

APPELLATE CIVIL.

Before Hilton and Din Mohammad JJ.

MUSSAMMAT MEL KAUR (DEFENDANT)

Appellant

versus

DAULAT RAM (PLAINTIFF) Respondent.

Civil Appeal No. 1726 of 1928.

Custom—Succession—Khatris—of village Mehlanwala—Tahsil Ajnala — District Amritsar — whether governed by agricultural custom — Widow of predeceased son — whether succeeds equally with her deceased husband's brothers.

Held, that the Khatris of village Mehlanwala, in the Ajnala Tahsil of the Amritsar District, being agriculturists, are governed by custom by which the widow of a predeceased son succeeds equally with her husband's brothers.

Harnam Singh v. Devi Chand (1) and Atar Singh v. Prem Singh (2), distinguished. Riwaj-i-am, referred to.

Second Appeal from the decree of Lala Devi Dayal Dhawan, Additional District Judge, Amritsar, dated 21st April, 1928, reversing that of Mr. I. M. Lall, Subordinate Judge, 2nd Class, Amritsar, dated 9th December, 1927, and decreeing the plaintiff's suit.

FAKIR CHAND, FAKIR CHAND MITAL and A. N. CHONA, for Appellant.

SHAMBU LAL PURI and J. N. AGGARWAL, for Respondent.

HILTON J.

HILTON J.—This is a second appeal on a certificate in a matter of custom. Gokal Chand died leaving a son, Daulat Ram, the plaintiff. The defendant *Mussammat Mel Kaur* is the widow or another son who predeceased Gokal Chand. She has possession of 193 *kanals* 18 *marlas* of land, which is a half share

(1) 107 P. R. 1901.

(2) 12 P. R. 1906.

of the land left by Gokal Chand. Daulat Ram's suit for possession of the land was dismissed in the original Court but decreed by the District Judge on appeal and the appeal here is therefore by the defendant. The parties are *Khatris* of Mehlanwala village in the Ajnala *Tahsil* of the District of Amritsar.

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In the *Riwaj-i-am* of the Amritsar district of 1912 all the tribes who follow agricultural custom, including those *Khatris* who do so, are recorded as observing a custom by which the widow of a predeceased son succeeds equally with her husband's brothers and this may be taken to be the custom prevailing among such tribes. The question, however, is whether the family of the parties follows this agricultural custom or their personal law. The initial *onus* is on the defendant to prove that they do not follow their personal law and the only question is whether she has discharged it.

It may be said at once that no instances are proved of members of this family having either followed custom as a departure from Hindu Law or the contrary.

The facts which are established are that the village of Mehlanwala is inhabited by three tribes, namely *Rajputs*, *Maulanas* and *Khatris*. The *Khatris* form a compact section of the village, the *Taraf Khatrian*, and have their own *lambardar*. In the family of the parties Gokal Chand was a *lambardar* and so was his father Ram Dhan before him. This Ram Dhan was present and put his seal to the *Riwaj-i-am* of the district of 1865 in which *Riwaj-i-am* various customs, that are departures from the personal law, are ascribed to *Khatris*, for instance the succession of a widow to her husband as owner.

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This attestation of the 1865 *Riwaj-i-am* by Ram Dhan is an important point in favour of the defendant.

There is also the fact stated by plaintiff himself that all the *Khatris* of village Mehlanwala are agriculturists and the absence of any evidence that any of them have any other source of income, such as money lending or trade.

Finally there is Exhibit D/3, the *Khasra Girdawari* of 1922, which shows that several fields were then in the personal cultivation of Daulat Ram himself.

In my opinion the foregoing considerations shift the initial *onus* from the defendant to the plaintiff, and there being no instances to the contrary I would hold that the parties in this case are not governed by their personal law.

The learned District Judge cited two authorities in support of the view which he took. The first of these *Harnam Singh v. Devi Chand* (1) was the case of a *Khatri* who lived in a town and about whom there was evidence that he kept a shop, which important features are lacking in the present case. In the other case *Atar Singh v. Prem Singh* (2) the considerations pointing towards the applicability of custom appear to have been much slighter than in the present case.

For the foregoing reasons I would accept the appeal of *Mussammat Mel Kaur* and, setting aside the judgment and decree of the District Judge, dated 21st April, 1928, would restore the decree of the Subordinate Judge, 2nd Class, dated 9th December,

(1) 107 P. R. 1901.

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1927. The appellant's costs in this Court and in the Court of the District Judge should be paid by the respondent.

DIN MOHAMMAD J.—I agree.

A. N. C.

Appeal accepted.

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CIVIL REFERENCE.

Before Addison and Sale JJ.

KANGRA VALLEY SLATE COMPANY, LTD.

(ASSESSEE) Petitioner

versus

COMMISSIONER OF INCOME-TAX, PUNJAB—

Respondent.

1934

June 28.

Civil Reference No. 25 of 1932.

Indian Income-tax Act, XI of 1922, Section 10 (2) (ix): Expenses incurred in defending a law suit—whether deductible—difference between 'Capital' and 'Income' expenditure—pointed out.

The question referred to the High Court by the Commissioner of Income-tax was whether the expenditure incurred by the assessee-company in defending, as lessees of certain land, a suit for ejection and injunction instituted by the lessors, is deductible under Section 10 (2) (ix) of the Income-tax Act as expenditure "incurred solely for the purpose of earning such profits or gains."

Held, that the answer to the reference depends on the question whether the legal expenditure incurred by the Company was or was not in the nature of capital expenditure.

And, applying the test laid down by Lord Dunedin in *Vallambrosa Rubber Co. Ltd. v. Farmer (Surveyor of taxes)* (1), *viz.* "that capital expenditure is a thing to be spent once and for all, and income expenditure is a thing that is