

Shri Madhu Limaya, Chairman, Socialist Party of India, Bombay v. The State

come up on the next date fixed is not proper compliance of section 344 of the Code of Criminal Procedure, and if there is, as is apparent, no legal order remanding the accused to police custody, the detention obviously would be questionable.

R. P. Khosla, J. The learned Assistant Advocate-General for the State had no real answer to the contentions raised but suggested that in any event today (at the time of the hearing of the petition) the detenue was in proper legal custody, for the challan for those offences had meanwhile been put in Court. The submission is wholly untenable. In point of time, the question has to be settled whether at the time of arrest of the detenue, the detention was legal or not.

For all these reasons and considerations, I have no manner of doubt that the detention of the petitioner on the day he was taken into custody, e.g., 7th January, 1959, was wholly illegal. In this view, this petition must succeed and the petitioner detenue must regain his liberty forthwith.

R.S.

APPELLATE CIVIL

Before I. D. Dua, J.

SHRIMATI DAYAL KAUR,—Appellant.

versus

BALWANT SINGH AND OTHERS,—Respondents.

Regular Second Appeal No. 429 of 1954.

1959
Feb., 6th

Customary Law—Ambala District—Sainis of Kharar Tehsil—Widow remarrying her deceased husband's brother—Whether forfeits her rights over her deceased husband's property—Widow's unchastity—Whether entails

forfeiture of her husband's estate—Rattigan's Digest of Customary Law—Para 32—Remarriage with husband's brother and unchastity—Effect of.

Held, that amongst Sainis of Kharar Tehsil of Ambala District if a widow remarries her deceased husband's brother and continues to stay in the same house in which both her deceased husband in his lifetime and her present husband have lived, the basis of forfeiture is not so strong as it would be where she leaves her husband's family and goes into another.

Held, that unchastity on the part of a widow does not entail forfeiture of her rights in her deceased husband's estate. Even remarriage on the part of a widow with the brother of her deceased husband does not entail forfeiture in her deceased husband's estate.

Held, that the trend of public opinion in the matter of custom is also moving with the decisions of the Courts, the preponderance of which is against forfeiture of widow's rights in her deceased husband's estate by reason of unchastity or *karewa* with her deceased husband's brother.

Second Appeal from the decree of the Court of Shri Tara Chand Gupta, Additional District Judge, Ambala, dated 21st January, 1954 reversing that of Shri K. K. Gujral, Sub-Judge, 3rd Class, Ambala, dated the 31st July, 1953, and passing a decree for the declaration sought with costs in favour of the plaintiffs against the defendants.

H. S. GUJRAL, for Appellant.

D. N. AGGARWAL, for Respondents.

JUDGMENT

DUA, J.—Plaintiffs Balwant Singh and Chanan Singh instituted the present suit for declaration that they were the owners of two-thirds share and defendant No. 1 of one-third share in the land described in the plaint and that defendant No. 2 had no right or interest in it. It was alleged that the plaintiffs and defendant No. 1 were real brothers and that defendant No. 2 was the widow of

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their brother, Hazara Singh, who had died in 1960. The parties were alleged to be governed by custom in matters of succession and alienation. Defendant No. 2, it was pleaded, had performed *karewa* marriage with defendant No. 1 and had given birth to a son from him on 8th of December, 1950, with the result that she had lost her right in the property left by her deceased husband. In the alternative it was pleaded that if *Karewa* marriage be not held established, even then defendant No. 2 who was leading a life of immorality and was thus unchaste had forfeited her right in the property in question. Defendant No. 1, according to the plaintiffs, had made an application to the revenue authorities for the partition of the property and had stated in those proceedings that defendant No. 2 had one-fourth share in the property which was objected to by the plaintiffs whereupon the revenue officer on 2nd of July, 1952, directed the parties to get their respective rights determined by the Civil Court. The defendants resisted the suit and pleaded that defendant No. 2 had never been unchaste nor had she performed *karewa* marriage with defendant No. 1 and that in any case she did not lose her right in the property left by her deceased husband. The trial Court held that defendant No. 2 was not unchaste but she had performed *karewa* marriage with defendant No. 1 and that by reason of her re-marriage she did not, under the law, lose her right in the property of her deceased husband. On this finding the plaintiffs' suit was dismissed.

On Appeal, the learned Additional District Judge, held that the plaintiffs had failed to prove any *karewa* marriage between defendants Nos. 1 and 2. He, however, held that defendant No. 2 was undoubtedly an unchaste woman as she had illicit connections with Mohinder Singh, defendant

No. 1. It was also observed that she had given birth to an illegitimate son from Mohinder Singh and was again pregnant from him. On the finding that she had given birth to an illegitimate child, the lower appellate Court allowed the appeal and passed a decree in favour of the plaintiffs as defendant No. 2 was held to have lost all her rights in the estate of her deceased husband.

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Smt. Dayal Kaur defendant No. 2 has come up on second appeal to this Court. The parties are Sainis of Kharar Tehsil, district Ambala. The counsel for the appellant has contended that unchastity on the part of the widow does not entail forfeiture in her husband's estate. In this connection he submits, that in the plaint the only custom pleaded is that the widow forfeits her right in her deceased husband's estate, if she becomes unchaste and leaves the house of her husband. I do not think, the counsel is right in his reading of the plaint. In para 3 of the plaint, it is stated that defendant No. 2 had entered into *karewa* marriage with defendant No. 1 with whom she is living as wife. It is further stated that because of this she has lost all rights in her husband's estate. In para 4 of the plaint, however, it is mentioned, that according to the *riwaj-i-am* as in vogue in Ambala and in the State of Punjab, if a widow becomes unchaste and leaves her husband's house or if she marries according to *karewa*, she loses her right in her deceased husband's estate. However, the finding of the lower appellate Court being that no marriage has been established between defendants Nos. 1 and 2, the question to be considered on second appeal is whether unchastity by itself, when the widow has not left the shelter of her deceased husband's family entails forfeiture in her husband's estate. The learned counsel has drawn my attention to para 32 of Rattigan's

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Digest of Customary Law which states that in the absence of custom, the remarriage of a widow causes a forfeiture of her life-interest in her first husband's estate, which then reverts to the nearest heir of the husband. In the latest edition of this Digest there is a note which says that this paragraph should really read as follows :—

“Generally a widow forfeits her life-interest in her first husband's estate on remarriage.”

The counsel contends that this paragraph which also admits of exceptions is confined to remarriage and does not speak of unchastity as a ground entailing forfeiture in a widow's first husband's estate. The learned counsel has also drawn my attention to *Chuni Lal v. Mt. Attar Kaur and another* (1), where it is stated that in the absence of custom remarriage of a widow causes a forfeiture of her life-interest in her first husband's estate which then reverts to the nearest heir of her husband; an exception to this rule is, however, recognised amongst Sikh, *Jats* of the Punjab Province where the widow marries her first husband's brother. The next case on which reliance has been placed is *Santsing v. Raribai* (2), head note (c) of which reads thus :—

“Among the Sikh *Jats* in the Punjab a widow does not forfeit her life estate in her deceased husband's property by reason of her remarriage in *karewa* form with her husband's brother whether he be the sole surviving brother or there are other brothers as well of the deceased. The custom would appear to be founded on the just and equitable notion that by

(1) A.I.R. 1933 Lah. 69

(2) A.I.R. 1924 Sind. 17

the marriage with the deceased husband's brother a widow still continues to be a member of the same family. She is considered to have done the right and proper thing in a community where the notion of polyandry prevails and the widow is theoretically recognised not only as the wife of her deceased husband but as the wife of all his brothers. Widow marriage was recognised by custom in the *Jat* community before Act 15 of 1856 (Hindu Widow Remarriage Act) and the custom was also prevalent in this community before this Act that the widow by marrying the brother of her deceased husband did not forfeit her right to the estate she inherited from the latter and the provisions of Act 15 of 1856 could not be taken to override this custom, by virtue of section 7 of the Act 4 of 1872."

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In *Phuman Singh and others v. Mt. Kishno* (1), a Division Bench of the Lahore High Court observed that among the Hindu Jats, to which class the Ludhiana Jats belong, mere unchastity involves no penalty of forfeiture of a widow's right to her husband's estate so long as she does not leave her husband's house. It is true that in this case the learned Judges were influenced by Question and Answer No. 42 of the *riwaj-i-am* of Ludhiana District and by some evidence led in that particular case, and an earlier decision of the Chief Court from Ludhiana District reported as *Musammatt Sobhi v. Bhana and another*, (2) was not followed. *Fatteh Singh and another v. Kalu and another*, (3) is a decision by a Division Bench of

(1) A.I.R. 1936 Lah. 17
(2) 25 P.R. 1891
(3) 171 P.R. 1888

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the Punjab Chief Court where it is observed that there is no general custom in the Punjab by which a Hindu widow forfeits her husband's estate, when vested in her, by an act of unchastity. For this observation four earlier cases of the Chief Court were relied upon. Parties to this decision were Bagri Jats of Sirsa District. *Kanaya Singh v. Mussammatt Premi* (1), is a decision by Agnew and Shadi Lal, JJ., where while dealing with the custom of Sainis of Hoshiarpur District it was observed that under the Customary Law, ordinarily a widow, by remarrying her husband's brother, does not, for the purpose of succession, lose her previous status as the widow of her first husband. In *Hardyal and others, v. Mst. Dakhan*, (2), Kapur and Soni, JJ., after review of the case law, observed that a widow who has succeeded to the estate of her husband cannot be divested of that estate because of her subsequent unchastity unless a special custom is set up and proved. A decision of their Lordships of the Privy Council in *Moniram Kolita v. Kerry Kolitany* (3), was relied upon in this connection, and the decision in *Fatteh Singh's case* (4) was also approvingly referred to in this judgment. The same Bench in another case (*Atma Ram-Ram Saran v. Chambeli and another*) (5), observed that the general custom of the Punjab is not in favour of forfeiture of estates by widows on account of their unchastity and the onus is therefore on the person, who asserts in favour of any contrary custom, to prove it. This was a Letters Patent Appeal against the decision of Falshaw J. and the Division Bench dismissed the appeal affirming the decision of the learned Single Judge. Mr. Gujral has also drawn my

(1) Case No. 322 P.L.R. 1913
 (2) A.I.R. 1953 Punj. 209
 (3) 7 I.A. 115
 (4) 171 P.R. 1888
 (5) A.I.R. 1953 Punj. 211

attention to several instances recorded at page 90 of the Customary Law of Ambala District compiled in 1920, in which cases were decided in favour of widows in spite of the birth of illegitimate children by them. Recently in *Gurdialo v. Mst. Dhan Kaur* (1), Gosain, J., while dealing with a case from Bhatinda has observed that under custom a *karewa* marriage by a widow with the brother of her last husband has neither the effect of forfeiture of her life estate in the husband's property nor that of forfeiture of her right to future succession *qua* the husband's property. For this view he has placed reliance on *Kanhaya Singh's case* (2), and on *Gaman v. Mst. Aman* (3), As against this, Mr. D. N. Aggarwal has drawn my attention to *Mahajan v. Mt. Purbho and others* (4), where while dealing with the Customary Law of the Kangra District, it was observed by a Division Bench that the unchastity of a widow involves the forfeiture of her estate inherited from her husband. This case is really confined to the peculiar custom prevailing in Kangra District, as is also clear from a recent decision of this Court in *Mst. Kesro v. Mst. Parbati* (5), In this last case also, distinction has been drawn between remarriage and unchastity on the part of a widow in so far as the question of forfeiture is concerned. In the case of remarriage the woman ceases to be the widow of her deceased husband and becomes a member of another family, but in the case of unchastity she still remains the widow of her deceased husband, In accordance with this reasoning, in my opinion, where a widow remarries her deceased husband's brother and continues to stay in the same house in which both, her deceased husband

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(1) 1959 P.L.R. 163

(2) 1913 P.L.R. 322

(3) 107 P.R. 1888

(4) A.I.R. 1930 Lah. 504

(5) 1959 P.L.R. 106

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in his lifetime and her present husband have lived, the basis of forfeiture would not be so strong as it would be where she leaves her husband's family and goes into another. Mr. D. N. Aggarwal has also relied on *Mt. Parji v. Mangta* (1), where Jai Lal, J., while dealing with the Customary Law of Kharar Tehsil observed that under the custom governing the parties, the widow's remarriage divested her of all rights in her husband's estate. Mr. Gujral, however, points out that this was not a case of remarriage with the brother of the widow's deceased husband but it was a case of remarriage with a stranger. After giving the matter my most earnest consideration, I think that unchastity on the part of a widow does not entail forfeiture in her deceased husband's estate. In the present case the finding that no remarriage has been proved is a finding of fact and is binding on me. No sufficient ground has been shown justifying interference with this finding on second appeal. The review of case law, however, also shows that the better view is that even remarriage on the part of a widow with the brother of her deceased husband does not entail forfeiture in her deceased husband's estate. There are also decided cases which go to the length of holding that even marriage with a stranger would preserve the widow's right in her deceased husband's estate but I do not think, it is necessary for me to express any opinion on that point, because on the facts of the present case that question does not arise.

Before concluding I may make a passing reference to the introduction by Mr. R. B. Whitehead to the Customary Law of Ambala District compiled in 1920, where it is stated that there was a general relaxation in old restrictions especially in the direction of greater rights and liberty for

(1) A.I.R. 1930 Lah. 1023

females, and custom was generally moving with the Courts. This would show that the trend of public opinion in the matter of custom was also moving with the decision of the Courts, the preponderance of which, as mentioned above, is against forfeiture of widow's right in her deceased husband's estate by reason of unchastity or *karewa* with her deceased husband's brother.

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For the reasons given above, I would allow this appeal and setting aside the judgment and decree of the learned Additional District Judge, dismiss the plaintiffs' suit. In the peculiar circumstances of this case the parties are directed to bear their own costs throughout.

R.S.

REVISIONAL CIVIL

Before G. D. Khosla, Acting C.J. and S. S. Dullat, J:

MUNICIPAL COMMITTEE ABOHAR,—Petitioner.

versus

DAULAT RAM OF ABOHAR,—Respondent.

Civil Revision No. 252 of 1957.

East Punjab Urban Rent Restriction Act (III of 1949)—Sections 2(f) and 13—Act whether covers the case of juristic persons—Rights of such persons—Nature and extent of—Section 13(3)(a)(ii)(a)—“Requires for his use”—Interpretation of vis a vis a Municipality—Requirement of rented land by a Municipality for a thoroughfare—Whether amounts to “own use”—Such land, whether can be used for purposes other than business or trade.

1959
Feb., 13th

Held, that East Punjab Urban Rent Restriction Act covers the case of juristic persons as well as of individual human beings. Juristic persons under the law possess certain rights. These rights are enforced in the manner and