

1934
 WALATTI RAM
 v.
 SHADI RAM.
 ———
 TEK CHAND J.

I would accordingly accept these appeals, set aside the judgments and decrees of the learned Judge in Chambers, and dismiss the plaintiffs' suits with costs in all Courts.

ABDUL RASHID J.—I agree.

A. N. C.

Appeal accepted.

APPELLATE CIVIL.

Before Hilton J.

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 ———
 March 28.

MUSSAMMAT RAJJI (DEFENDANT) Appellant
versus
 BHANA AND OTHERS (PLAINTIFFS) } Respondents.
 SARDA (DEFENDANT)

Civil Appeal No. 1885 of 1929.

Custom—Widow—Unchastity—whether causes forfeiture of her life interest in her husband's estate—Sainis of Garhshankar tahsil, district Hoshiarpur—Riwaj-i-am.

Held, that the question and answer 44 of the Customary Law of the Hoshiarpur district, *viz.*, that unchastity of a widow, if proved, *e.g.*, by the widow leaving her husband's house or by her having an illegitimate child, generally involves loss of her estate, is applicable to the *Sainis* of Garhshankar *tahsil* and is sufficient to shift the *onus* on to the widow to rebut the existence of the special custom recorded therein.

And, that the widow in this case, having failed to discharge this *onus*, was rightly held to have forfeited her interest in her husband's estate.

Second Appeal from the decree of R. B. Lala Rangi Lal, District Judge, Hoshiarpur, dated 17th May, 1929, reversing that of Mr. P. N. Joshua, Subordinate Judge, 4th Class, Garhshankar, dated 12th June, 1928, and decreeing the plaintiffs' suit.

ANANT RAM KHOSLA, for Appellant.

BASANT KRISHAN, for SAUNDERS, for (Plaintiffs)
Respondents.

HILTON J.—The defendant, *Mussammat Rajji*, is the widow of Sundar Singh, deceased, and the land in suit belonged to Sundar Singh. The plaintiffs are collaterals of Sundar Singh whose suit for possession of this land, on the ground that *Mussammat Rajji* had forfeited her life interest through unchastity, was dismissed by the trial Judge, but has been decreed by the District Judge in appeal. This second appeal is, therefore, by the defendant *Mussammat Rajji* on a certificate on the question whether a custom exists by which a *Saini* widow of the Garhshankar *tahsil* of Hoshiarpur district forfeits her husband's estate by unchastity.

The general custom of the Punjab is, as mentioned in paragraph 31 of Rattigan's Digest of Customary Law, that unchastity of a widow sometimes causes a forfeiture of her life interest in her husband's estate, but that the *onus* is on those who assert the existence of a custom sanctioning forfeiture. Thus in the present case the *onus* in the first instance is on the plaintiffs-respondents.

According, however, to Question and Answer 44 of the Customary Law of the Hoshiarpur district by Mr. Humphreys, unchastity of a widow, if proved, *e.g.*, by the widow leaving her husband's house or by her having an illegitimate child, generally involves loss of her estate. *Jats*, however, state that unchastity only involves loss of her estate by a widow if she leaves her husband's house. In the present case it has been found as a fact by the Courts below, that *Mussammat Rajji* had left her husband's house and it was also admitted by her that she had had a child

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by one Indar Singh. The conditions, therefore, of the special custom mentioned in the above question and answer of the district customary law are fulfilled.

It is argued that this question and answer were not intended to refer to *Sainis*, but I am quite clear that this contention is wrong since illustration No. 29 and also exception No. 8, which follow question and answer No. 44, concern *Sainis*, and this shows that *Sainis* were intended to be included in the tribes covered by the said question and answer.

No instances are quoted in the customary law of *Saini* widows having lost their husband's estate through unchastity, but even without instances the statement of the special custom in the above-quoted question and answer No. 44 is sufficient, as held by the learned District Judge, to shift the *onus* from the plaintiffs, where it originally lay, on to the defendant-appellant, to rebut the existence of such a special custom.

It remains to determine, therefore, whether there is any evidence to rebut this evidence of the special custom. The learned counsel for the appellant has relied before me upon exception No. 8 at page 119 of the Customary Law of the Hoshiarpur district and also on a judgment of the District Judge of Jullundur (Exhibit D. 14). As regards the exception No. 8 that was a case where the widow had given birth to a child through illicit intercourse with her deceased husband's brother and she was left in possession of the property of her husband. I do not think that this instance of an exception can carry much weight, because it is not clear that the deceased husband's brother, with whom the widow had had illicit intercourse, was not the nearest collateral and, therefore, the person who was most concerned to challenge the

retention by the widow of her possession of the property.

As regards the judgment, Exhibit D. 14, this was a case of *Sainis* of the Nawanshahr *tahsil* of Jullundur district, which adjoins the Garhshankar *tahsil* of Hoshiarpur, and the judgment was delivered in 1923. This judgment has, in my opinion, been rightly rejected as a piece of evidence by the learned District Judge on the ground that it refused to rely upon the *Riwaj-i-am* of the Jullundur district, because it was unsupported by instances, although question and answer No. 44 of the Jullundur district *Riwaj-i-am* was similar to question and answer No. 44 of the Hoshiarpur district customary law, which has been quoted above, and was in favour of a special custom by which the widow forfeits her rights in the event of unchastity.

Although, therefore, the burden on the widow may be light, I do not think that in this particular case it has been discharged by the two pieces of evidence relied upon.

Another point was argued before me to the effect that *Mussammat* Rajji had previously been married to Indar Singh with whom she is now said to have had illicit intercourse, that is to say, before her marriage with Sundar Singh. But in the Courts below it was not the case of either side that *Mussammat* Rajji had not been lawfully married to Sundar Singh and I do not, therefore, think that this argument can avail the appellant in this Court.

I think that the case has been rightly decided by the learned District Judge and I dismiss the appeal with costs.

P. S.

Appeal dismissed.

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