

APPELLATE CIVIL

Before Bhandari, C. J.

SARDUL SINGH,—Appellant

versus

MST. NAND KAUR AND OTHERS,—Respondents.

Regular Second Appeal No. 318 of 1956.

1957
 Aug., 30th

Custom (Punjab)—Succession—Sonless widow—Sandhu Jats of Ferozepur District—Proof of custom—Judicial decisions—Value of.

Held, that among Sandhu, Jats of the Ferozepur District, a sonless widow is entitled to succeed to her husband's estate equally with each of his sons.

Held also, that judicial decisions furnish excellent evidence of custom, they being the best evidence of instances in which the right was recognized.

Regular Second Appeal from the decree of Shri Parshotam Sarup, Additional District Judge, Ferozepore, dated the 7th January, 1956, modifying that of Shri Ram Gopal Kohli, Sub-Judge, 1st Class, Muktsar, dated the 27th July, 1955, up to the extent that the plaintiff shall be entitled to a decree for declaration that he is entitled to the ownership of the land in dispute subject to the right of possession of defendants Nos. 1 to 3 for 1/4 share each in their lifetime in lieu of maintenance.

H. L. SARIN, for Appellant.

H. L. SIBAL, for Respondent.

JUDGMENT

Bhandari, C. J. BHANDARI, C.J.—This appeal raises the question whether among Sandhu Jats of the Ferozepore District a sonless widow is entitled to succeed to her husband's estate equally with each of his sons.

The facts of the case are very simple indeed. Early in January, 1954, one Lal Singh, a resident of

village Kanyanwali of the Muktsar tehsil died leaving behind him three widows, a son by one of the three widows by the name of Sardul Singh and a plot of land measuring 1,336 *kanals* 7 *marlas*. On the 13th August, 1954, Sardul Singh brought a suit for a declaration that he is entitled to succeed to the entire estate left by his deceased father, and for an injunction restraining the defendants, namely, his mothers from interfering with his possession. The trial Court expressed the view that each of the three widows was entitled to $\frac{1}{6}$ th share in the property left by the deceased landholder in lieu of maintenance, but the learned Additional District Judge came to a contrary conclusion and held that each of the three widows was entitled to share equally with the son and that each one of them was entitled to $\frac{1}{4}$ th share in the said property. The plaintiff, who is a boy of about 12 or 13 years of age, is dissatisfied with this order and has come to this Court in second appeal.

Sardul Singh
v.
Mst. Nand Kaur
and others
Bhandari, C. J.

The general agricultural custom of the Province as embodied in paragraph 16 of Rattigan's Digest of Customary Law is that in the presence of a male descendant of the deceased his widow is ordinarily only entitled to suitable maintenance, whether such descendant is the issue of the surviving widow or of another wife. This general custom has in the Ferozepore District been varied by a special custom, for the answer to Question No. 35 of the Customary Law of the Ferozepore District compiled by Mr. M. M. L. Currie is in the following terms:—

“Where there are more than one widow and one or more are sonless, there is considerable diversity of opinion and practice. Among the Hindu tribes the following say that—

- (i) a sonless widow obtains a son's share if the property is small, but if the estate

Sardul Singh
v.
Mst. Nand Kaur
and others
—
Bhandari, C. J.

is a large one, is only entitled to sufficient land to maintain her:—

Gils (except in Fazilka), Siddhus of Zira, Muktsar and Fazilka, Dhaliwals of the same tahsils, Khosas of Zira and Moga, and the miscellaneous Jats of Ferozepur and Moga, the Siddhus of the 11 Bhaike Villages of Nathana;

(ii) she gets a son's share:—Gils of Fazilka, Sandhus, Khosas of Ferozepore, Dhaliwals of Moga and Ferozepur, Bagri Kumhars, Mahtams of Muktsar and Fazilka.

* * * * *

The rest of the answer is not relevant to the decision of this case and need not be reproduced.

The first point for decision in the present case is whether the widows in the present case are governed by paragraph (i) or by paragraph (ii) of the answer reproduced above. Paragraph (i) is clearly inapplicable to the facts of the present case as it deals with the custom of Siddhus of Zira, Muktsar and Fazilka, and not Sandhus of the tahsil to which the parties belong. This particular case is regulated by the provisions of paragraph (ii) mentioned above. Mr. Sarin, who appears for the plaintiff, contends that the custom embodied in paragraph (ii) relates only to Sandhus of Ferozepur Tahsil, but the learned District Judge was of the opinion that it relates to Sandhus not of the Ferozepore Tahsil but of the Ferozepur District. I find myself in complete agreement with the view taken by the learned District Judge. The language of the paragraph makes it quite clear that whereas this custom is restricted to "Gils of Fazilka" and "Khosas of Ferozepore", it is not restricted to Sandhus of any tahsil. It seems to me, therefore, that Sandhus of all the five Tahsils of the Ferozepore District are governed by this custom.

The special custom embodied in the answer to question 35 is supported by a decision of the Lahore High Court reported as *Naib Singh v. Sham Kaur and another* (1), where it was held that the existence of a custom that among Sandhu Jats of Ferozepore, sonless widow is not entitled to her husband's estate equally with each of her stepsons was not proved. This judicial decision furnishes excellent evidence of custom for as pointed out in *Mahadeo and others v. Babohwar Prasad and others* (2), decrees in suits are best evidence of instances in which the right was recognised.

Sardul Singh
v.
Mst. Nand Kaur
and others
Bhandari, C. J.

The evidence of special custom mentioned above is corroborated by as many as six instances in which the widows in this tribe succeeded equally with their stepsons. It is true that there are certain instances to the contrary but those instances appear to be based on compromises. At page 93 of Currie's Customary Law of the Ferozepore District is cited the instance of one Sham Singh, a Sandhu of the Muktsar Tahsil. Sham Singh had two wives. Gurdial Singh was born from one woman and the other was childless. The mutation of the property of Sham Singh was sanctioned in the name of Gurdial Singh and 251 *kanals* 19 *marlas* were given to his stepmother as maintenance. The whole estate was 3,120 *kanals* 13 *marlas*. This instance does undoubtedly support the case of the son, but the custom to the contrary as recorded in the *riwaj-i-am* and as supported by a reported decision of the Lahore High Court and by as many as six instances, must in my opinion take precedence over the isolated instance.

For these reasons I would uphold the order of the learned Additional District Judge and dismiss the appeal with costs. Ordered accordingly.

(1) A.I.R. 1929 Lah. 829

(2) A.I.R. 1939 All. 626