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for the purposes of section 9 (1) (b) or (c) of the Insolvency Act.

We accordingly accept the appeal, set aside the decision of the Insolvency Judge dismissing the petition as barred by time, and remand the proceedings to him for disposal in accordance with law. As there have been two conflicting decisions of Single Benches of this Court, we leave the parties to bear their own costs up to date.

Appeal accepted.

APPELLATE CIVIL.

Before Young C. J. and Din Mohammad J.

MAKHAN SINGH AND OTHERS (PLAINTIFFS)

Appellants

versus

BAKSHSHISH SINGH AND OTHERS (DEFENDANTS)

Respondents.

Civil Appeal No. 3094 of 1927.

Custom — Succession — Pagwand or Chundawand — Presumption in favour of Pagwand — when rebutted.

Plaintiffs sued for a declaration that the custom in their family was that of *Chundawand*, and in accordance with that custom, they claimed possession of certain lands to the exclusion of the defendants, who were their relatives of the half blood. Evidence in the case proved that J. S., the common ancestor of the parties had three wives and, on his death, three groups were made of his descendants according to the three wives. Among the descendants of these three groups, *Chundawand* was apparently established in the one to which the plaintiffs belong, and *Pagwand* in the other, while in the third there was no conclusive evidence one way or the other.

Held, that in this case, the existence of three different families by the three wives of the common ancestor having been recognized, and it having been established on the only

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instance arising in the group to which plaintiffs belong that that group had adopted the *Chundawand* rule, it must be concluded that the *Chundawand* rule has been adopted in the family of the plaintiffs from the death of the common ancestor.

Held also, that when the rule of *Chundawand* is followed, the Court may presume, until the contrary is proved, that the whole blood excludes the half blood.

Ghulam Mohammad v. Mohammad Bakhsh (1), and *Pir Bakhsh v. Karim Bakhsh* (2), relied upon.

Sohel Singh v. Uttam Singh (3), referred to.

First Appeal from the decree of Lala Diwan Chand, Subordinate Judge, 1st Class, Lahore, dated 26th October, 1927, dismissing the plaintiffs' suit.

AMAR NATH MONGA and MOHAMMAD AMIN, for Appellants.

DEVI DIAL, for Respondents.

The judgment of the Court was delivered by—

YOUNG C. J.—This is a first appeal from the decision of the learned Senior Subordinate Judge of Lahore. The plaintiffs brought a suit for a declaration that the custom in their family was that of *Chundawand* and, in accordance with the custom, they claimed possession of certain land to the exclusion of the defendants who were their relations of the half-blood. The trial Court came to the conclusion that the plaintiffs had failed to discharge the onus which lay upon them to show that the rule of *Chundawand* prevailed in their family.

In this Court we have examined the evidence. The plaintiff relied mainly upon the evidence of a *Qanungo*. If the evidence of the *Qanungo* is taken in conjunction with the pedigree printed at page 37 of

(1) 4 P. R. 1891 (F. B.).

(2) 22 P. R. 1895.

(3) 48 P. R. 1891.

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the paper book, it will be seen that there was a common ancestor Jodh Singh. He had three wives, *Mussammat Jaunsan*, *Mussammat Desan* and *Mussammat Jian*. On his death, according to the *Qanungo's* evidence, the family was divided into three groups. *Mussammat Jaunsan* had two sons who were given five equal shares, *Mussammat Desan* had three sons who were given five equal shares and *Mussammat Jian* had two sons who were given two equal shares. In the settlement of 1868, the following remarks appear under the descendants of Jodh Singh:—

“ Our ancestor Jodh Singh had three wives. In his lifetime or after his death, the measure of ownership was not affected. At the time of the last settlement (torn). The rule is that of *Chundawand*. The rule of *Pagwand* was not upheld.”

Ishar Singh, who is a descendant of *Mussammat Desan*, died. There was mutation and the *Qanungo* establishes that, on his death, the land came into the ownership and possession of the descendants of Megh Singh and Tek Singh, who were the sons of *Mussammat Desan*; and the *Qanungo* then goes on to say, which is obvious, that hence it seems that the rule of *Chundawand* prevails in this branch. When Khazan Singh, the son of *Mussammat Jian* died, his property devolved neither according to the custom of *Pagwand* nor according to the custom of *Chundawand*. When Diya Singh died (he belonged to the branch of *Mussammat Jaunsan*) his property devolved according to the custom of *Pagwand*. So we have in the three different branches of this family, *Chundawand* apparently established in the family of *Mussammat Desan*, *Pagwand* established in the family of *Mussammat Jaunsan* and, in the family of *Mussammat*

Jian there is no conclusive evidence either one way or the other. At page 52 of the paper book there is further evidence. The title of the document is *fard intikhab*. Therein there is a record of the entry of the settlement record of 1856. The names of the proprietors are given. Jawahar Singh and others are said to be the descendants of *Mussammat Jaunsan*. Sher Singh and others are descendants of *Mussammat Desan*. Khazan Singh and others are descendants of *Mussammat Jian*. This, combined with the evidence of the *Qanungo*, shows conclusively that the family on the death of the common ancestor, was divided into groups, and further it has been conclusively established, on the only instance that we have had in the family of *Mussammat Desan*, that that particular group had adopted the *Chundawand* custom.

The leading case on this is the Full Bench ruling reported as *Ghulam Mohammad v. Mohammad Bakhsh* (1). It lays down that when the rule of *Chundawand* is followed, the Court may presume, until the contrary is proved, that the whole blood excludes the half-blood. Following this ruling there is another authority in *Pir Bakhsh v. Karim Bakhsh* (2), a Division Bench decision—which laid down that, where the father himself distributed his estate *per stirpes* notwithstanding that he did not allot exactly equal shares to the descendants of each wife, the formation of groups by such descendants was a far more essential feature of such division than equality of the shares given to each group. In *Sohel Singh v. Uttam Singh* (3) this observation was made:—

“ This division was neither strictly in accordance with *Pagwand* rule, or *Chundawand*; but it was a

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(1) 4 P. R. 1891 (F. B.).

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division in which the existence of two families, one by each wife, was recognised and we think we are therefore acting in accordance with the spirit of the Full Bench ruling *Ghulam Mohammad v. Mohammad Baksh* (1), by holding that the presumption in the present case is in favour of the defendants, the relations of the whole blood.”

The onus is on the plaintiffs to prove that they allege, namely, that the *Chundawand* custom prevails. Considering all the evidence that we have set out above we have come to the conclusion that the plaintiffs have in this case proved that the *Chundawand* rule has been adopted in their family from the death of Jodh Singh, the common ancestor. On this ground, therefore, we set aside the decision of the lower Court and decree the plaintiffs' suit with costs throughout.

P. S.

Appeal accepted.

(1) 4 P. R. 1891 (F. B.).