwaj-i-am* was a strong piece of evidence in support of an alleged custom which it lay upon the other side to rebut, even assuming that the rule laid down in the entry was against the general custom in the Punjab. The Privy Council judgment was considered in *Labh Singh* v. *Mst. Mango* (2) where it was said that in view of the Judicial Committee's clear exposition of the law it could no longer be held to be the established rule that a statement in the *Riwaj-i-am* opposed to general custom and unsupported by instances was of no judicial value. Such an entry was *primâ facie* proof of the custom and placed the *onus* of rebuttal upon the party disputing the correctness of that entry. The

(1) 45 P. R. 1917 (P.C.). (2) (1927) I. L. R. 8 Lah. 281

same view was taken in *Kahan Singh* v *Gopal Singh* (1) and *Labha Ram* v. *Raman* (2). It follows that it was for the plaintiff in this case to rebut the entry in the *Riwaj-i-am* which is against her.

It was held in *Mussammat Bhurian* v. *Mst. Puran* (3) that amongst *Ahirs* of Delhi District no special custom had been proved whereby unchastity worked a forfeiture of the life estate of a widow. I have been carefully through that judgment and nothing is said in it about any entry in the *Wajib-ul-arz* or *Riwaj-i-am*. This case, therefore, cannot affect that decision in the present case.

It remains to be decided whether the widow has rebutted the presumption arising from the entry in the *Riwaj-i-am* of 1879. It is true that in three cases the Subordinate Courts have decided against this entry but they did so on the ground that the rule in the *Riwaj-i-am* was not supported by instances. Having regard to the decisions quoted above, I must hold that these decisions were bad in law and cannot, therefore, be taken to be instances rebutting the entry in the *Riwaj-i-am*. That being so, effect must be given to that entry.

For the reasons given I accept the appeal and, setting aside the order of the lower appellate Court, dismiss the suit with costs throughout.

It was also contended before me that the finding of fact of the Courts below that the plaintiff had not re-married by *karewa* should be set aside. There is no question that the widow is living with Nahar and has given birth to three children by him. The District Judge has said that only one witness from the village

(1) (1927) I. L. R. 8 Lah. 527. (2) (1928) I. L. R. 9 Lah. 1.
(3) 105 P. R. 1885.

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swore that he was present at the re-marriage and that this was strange. He also added that no *pandit* was there. Now, in a *karewa* marriage no *pandit* can be there and this remark of the District Judge is unintelligible. A *karewa* marriage is not a religious ceremony. Further, three witnesses from the village have given evidence that they were present at the re-marriage, and not one. One of these witnesses was Nahar's own brother. I have no doubt myself from the evidence which has been misread by the District Judge, that there was a *karewa* marriage but this question is not important, seeing that I have held above that unchastity causes a forfeiture in the life estate of the widow. This matter need not, therefore, be pursued further.

A. N. C.

Appeal accepted.