APPELLATE CIVIL.

Before Abdul Rashid J.

MUSSAMMAT CHHAJJI (DEFENDANT) Appellant

versus

BHAGAT RAM (PLAINTIFF)
MST. RAJJI (DEFENDANT) } Respondents.

1934

Feb. 8.

Civil Appeal No. 187 of 1923

Custom — Succession — Ancestral property — Dube Brahmans *of* Mauza *Ala Chaur* — tehsil *Nawanshahr* — *district Jullundur* — *Collaterals in third degree or daughters* — Brahmans—*whether governed by Hindu Law*—Onus probandi —Riwaj-i-am—*Manuals of Customary Law—evidential value of.*

Held, that although in the case of *Brahmans* there is the initial presumption that they are governed by their personal law, the entry in the *Riwaj-i-am* of the Jullundur district to the effect that the *Brahmans* of Nawanshahr *tehsil* have adopted the agricultural custom in matters of succession throws the *onus* of rebuttal upon the party disputing the correctness of that entry.

Beg v. *Allah Ditta* (1), followed.

Riwaj-i-am, answer to question 45, referred to.

And, in the absence of such rebuttal it must be held that the *Brahmans* in the present case are governed by the custom set out in the *Riwaj-i-am*, and that the collaterals in the third degree succeed in preference to the daughters.

Held also, that Manuals of Customary Law, in accordance with the *Riwaj-i-am* issued by authority for each district, stand on much the same footing as the *Riwaj-i-am* itself as evidence of custom.

And, that a tribe which is consulted at the time of the preparation of the *Riwaj-i-am* must be taken to be governed by Customary Law.

Ata Muhammad v. *Fateh Muhammad* (2), and *Thakardas* v. *Gopal Das* (3), relied on.

(1) 45 P. R. 1917 (P. C.). (2) 1930 A. I. R. (Lah.) 900.
(3) 1932 A. I. R. (Lah.) 326.

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Second appeal from the decree of Mr. E. R. Anderson, District Judge, Jullundur, dated 1st December, 1927, reversing that of Sheikh *Abdul Haq, Additional Subordinate Judge, 4th Class, Nawanshahr, dated 7th March, 1927, and granting the plaintiff a decree to the effect that the alienation will not affect his reversionary rights on the death of* Mst. *Rajji.*

MEHR CHAND SUD, for BADRI DAS, for Appellant.

MEHR CHAND MAHAJAN and J. R. AGNIHOTRI, for Plaintiff-respondent.

ABDUL RASHID J.

ABDUL RASHID J.—The parties to this litigation are *Brahmans* of *Mauza* Ala Chaur, tahsil Nawanshahr, district Jullundur. One *Mussammat* Rajji succeeded to the estate of her husband Badhawa and, on the 11th February, 1924, made a gift of the entire estate to her daughter *Mussammat* Chhajji, defendant-appellant. The plaintiff, Bhagat Ram, who is a collateral of the last male holder in the third degree, instituted a suit for a declaration to the effect that the gift made by the widow in favour of her daughter shall not affect his reversionary rights after the death of the widow. The defendants pleaded, *inter alia*, that the parties were governed by their personal law, that the plaintiff had no right to sue, and that the gift being in favour of the nearest heir could not be questioned by any one.

The trial Court came to the conclusion that the parties were governed by Hindu Law and dismissed the suit of the plaintiff. The plaintiff appealed to the learned District Judge who held that the parties were governed by custom, and that in matters of succession

collaterals were preferred to daughters. He, therefore, grantd the plaintiff the decree prayed for.

The defendant *Mussammat* Chhajji has preferred an appeal to this Court and the sole question for determination in this appeal is, whether *Dube Brahmans* of *Mauza* Ala Chaur are governed by custom or by their personal law. The *kaifiyat abadi deh*, which forms a part of the settlement record of 1851, shows that the land comprised in this village was given to Chora, *Jat*, Alla, *Saini*, and Nard, *Brahman*, about 500 or 600 years ago. The village is divided into three *zails*, one of these *zails* being called *zail* Anokha after an ancestor of the *Brahmans* now occupying the land in that *zail*. The revenue of the whole of the village amounts to Rs. 1,371 out of which the proprietors of *zail* Anokha pay Rs. 227. Out of an area about 500 *kanals* comprising *zail* Anokha about 30 *kanals* are owned by non-*Brahmans* while the remaining area is in the proprietary possession of the *Brahmans*. In these circumstances it must be held that, though the *Brahmans* do not form a compact village community, they at least form a compact community in a definite portion of the village, namely, *zail* Anokha.

The *Brahmans* being a priestly class we undoubtedly start with the initial presumption that they are governed by their personal law and not by the agricultural custom of the province. This initial presumption, however, is rebutted by the entries in the Customary Law of the Jullundur district prepared at the revised settlement of 1913-17. The following quotation from the Customary Law shows that the *Brahmans* in Nawanshahr *tahsil* have adopted the agricultural custom in matters of succession :—

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"*Question 45*—Under what circumstances are daughters entitled to inherit? Are they excluded by the sons or by the widow, or by the near male kindred of the deceased; if they are excluded by the near male kindred, is there any fixed limit of relationship within which such near kindred must stand towards the deceased in order to exclude his daughters? If so, how is the limit ascertained? If it depends on descent from a common ancestor, state within how many generations relatively to the deceased such common ancestor must come?

Answer—If sons or widows exist daughters have no right to inherit. This is also the case if collaterals up to 5th degree exist in the three *tahsils* of Jullundur, Nakodar and Phillaur, and up to 7th degree in the Nawanshahr *tahsil*. In the last *tahsil Hindu Rajputs*, miscellaneous *Hindus*, *Khatris* and *Brahmans* follow the general custom of the first three *tahsils*."

In view of these entries in the *riwaj-i-am* the initial *onus* which lay heavily on the plaintiff must be taken to have shifted on to the defendant. It was held in *Sardar Shah* v. *Mst. Sardar Begam* (1) that an entry in a *riwaj-i-am* of a special custom without instances is *primâ facie* proof of that custom, and places the *onus* of rebuttal on the party disputing the correctness of the entry. This ruling was based on the Privy Council ruling reported as *Beg* v. *Allah Ditta* (2). It was further laid down in *Ata Muhammad* v. *Fateh Muhammad* (3) that "Manuals of Customary Law in accordance with the *riwaj-i-*

(1) (1929) I. L. R. 10 Lah. 531. (2) 45 P. R. 1917 (P. C.).
(3) 1930 A. I R. (Lah.) 900.

am issued by authority for each district stand on much the same footing as the *riwaj-i-am* itself as evidence of custom. Where therefore a reference is made to the Manual of Customary Law for the purpose of proving a custom the mere absence of a copy of the *riwaj-i-am* on the record is immaterial."

The plaintiff also produced a judgment of the District Judge, Jullundur, dated the 17th June, 1921, which relates to village Ala Chaur to which the parties belong, and lays down that the *Brahmans* in this village follow custom in matters of succession and alienation. This judgment provides a valuable instance of the fact that the parties to the present litigation are governed by the agricultural custom of the province.

It was laid down in *Thakardas* v. *Gopal Das* (1) that a tribe which is consulted at the time of the preparation of the *riwaj-i-am* must be taken to be governed by the Customary Law. In *Jaswant Singh* v. *Bhanna* (2) it was laid down that "one of the most important tests to be applied in determining whether a particular caste is or is not governed by agricultural custom is to ascertain whether or not they form a compact village community, or at least, a compact section of the village community. If they do so, the presumption is strongly in favour of the applicability of custom. And once this presumption has been established, the *onus* is shifted on to the party which relies on personal law."

In view of the evidence summarized above and the different rulings to which reference has been made,

(1) 1932 A. I. R. (Lah.) 326. (2) 1933 A. I. R. (Lah.) 966.

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it was incumbent on the defendants to prove that *Brahmans* of *Mauza* Ala Chaur are governed by their personal law. The only evidence on which reliance is placed on behalf of the defendants consists of the statement of four witnesses who depose that the *Brahmans* wear a sacred thread, worship the *devi* and follow the *Vedic* rites in marriage ceremonies. This evidence only proves that the *Brahmans* in certain matters still follow the rites prescribed by Hindu Law. It does not, however, show that in matters of succession or alienation the *Brahmans* are governed by their personal law.

Another point urged by the learned counsel for the appellant was that there had been forty-four alienations in the village and that none of these alienations had so far been challenged. This fact, however, is not of much assistance to the appellant as it is not known whether near collaterals existed who could challenge these alienations. Moreover, most of the alienations appear to be mortgages, and several of them are of recent date and can still be challenged. Vague evidence of this type cannot rebut the presumption which, in view of the entries in the *riwaj-i-am*, must be made in favour of the plaintiff.

For the foregoing reasons I am of the opinion that it has been established that *Brahmans* of Ala Chaur, Tahsil Nawanshahr, are governed by agricultural custom in matters of alienation and succession.

It was contended on behalf of the appellant that the entries in the *riwaj-i-am* must be taken to refer to ancestral property and that in the present case it had not been proved that the property in dispute was

ancestral. The defendants, however, in their written statement never alleged that the property in dispute was the self-acquired property of the last male holder Badhawa. It was urged on behalf of the appellant that the case should be remanded for the purpose of determining whether the property was ancestral or self-acquired. I am, however, of the opinion that the appellant cannot be allowed to raise this question of fact for the first time in second appeal.

For the reasons given above I affirm the decree of the learned District Judge, and dismiss the appeal with costs.

A. N. C.

Appeal dismissed.