witnesses only had to be examined was allowed to drag on for eight long months. It is hoped that the case will now be proceeded with with all convenient speed.

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TEK CHAND J.

I wish to make it clear that this order should not be taken as an expression of my opinion on the merits of the complaint. That is a matter primarily for the Magistrate who will deal with the case and will form his own conclusion on the evidence.

N. F. E.

Revision accepted;
Case remanded.

APPELLATE CIVIL.

Before Tek Chand and Monroe JJ.

MUSSAMMAT LADO (PLAINTIFF) Appellant
versus
BANARSI DAS AND OTHERS (DEFENDANTS) Respondents.

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May 23.

Civil Appeal No. 3134 of 1927.

Custom—Succession—Jains *of Delhi—whether widow of a co-parcener succeeds to her husband's interest in the joint family property—Hindu Law*—Mitakshara.

Held, that *Jains* are governed by Hindu Law (*Mitakshara*) except in so far as a custom to the contrary may be established by cogent evidence.

And, that the plaintiff on whom the *onus* rested had failed to establish that among the *Jains* of Delhi a special custom exists under which the widow of a deceased co-parcener succeeds to her husband's interest in the joint family property.

Case law referred to.

First appeal from the decree of Sayyed *Abdul Haq, Subordinate Judge, 1st class, Delhi, dated the 15th August, 1927, dismissing the plaintiff's suit.*

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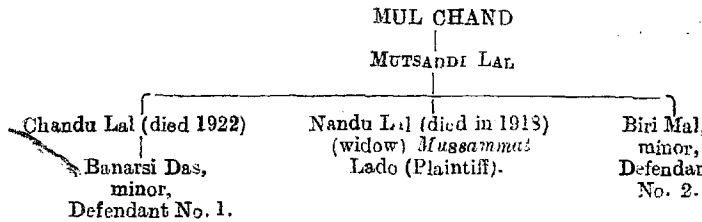
SHAMAIR CHAND and MOHAMMAD AMIN, for Appellant.

HAR GOPAL and BHAGWAN DAS, for Respondents.

TEK CHAND J.—The following pedigree table will be helpful in understanding the facts of this case :—



Mutsaddi Lal died some time in 1915 leaving valuable immoveable property and a family business known as Mul Chand-Mutsaddi Lal. After his death the business was conducted by his two adult sons Chandu Lal and Nandu Lal. Nandu Lal died childless in 1918 leaving a widow, *Mussammat* Lado who is the plaintiff in this case. After Nandu Lal's death Chandu Lal carried on the family business, in the course of which he raised a loan of two lacs of rupees from the Punjab National Bank respondent No. 3, on security of certain house property. Chandu Lal having died, the Bank sued on foot of the mortgage and obtained a decree against his brother, Biri Mal, and son, Banarsi Das. In execution of this decree the mortgaged properties were put to sale and were purchased by the Bank with the permission of the Executing Court.

Before the sale was confirmed, *Mussammat* Lado, widow of Nandu Lal, brought the present suit for a declaration that she was the owner in possession of one-third of the property which had been mortgaged by Chandu Lal with the Bank and that the mortgage, the decree passed thereon, and the execution sale were

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invalid, *qua* her one-third share in the property. She based her claim on the allegation that after the death of her husband Nandu Lal, an oral partition of the family properties was effected between Chandu Lal, Biri Mal and herself, by which one-third of the estate was given to her absolutely. She also pleaded, in the alternative, that even if the alleged oral partition was not proved and the property was held to be that of the joint family, a special custom existed among the *Jains* of Delhi by which the widow of a sonless deceased co-parcener succeeded to her husband's share in the family property. The learned Senior Subordinate Judge finding against the plaintiff on both these points has dismissed the suit.

On appeal by the plaintiff, Mr. Shamair Chand has re-agitated the point that an oral partition was effected a few days after the death of Nandu Lal. After hearing him and going through the record I can see no reason to differ from the conclusion of the learned trial Judge. The evidence bearing on the point consists of vague statements of a few witnesses who depose that shortly after the death of Nandu Lal, when the relations and the friends of the family had come for condolence, Manohar Lal, father of *Mussammat* Lado, enquired from Chandu Lal if he had made any "arrangement for the plaintiff." On this Chandu Lal replied that she was the owner of her husband's share in the property and he would give her one-third of the income. The statements of Manohar Lal and the other witnesses on the point are vague and self-contradictory, and in the circumstances it is impossible to place any reliance on them. Admittedly the property was worth several lacs of rupees. If the intention was to give her a third share in it, it is incredible that no writing should have been taken at the time. It is admitted that the title deeds of the pro-

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perties allotted to her were not made over to her, nor rent-deeds executed in her favour. Nor is it suggested that after the alleged partition the plaintiff collected the rents and profits of any portion of the property, or received a fixed share of the family income, or that she exercised any other acts of ownership. It is also significant that she has not gone into the witness-box to prove the alleged partition. The evidence on the point is unsatisfactory and inconclusive, and is insufficient to support the plaintiff's contention. I must, therefore, uphold the finding of the trial Court that no partition of the family properties ever took place.

The family being joint and the property in question being the property of the family, the next question for determination is, to whom the interest of Nandu Lal passed on his death. It is conceded that according to Hindu Law of the *Mitakshara* School the widow of a deceased co-parcener does not succeed to her husband's interest in the property which passes by survivorship to the other male co-parcener. In the Lower Court an attempt seems to have been made to argue that *Jains* as a community are not governed by Hindu Law. But before us Mr. Shamair Chand, the learned counsel for the appellant, very fairly and properly conceded that it has been settled in a long series of cases, decided by the Privy Council and the various High Courts in India, that *Jains* are governed by Hindu Law, except in so far as a custom to the contrary may be established by cogent evidence. *Chotay Lal* v. *Chunnu Lal* (1), *Sheo Singh Rai* v. *Mst. Dakho* (2), *Rup Chand* v. *Jambu* (3), *Bhagwan Koer* v. *Bose* (4), *Dhanraj-Johar Mal* v. *Soni Bai* (5), *Gettappa* v.

(1) (1878) I. L. R. 4 Cal. 744 (P. C.).
(2) (1878) I. L. R. 1, All. 688.
(3) (1910) I. L. R. 32 All. 247, 252 (P.C.).
(4) (1904) I. L. R. 31 Cal. 11, 30 (P. C.).
(5) 1925 A. I. R. (P. C.) 118.

Eramana (1), *Bhikabai* v. *Mani Lal* (2), *Sohna Shah* v. *Dipa Shah* (3), *Chhajju Mal* v. *Kundan Lal* (4), *Tek Chand* v. *Soman Singh* (5) and Civil Appeal No. 2750 of 1926. He contended, however, that on the present record it had been proved that among the *Jains* of Delhi a special custom existed under which the widow of a deceased co-parcener succeeded to her husband's interest in the co-parcenary property in the same way as a son of the deceased co-parcener would have succeeded. The Lower Court has found against the existence of the alleged custom and after hearing counsel and going through the record, I am of opinion, that no other conclusion is possible. It is in evidence that in the town of Delhi there reside more than one thousand *Jain* families. Succession of sonless widows must, therefore, be a matter of frequent occurrence and yet not a single decided case or well-ascertained instance is forthcoming in which the alleged custom was followed. Some of the witnesses produced by the plaintiff no doubt make bald statements that such a custom exists, but none of them was able to prove any instance in which a widow was allowed to succeed to her husband's interest in the joint family property as a co-parcener. P. W. 1 Mangat Rai referred to the case of his sister *Mussammat* Kirpi who, according to him, succeeded to her husband's co-parcenary interest, but this is disproved by the document, Exhibit P. W. 9/1, which shows that her husband was separate from his brothers, and the property was held by *Mussammat* Kirpi "without the partnership of any one else." This instance, therefore, is not relevant. P. W. 4 Mithan Lal referred to the case of Sheo Singh

(1) (1926) I. L. R. 50 Mad. 228.
(2) (1930) I. L. R. 54 Bom. 780.
(3) 15 P. R. 1902.
(4) (1922) 70 I. C. 838.
(5) 74 P. R. 1916.

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Rai and Ishk Lal, and deposed that on Ishk Lal dying sonless his widow succeeded to his interest in the joint family property on his death. The facts of this case are reported at great length in *Sheo Singh* v. *Dakho* (1), from which it is clear that the family was not joint, and that Ishk Lal, the husband of *Mussammat* Dakho, was separate from Sheo Singh Rai. As to the other so-called instances, referred to by the other witnesses, it was brought out in cross-examination that either the deceased husbands of the widows concerned had separated from other members in their lifetime, or there was no other co-parcener living at the time. I must therefore hold, in agreement with the trial Court, that there is no evidence whatsoever on the record to support the alleged custom.

As a last resort Mr. Shamair Chand relied on a book called the *Jain Law* by Mr. Champat Rai, Barrister-at-Law, Hardoi (U. P.) at p. 80 of which it is stated that "on the death of a person without a son, his widow takes his property as an absolute owner, whether it be divided or undivided." In support of this statement the learned author has referred to certain sacred books of the *Jains* named *Bhaddar Bahu* and *Arhan Niti*. Counsel for the respondent has attacked the authenticity of these books, but for the purposes of the present case, it is not necessary to go into that matter. It will be sufficient to say that the verses in those books on which Mr. Champat Rai relies for the proposition relate to a state of affairs which might have existed in the *Jain* community at some time in hoary antiquity, but which has been obsolete for centuries. Mr. Justice Patkar of the Bombay High Court has recently discussed at length

(1) (1878) I. L. R. 1 All. 688 (P. C.).

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the authority of these books in *Bhikha Bai* v. *Muni Lal* (1), and after an elaborate discussion he has reached the conclusion that they contain statements of the law which are mutually inconsistent and self-contradictory and which, if they were ever in force, have long since become obsolete and are not binding on the Courts of law. As an instance, it may be mentioned that according to Mr. Champat Rai the "real" *Jain* Law is, that after the death of a male proprietor his widow succeeds to his property as absolute owner *even in the presence of sons*. Mr. Shamair Chand has admitted that such a rule of succession does not exist among the *Jains* anywhere in India. The second point, also, is without force and must be decided against the appellant.

The appeal fails and I would dismiss it with costs.

MONROE J.—I agree.

MONROE J.

A. N. C.

Appeal dismissed.

(1) (1930) I. L. R. 54 Bom. 780, 780.