

APPELLATE CIVIL*Before Kapur, J.***BACHAN SINGH,—Appellant.***versus***MST. NAND KAUR,—Respondent.****Regular Second Appeal No. 473 of 1948.****1951****June 28th**

Custom (Punjab)—Succession—Sonless widow—Whether can succeed to her husband's estate equally with her stepson—Whether also has the right to share in collateral succession with her stepson.

T. S. died and his land was mutated in favour of his sonless widow N. K. and son B. S. from another wife in equal shares. W. S., a collateral of T. S., died and his estate was also mutated in favour of N. K. and B. S. in equal shares. N. K. applied for partition of property. B. S. brought the present suit for decision that he was the sole owner in possession of the land and N. K. had no right in the land, the entries in the Revenue Records were wrongly made and she was not entitled to get partition of the land. Trial Court dismissed the suit and the District Judge affirmed his decision. B. S. came up in 2nd appeal to the High Court.

Held, that under the special custom prevailing in the Ludhiana District a sonless widow succeeds equally with her stepson to the estate of her husband though under the general custom she is ordinarily only entitled to maintenance.

Held further, that a sonless widow has no right to succeed equally with a son in regard to the estate of a collateral, because she has no right to get any maintenance from such an estate.

Second Appeal from the decree of the Court of Shree J. S. Bedi, District Judge, Ludhiana, dated the 14th April 1948, affirming that of Shree Jasmer Singh, Subordinate Judge,

Bachan Singh 1st Class, Jagraon, District Ludhiana, dated the 12th July
 v. 1947, dismissing the plaintiff's suit with costs and allowing
Mst. Nand the costs of the Lower Appellate Court to the defendant
Kaur as against the plaintiff.

N. L. WADHERA, for Appellant.

DALJIT SINGH, for Respondent.

{ **Kapur J.**

JUDGMENT

KAPUR, J. This is a plaintiff's appeal against a judgment and decree of Mr Bedi, District Judge, Ludhiana, affirming the decree of the trial Court in which it was held that a sonless widow has a right to succeed equally with her stepson to the estate of the husband and has also the right to share in collateral succession with her stepson.

Teja Singh, the husband, died and his land was mutated in favour of his son Bachan Singh, the plaintiff, and his widow Nand Kaur in equal shares. Waryam Singh, a collateral of Teja Singh, then died and his estate was also mutated equally in the names of Bachan Singh and Nand Kaur. Nand Kaur then made an application for partition of the property. Thereupon the plaintiff brought a suit for declaration to the effect that he was the sole owner in possession of the land in dispute and that the defendant had no right whatsoever and that the entries in the revenue records had been wrongly made and Nand Kaur was not entitled to get partition of the land. On both these points the trial Court and the first appellate Court have held in favour of the widow.

According to paragraph 16 of Rattigan's Digest of Customary Law, which contains the general custom in regard to these cases, in the presence of a male descendant of the deceased his widow is ordinarily entitled to suitable maintenance whether such descendant is the son of the widow or by another wife. But in Ludhiana there is a special custom in regard to the rights of sonless widows which is contained in answer to question No. 32 of the *Riwaj-i-am* of the district. There it is stated that a widow with sons takes no share, but a sonless widow in the presence of sons takes a share equal

to that of each of the sons though she is sometimes content with less. This shows that if the widow is sonless, she has the right to succeed to her husband's estate equally with the son or sons. In my opinion, both the Courts below have rightly held that the widow has the right to succeed to her husband's estate along with the son by another wife.

Bachan Singh

v.
Mst. Nand
Kaur

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Kapur J.

The question arises as to the estate of Waryam Singh. The right of the widow is to get maintenance from her husband's estate. No doubt if the husband had been alive when Waryam Singh died and he had inherited his estate, then his own estate plus what he had got from Waryam Singh would have been available to both the son and the widow for respective purposes of inheritance and maintenance. On the death of Teja Singh in such circumstances the widow would have been entitled to maintenance out of the whole estate comprising his own estate plus that which he had obtained from Waryam Singh. But the question arises whether the widow would have a similar right if the estate of a collateral becomes available after the death of her husband. As I have said, the right of a widow is really one of maintenance as she has only a life estate and she is only entitled to that maintenance from out of the estate of her husband. The right to succeed to the collateral is because of relationship with the common ancestor and in a case such as this the right to succeed vests in the son because of his descent from the common ancestor and not through his own father. The whole theory of succession in custom is based on this principle, i.e. descent from the common ancestor. In cases such as this, in my opinion, a widow has not the right to get any share in the estate coming from a collateral because she has no right to get any maintenance from such an estate.

It is then submitted that a widow gets it as representing her husband, but in cases of collateral succession I have never come across a case nor has any been cited where a widow has been held to be a representative of her husband along with the sons. As

Bachan Singh I have said, the son inherits because of his descent
^{v.}
Mst. Nand from a common ancestor and not merely because he
Kaur is the son of the father. In these circumstances, I am
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Kapur J. of the opinion that a widow has no right to succeed
equally with a son in regard to the estate of a col-
lateral. I, therefore, hold that the widow was not
entitled in this case to get any share out of the estate
of Waryam Singh.

In the result this appeal succeeds only with regard to the share of Waryam Singh and fails in regard to the estate of Teja Singh. The appeal is partially allowed and the decree of the Courts below modified. As neither of the parties has wholly succeeded the parties will bear their own costs throughout.