available by way of appeal under section 6C and many aggrieved persons, including some of the petitioners, have actually made appeals to the Judicial authority under this section. It is further pointed out by Mr. Anand Swaroop that in respect of four writ petitions, to which I adverted earlier, the maize has not yet been exported from the territories of Haryana. It is again not denied that in these writ petitions the maize which was consigned had not actually started moving for the destination.

Mention may also be made of the objection with regard to jurisdiction. It is argued by Mr. Doabia that the export of maize having commenced from the territories of Haryana, no jurisdiction vested in the Collector of Howrah to make an order of confiscation. There does not seem to be much substance in this objection. The confiscation has been made in respect of goods which were during the course of transit and the Collector's action was taken at Howrah which is not within the jurisdiction of this Court. It is truly and in effect the action of the Collector which is challenged in these proceedings and *ex facie* this Court cannot determine the validity of that order. The goods were seized at Howrah and were taken possession of by the Collector. The export of foodgrains alone took place from the State of Haryana in respect of the consignments covered by ten of these petitions, and this is one of the many points raised by the petitioners that the transport had taken place under a valid permit. The substance of the dispute relates to the jurisdiction of the Collector, Howrah, and though I have decided the question otherwise on merits this Court does not seem to have the jurisdiction to grant the mandate for quashing the orders of confiscation made by the Collector of Howrah.

Consequently, these petitions must fail and are dismissed with costs.

R.N.M.

APPELLATE CIVIL

Before Mehar Singh, C. J. and R. S. Narula, J.

MST. GURDIAL KAUR,—*Appellant.*

versus

MANGAL SINGH,—*Respondent.*

Regular Second Appeal No. 563 of 1960

March 11, 1968.

Custom—Succession—Mother—Whether entitled to succeed to son after remarrying—Constitution of India (1950)—*Articles* 13 *and* 15—*Custom by which mother*

forfeits her right to succeed to his son on remarriage——Whether hit by Article 15 *or opposed to public policy or immoral.*

Held, that a mother is not entitled to succeed according to custom as a mother but only as the widow of the father of the deceased and that according to custom she is no longer the widow of the father of the deceased if she has remarried. and has. therefore, no title to the estate of her son against the reversioners.

Held, that the usage by which the mother loses her right to succeed to her son on remarriage, does not discriminate against Jats as compared to other Hindus as governed by their personal law on the ground of caste or race, and in so far as this law disinherits a mother on remarriage as compared with a father who continues to be an heir of the estate of his predeceased son inspite of marrying, it also does not discriminate against females merely on the ground of sex. On both these counts, the fundamental rights of a Jat mother guaranteed to her under Article 15 of the Constitution of India are not violated. There is no discrimination on the ground of sex because rights of succession varying between different heirs belonging to different sexes have to be determined according to the Personal Law or the usages by which a party is governed and it is too much to suggest that all heirs belonging to any sex must have the same rights of inheritance.

Held, that on the analogy of the law to the effect that the custom by which a prostitute contracting marriage forfeits all rights in her original family is opposed to public policy and immoral and consequently unenforceable, it cannot be held that the custom disinheriting a mother on remarriage is opposed to public policy. The position of a mother cannot be equated to that of a prostitute. There is no analogy between the two usages, and whereas it may be abhorrent to judicial sense that a prostitute should be penalised for giving up her profession and starting a married life, it is certainly not so in the case of a widowed mother remarrying. Moreover, the usage in question was recognised as a valid one as long ago as in 1891 and has stood the test of time ever thereafter.

Second Appeal from the decree of the court of Shri H. S. Bhandari, District Judge, Patiala, dated the 14*th day of December* 1959 *reversing that of Shri Joginder Singh Chatha Sub-Judge* 1*st Class, Nabha, dated the* 31*st July*, 1959 *and dismissing the plaintiff's suit with costs throughout.*

M. R. SHARMA, ADVOCATE, for the Appellant.

M. M. PUNCHHI for V. C. MAHAJAN, ADVOCATE, for the Respondent.

JUDGMENT

NARULA, J.—One Sadhu, son of Bishna, a Jat of village Udha, tehsil Nabha, district Patiala, an unmarried youngman, died on May

5, 1956, leaving behind land measuring 190 Bighas, 16 Biswas, in his village. Mangal Singh defendant-respondent, a distant collateral of the deceased took possession of the land, Mst. Gurdial Kaur plaintiff-appellant, the widowed mother of the deceased, filed a suit on March 3, 1958, for possession of the land left by her son as his sole heir. In order to invoke the benefits of the Hindu Succession Act she claimed that Sadhu had died in June, 1956. But the parties agree that on account of the concurrent findings of fact recorded by both the Courts below about the date of Sadhu's death being May 5, 1956, the provisions of Hindu Succession Act would not apply to this case and the question relating to the estate of the deceased shall have to be decided according to the usage by which the parties were governed. It is further not in dispute that according to the said usage the plaintiff-appellant would be entitled to the estate of her son to the exclusion of the defendant-respondent if the plaintiff had not remarried. The factum of the usage governing the parties about a mother losing her right to inherit the estate of her son on her getting remarried as she does not inherit the estate as the mother of the deceased, but as the widow of the father of the deceased has also not been disputed before us. As a result of contest by the defendant, following five issues were framed by the trial Court:—

"(1) Whether the parties are governed by custom in matters of marriage and succession?

(2) Whether Sadhu died in June, 1956?

(3) Whether the plaintiff has remarried and if so its effect?

(4) Whether the principle of *res judicata* applies to the case and if so its effect?

(5) Relief."

The plaintiff-appellant did not contest the first issue. The trial Court by its judgment, dated July 31, 1959, accordingly held that the parties were governed by custom in matters of marriage and succession, that Sadhu had died on May 5, 1956, and not in June, 1956, that the evidence led by the parties did not prove that the plaintiff had remarried, and that no evidence was produced to support the plea of *res judicata*. As a result of the abovesaid findings, the suit of the plaintiff-appellant was decreed with costs. The only question that was argued in the defendant's first appeal before the District Judge, Patiala, related to issue No. 3. Shri H. S. Bhandari the learned District Judge by his judgment, dated December 14, 1959, reversed the finding of

the trial Court on that issue and held that the documentary and oral evidence produced on the record conclusively established that the plaintiff-appellant had remarried one Inder Singh, and that, therefore, according to the admitted custom which governed the rights of the parties, she had lost all claims to succeed to her son in respect of the property in dispute. In view of his said finding, the learned District Judge accepted the defendant's appeal, set aside the order of the trial Court, and dismissed the plaintiff's suit with costs throughout.

In this regular second appeal Mr. M. R. Sharma, the learned counsel for the plaintiff-appellant has firstly contested the finding of the trial Court on issue No. 3. He concedes that *prima facie* the subject-matter of the issue relates to a pure question of fact and that normally he would not be entitled to question the finding of the first appellate Court on such a point. He has, however, contended that in the absence of any definite evidence of Karewa, the learned District Judge could not have held the marriage to be proved as the living of the plaintiff-appellant with Inder Singh should be consistent with her leading an unchaste life and not necessarily with marriage with Inder Singh, and that in case of mere unchastity she was not liable to be disinherrited. Not only was no such plea taken in any of the Courts below and not only would such a plea be inconsistent with the stand taken by the plaintiff-appellant in both the Courts below denying her living with Inder Singh and denying having had any children from Inder Singh, but in fact this plea is unsustainable on the evidence on record through which we have been carefully taken by the learned counsel for both sides. It has been proved from the evidence on record of this case that Waryam Singh and Inder Singh were real brothers, that Waryam Singh was married to one Tejo, that Gurdial Kaur plaintiff who was the real sister of Tejo had been living with Inder Singh for more than 15 years, that Waryam Singh and Inder Singh were living separately, and that Inder Singh had at least one son from the plaintiff whose birth entry Exhibit D.E. has been duly proved. Some half-hearted attempt was made by Mr. Sharma to argue that proper mode of proof of Exhibit D.E., was not adopted in the trial Court. He soon realised that no such argument was open to him in view of the fact that no objection to Exhibit D.E. being tendered in evidence had been taken on behalf of his client in the trial Court. The parentage of Inder Singh has been given in the entry. Puran Lambardar at whose instance the entry purports to have been made in the police-station has himself appeared as a witness and has deposed to the relevant facts. His testimony has not

been shaken in cross-examination in any manner. Mst. Gurdial Kaur was living with Inder Singh in village Khurrana at a substantial distance from village Udha. The name of Mst. Gurdial Kaur is also entered in the voters list Exhibit D.D. against the house in which Inder Singh was living and she is shown therein as the wife of Inder Singh. Exhibit D.F., the report of the process-server dated April 9, 1958, on summons issued to Mst. Gurdial Kaur at Inder Singh's address in village Khurrana about her having refused to accept service of the summons, is also significant. Besides the oral evidence led by the defendant in support of his plea about the plaintiff's remarriage which is cogent and consistent and which has been rightly believed by the Court below, it is significant that neither Inder Singh nor Gurdial Kaur plaintiff herself dared to enter the witness-box and to deny that they were living as husband and wife or that they were married or that they had children from each other. Even Mst. Gurdial Kaur's sister Tejo or her husband Waryam Singh has not been produced. The Court below was correct in inferring from the above facts and other evidence on record that there was nothing to rebut the legal presumption in favour of marriage when a man and a woman have been proved to have been living together continuously for a number of years and having cohabited and got children. In this view of the matter it is impossible to disturb the pure finding of fact recorded by the learned District Judge on issue No. 3. The law laid down by a Full Bench of the Lahore High Court in Mussammat Desi v. Lehna Singh and others (1), to the effect that a mother was not entitled to succeed according to custom as a mother but only as the widow of the father of the deceased, and that according to custom she is no longer the widow of the father of the decased if she has remarried, and has, therefore, no title to the estate of her son against the reversioners, has all along been followed by the Lahore High Court and subsequently by this Court, and no judgment to the contrary has been brought to our notice. Nor has Mr. Sharma been able to contest the correctness of this decision.

Mr. Sharma, then submitted that he should be permitted to argue a new ground of appeal which raises a pure question of law. This relates to questioning the validity, legality and enforceability of the custom in question on the ground that the usage based on the said custom is violative of Article 15 of the Constitution. In view of the law laid down by their Lordships of the Supreme Court in Yeshwant

(1) 46 P.R. 1891 (page 246).

Deorao v. *Walchand-Ramchand* (2) and *M. K. Ranganathan and another* v. *Government of Madras and others* (3), we permitted Mr. Sharma to argue this new point though it was neither raised by him in any of the Courts below nor raised even in the grounds of this second appeal.

The argument of the plaintiff-appellant is that usage is as good as a statutory law as both have been equated in the definition of "law" contained in Article 13 (3) (a) of the Constitution, and that in so far as the usage in question discriminates against Jats as compared to other Hindus governed by their Personal Law, the usage discriminates merely on the ground of caste or race; and in so far as this law disinherits a mother on remarriage as compared with a father who continues to be an heir of the estate of his predeceased son in spite of remarrying, it discriminates against females merely on the ground of sex; and that on both these counts, the fundamental rights of the plaintiff appellant guaranteed to her under Article 15 of the Constitution have been violated. The argument appeals to be wholly misconceived. According to the provisions of section 5 of the Punjab Laws Act (4 of 1872) in questions regarding succession, marriage, etc., the rule of decision has to be custom applicable to the parties concerned only if the custom is not contrary to justice, equity and good conscience, and if the same has not been altered or abolished by statute or not declared void by any competent authority. The law based on the custom in question has no doubt been abolished after the coming into force of the Hindu Succession Act, but as already observed, succession in the instant case having opened before the Act came into force, this case will have to be decided according to custom. It is not disputed that the custom in question has not been altered or abolished in any other manner nor has the same been declared to be void by any competent authority. The law based on the custom in question is, therefore, pre-Constitution law. Article 13 (2) of the Constitution prohibits only the State from making any law which take away or abridge the rights conferred by Part III of the Constitution. Mr. Sharma submitted that though the law based on the custom in question has not been made by the State, judiciary is a part of the State, according to the decision of the Supreme Court in *Jayantilal Amratlal Shodhan* v. *F. N. Rana and others* (4), and

(2) A.I.R. 1951 S.C. 16.
(3) A.I.R. 1955 S.C. 604.
(4) A.I.R. 1964 S.C. 648.

that, therefore, the judgment of the learned District Judge is liable to be set aside as it has given effect to a law which contravenes Article 15. This argument is wholly fallacious as the definition of "the State" in Article 12 of the Constitution does not include a Court of law. If the argument of discrimination based on caste or race could be valid, it would be impossible to have different Personal Laws in this country, and the Court will have to go to the length of holding that only one uniform Code of laws relating to all matters covering all castes, creeds and cmmunities can be constitutional. To suggest such an argument is to reject it. Nor is there anything in the alleged discrimination on the ground of sex because rights of succession varying between different heirs belonging to different sexes have to be determined according to the Personal Law or the usages by which a party is governed and it is too much to suggest that all heirs belonging to any sex must have the same rights of inheritance. We have, therefore, no hesitation in rejecting this ingenious argument of Mr. Sharma and in holding that the usage in question does not infringe Article 15 of the Constitution.

The last submission of Mr. Sharma was that no custom can be enforced if it is contrary to some statute or contrary to public policy. There is no quarrel with this proposition of law, but when asked to show in what manner the custom in question was opposed to public policy, Mr. Sharma was again driven to his philosophy of the usage in question being violative of Article 15 of the Constitution. That argument has already been rejected by us. He then referred to the Judgment of a Division Bench of the Lahore High Court in *Fateh Ali Shah and others* v. *Muhammad Baksh and others* (5), and argued that as the Lahore High Court has held in that case that a custom among the prostitutes that if one of them contracts a marriage, she forfeits all rights in her original family, was held to be opposed to public policy and immoral and consequently unenforceable, we should hold that the custom disinheriting a mother on remarriage is also opposed to public policy. It is a matter of regret that the learned counsel has thought it fit to equate the position of a mother to that of a prostitute. There is no analogy between the two usages, and whereas it may be abhorrent to judicial sense that a prostitute should be penalised for giving up her profession and starting a married life, it is certainly not so in the case of a widowed mother remarrying. Moreover, as already observed, the usage in question was recognised as a

(5) A.I.R. 1928 Lah. 516.

valid one as long ago as in 1891 and has stood the test of time ever thereafter. We do not, therefore, find any force even in this argument of Mr. Sharma.

No other point having been argued before us in this case, the appeal fails and is dismissed though without any order as to costs.

MEHAR SINGH, C.J.—I agree.

R.N.M.

CIVIL MISCELLANEOUS

Before Daya Krishan Mahajan and Gurdev Singh, JJ.

AJAIB SINGH AND OTHERS,—*Appellants*

versus

THE EXCISE AND TAXATION OFFICER, BHATINDA AND OTHERS,—*Respondents*

Civil Writ No. 789 of 1967

March 12, 1968

Punjab Liquor Licence Rules. 1956 *and the Punjab Liquor Licence (First Amendment) Rules,* 1967—*Rules* 36(5) *and* 36(23-B)—*Amended Rules coming into force with effect from* 1*st April,* 1967, *though published in the* Punjab Gazette, Extraordinary, *dated the* 14*th March,* 1967—*Auction for financial year* 1967-68 *held on* 21*st March,* 1967—*Whether governed by Amended Rules—Auctioning of liquor shops in bunch without prior sanction of the Financial Commissioner (Excise and Taxation Commissioner)—Sanction obtained subsequently—Whether valid.*

The Punjab Liquor Licence (First Amendment) Rules, 1967, *were not in force on* 21*st March,* 1967, *when the auction was held, though they were notified in the* Punjab Gazette Extraordinary, *dated the* 14*th March,* 1967. *They were to come into force on the* 1*st of April,* 1967, *and so also the licence for the year* 1967-68, *the auction of which took place on the* 21*st of March,* 1967. *In the announcement. on the basis of which the auction was held, it was stated that all licenses would be subject to the provisions of the Punjab Excise Act (I of* 1914) *and the Rules framed thereunder from time to time.*