

Before : S. S. Sodhi & G. C. Garg, JJ.

MOHAMMAD ALI,—Appellant.

versus

MST. KARIMA ETC.,—Respondents.

Regular Second Appeal No. 909 of 1981

28th January, 1992.

Custom succession amongst Muslim Kambojs of village Jamalpur of Tehsil Malerkotla—Muslim Kambojs of village Jamalpur of Tehsil Malerkotla governed by Muslim Personal Law on matter of succession.

Held, that having regard therefore to the judicial precedent provided by *Abdul Rahim's case* and the instances of such law having been applied amongst Muslim Kambojs of Jamalpura, as noticed and considered in the order of reference, there can be no escape from the conclusion that in the matter of succession, parties here are governed by Muslim Personal Law and, therefore, the daughters of Shahzada are, each, entitled to 1/7th share while both their brothers would be entitled to 2/7 share each.

(Para 9)

Regular Second Appeal from the Order of the Court of Shri R. K. Singhal, P.C.S., Additional District Judge, Sangrur, dated 2nd April, 1981, reversing that of Shri Bhagwan Singh, Sub Judge IInd Class, Malerkotla, dated 21st May, 1979 and passing a decree for joint possession of 5/7 share of the property in dispute in favour of the plaintiffs and against Ali Mohammad, defendant with no order as to costs.

CLAIM

Suit for joint possession to the extent of 5/7th share in the Agricultural land measuring 22 Bighas 13 Biswas assessed to land revenue at the rate of Rs. 13 per annum comprised in Khasra No. 53/95 Khasra Nos. 118/6-5 (4 Bighas, 3 Biswas) out of Khasra No. 117/6-5, 118/6-5 and 120/5—17 (5 Bighas 11 Biswas) and out of Khasra Nos. 121/0—10, 9 Biswas as entered in the jamabandi for the year 1970-71 situated in village Dwan Mahadi, Tehsil Malerkotla.

(b) One house bounded as below :—

East : Thorough fare,

West : Thorough fare,

North : Rahmat villah,

South : Ilam Din-situated in Jamalpura.

(c) Another house bounded as :—

East : Thorough fare,

West : Thorough fare,

North : Haji Khail Din alias Matwa,

South : Khushi situated in Jamalpura.

CLAIM IN APPEAL : For reversal of the order of lower appellate Court.

(This case was referred to Larger Bench by Hon'ble Mr. Justice N. K. Kapoor, on 4th April, 1991 for decision of an important question of law. The Division Bench consisting of Hon'ble Mr. Justice S. S. Sodhi and Hon'ble Mr. Justice G. C. Garg, decided the case finally on 28th January, 1992.)

Amarjit Markan, Advocate, for the appellants.

M. L. Sarin, Sr. Advocate with Miss Alka Sarin, Advocate, for the respondents.

JUDGMENT

S. S. Sodhi, J.

The controversy here is with regard to law governing succession amongst Muslim Kambojs of village Jamalpura of Tehsil Malerkotla, namely; whether custom or Muslim Personal Law applies. The contest being between the sons and daughters of Shahzada, who died on September 19, 1974 leaving behind the property in suit.

(2) There is a conflict of judicial precedents in the matter, in that in *Babu and another v. Halima* (1), it was held by J. V. Gupta, J. that Kambojs of Malerkotla are predominantly an agricultural tribe and are governed by custom in the matter of inheritance. G. C. Mital, J. on the other hand in *Abdul Rahim and others v. Yusaf and others* (2), held that Mohammadan Kambojs of village Jamalpur, Tehsil Malerkotla are governed by Personal and not Customary Law, for the purposes of succession. It is this conflict of view that led N. K. Kapoor, J. to refer this matter to a larger Bench.

(3) As mentioned earlier, the property in suit was owned by Shahzada, who died in September 1974. The plaintiffs here are the

(1) 1983 P.L.R. 335.

(2) 1989 (1) P.L.R. 200.

three daughters and son—Wali Mohammad while the defendant is the other son—Ali Mohammad of the said Shahzada. After the death of Shahzada, Ali Mohammad took possession of the property left behind by his father and now asserts his title to it, both, on the law governing succession applicable to the parties, as also a Will said to have been made in his favour by his father. According to the defendant—Ali Mohammad, the parties were governed by Custom and in terms thereof, daughters were not entitled to succeed to the estate of their father. The plaintiffs-daughters on the other hand, averred that the parties were governed by Muslim Personal Law, according to which daughters too are entitled to succeed to the estate of their father, though their share is not the same as that of the sons. The Will set up by Ali Mohammad was also contested.

(4) The trial court held in favour of Ali Mohammad with regard to the law governing inheritance holding that Customary Law would govern. The Will set up by Ali Mohammad was, however, held to be invalid as it lacked the requisite consent of the other heirs.

(5) The lower appellate court, differed and reversed the finding of the trial court holding that it was Muslim Personal Law that governs inheritance and the daughters too were thus entitled to succeed to their father's property.

(6) Both parties brought on record various instances in support of their respective pleas regarding the relevant law governing succession. These have been duly noticed and considered in the order of reference. These instances do not, however, call for discussion as they now stand over-shadowed by the two judicial precedents referred to earlier, namely; *Babu and Abdul Rahim's* cases (supra).

(7) In dealing with the question posed, it would be apt to bear in mind the observation of the Supreme Court in *Mara and others v. Mst. Nikka alias Punjab Kaur and another* (3), "Custom in Punjab changes from district to district; tehsil to tehsil and pargana to pargana."

(8) Seen in this light, the apparent conflict in *Babu and Abdul Rahim's* cases (supra) would stand resolved inasmuch as while *Babu's* case (supra) was with regard to Kambojs of Malerkotla, that of *Abdul Rahim's* case (supra) concerned Mohammadan Kambojs of

(3) A.I.R. 1964 S.C. 1821.

Jamalpura. In other words, *Babu's case* can and must be construed as setting-forth the general rule governing inheritance amongst Kambojs of Malerkotla. *Abdul Rahim's case* (supra), on the other hand, confines itself to the rule governing inheritance amongst Muslim Kambojs of Jamalpura only and not generally the Mohammadans of Malerkotla. So considered, no conflict survives.

(9) Having regard therefore, to the judicial precedent provided by *Abdul Rahim's case* (supra) and the instances of such law having been applied amongst Muslim Kambojs of Jamalpura, as noticed and considered in the order of reference, there can be no escape from the conclusion that in the matter of succession, parties here are governed by Muslim Personal Law and, therefore the daughters of Shahzada are, each, entitled to 1/7th share while both their brothers would be entitled to 2/7 share each.

(10) In the result, the plaintiffs are hereby granted a decree for joint possession as prayed for by them. The suit of the plaintiffs is consequently decreed with costs throughout. The reference too stands answered accordingly.

J.S.T.

Before : Jawahar Lal Gupta, J.

MEHAL SINGH AND OTHERS,—Petitioners.

versus

THE STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ Petition No. 9063 of 1987.

30th May, 1991.

Constitution of India, 1950—Art. 226—Motor Vehicles Act (IV of 1939)—Government permitting tractor-trolleys to ply as public carriers—Regulation of plying of tractor-trolleys—State Transport Commissioner restricting operation of tractor trolleys to within a radius of 25 km. from place of residence or business where such vehicles are registered—Such restriction is reasonable—Tractor-trolleys cannot be encouraged to ply as commercial vehicles—Cause of traffic hazards on public roads—Such policy decision of Government cannot be set aside by High Court under Art. 226—No violation of any provision of M.V. Act shown—Action cannot be dubbed as arbitrary or unfair.