

## REVISIONAL CIVIL.

*Before Bhandari, C. J.*CHUHAR SINGH,—*Defendant-Appellant.**versus*RAM CHAND,—*Plaintiff-Respondent.*

Civil Revision 60/P of 1953.

*Custom (Punjab)—Adoption—Adoption of daughter's son, whether valid.*

1957

March, 14th

*Riwaj-i-am—Presumption—Entry in riwaj-i-am adversely affecting the rights of women—Value of.*

*Held*, that it is within the competence of a sonless proprietor to take in adoption a son of his daughter, and that this practice is in consonance with the General Customary Law of the Province.

*Held*, that if the revenue authorities have not put any direct questions on the point to the persons from whom the custom was ascertained, it is not safe to make any presumption in favour of the custom to which the entry relates.

*Held*, that, where the riwaj-i-am affects adversely the rights of females who had no opportunity whatever of appearing before the revenue authorities, the presumption of correctness which attaches to entries in revenue papers is considerably weakened.

*N. S. Venkatagiri Ayyangar and another v. The Hindu Religious Endowments Board, Madras* (1), *Ujagar Singh and others v. Mst. Diyal Kaur and others* (2), *Mst. Subbani and others v. Nawab and others* (3), *Fateh Singh v. Partap Singh* (4), *Puran Singh v. Jaswant Singh* (5), relied upon.

*Application under section 49 of Patiala Judicature Ordinance No. 10 of 2005 Bk. for revision of the decree of the Court of Shri Mehar Singh, District Judge, Kapurthala, dated the 19th day of July, 1952, affirming that of Shri*

- (1) A.I.R. 1949 P.C. 156
- (2) A.I.R. 1936 Lah. 991
- (3) A.I.R. 1941 P.C. 21
- (4) 1 Patiala L.R. 334
- (5) 1 Pepsu L.R. 117

*Raghubir Singh, Sub-Judge, II Class, Phagwara, dated the 31st August, 1951, decreeing the plaintiff's suit in respect of the land comprised in Khasra Nos. 1460, 1464, 1465, 1457, 1462, 1376, 1448, 1461, 1463, 1474, 1449, 1458 min, 1470, 1471, 1414, 1459, 4643/1810, 4654/1875, 1878 and 1466 only, and further declaring that the adoption deed, dated the 25th December, 2006, 17th April, 1950, shall be null and void as against the reversionary rights of the plaintiff after the death of Raj Mal, defendant so far as it affects the land comprised in these khasra numbers. As regards the land comprised in Khasra Nos. 355, 3466, 33510, 3516, 3539, 3737, 3742, 1495, 3753, 1456, 3754, 3744, 1877, 1879, 1919, 2033, 2032 min, 2031, 2410/1971 and 1445, belonging to Raj Mal defendant, the suit of the plaintiff shall stand dismissed and parties have been left to bear their own costs.*

BALDEV SINGH, for Petitioner.

R. K. D. BHANDARI, for Respondent.

#### JUDGMENT

Bhandari, C. J.      Bhandari, C.J.—This petition under section 115 of the Code of Civil Procedure raises the question whether the Courts below were justified in declaring that Raj Mal had no power to adopt his daughter's son Chuhar Singh.

It appears that on the 7th April, 1950, one Raj Mal adopted his daughter's son Chuhar Singh by virtue of a deed of adoption. On the 31st July, 1950, Ram Chand, a brother of Raj Mal, brought a suit for a declaration that the adoption in question was made in contravention of the custom by which the parties were regulated and prayed that the adoption be set aside. The trial Court decreed the claim and the order of the trial Court was upheld by the learned District Judge in appeal. Raj Mal is dissatisfied with the order and has come to this Court in revision.

The first point for decision in the present case is whether it is within the power of this Court,

acting under the provisions of section 115 of the Code of Civil Procedure, to interfere in a case of this kind when the Courts below had jurisdiction to deal with the case, when they have not exceeded the jurisdiction conferred upon them by law and when no defect of procedure has been indicated. The contention in the present case is that the Courts below have acted illegally by ignoring the provisions of the Customary Law as applicable to the parties to this litigation and consequently that it is within the competence of this Court to set right the palpable error which has been committed. This contention must, in my opinion be upheld, for as pointed out by their Lordships of the Privy Council in *N. S. Venkatagiri Ayyangar and another v. The Hindu Religious Endowments Board, Madras* (1), section 115 empowers the High Court to satisfy itself upon three matters—

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- (a) that the order of the subordinate Court is within its jurisdiction.
- (b) that the case is one in which the Court ought to exercise jurisdiction, and
- (c) that in exercise of the jurisdiction the Court has not acted illegally, that is in breach of some provision of law, or with material irregularity, that is, by committing some error of procedure in the course of the trial which is material in that it may affect the ultimate decision.

The general custom of the Province in regard to adoption is embodied in paragraph 35 of Rattigan's Digest of Customary Law. According to this paragraph a sonless proprietor of land in the

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(1) A.I.R. 1949 P.C. 156

Chuhar Singh v. Ram Chand Bhandari, C. J. central and eastern parts of the Punjab is at liberty to appoint one of his kinsmen to succeed him as his heir. The only question which requires decision therefore is whether this agricultural custom has been varied by a special custom applicable to the tribe to which the parties belong.

Now what exactly was the special custom by which the parties to this litigation were regulated? This custom is embodied in paragraph 6 of the *Wajib-ul-arz* which declares that every male owner has a right to adopt any one of his collaterals provided the adoptive father treats the adopted son in the same way as if he were a real son. This custom is not in consonance with the general agricultural custom of the Province, for it declares by implication that although sons of daughters or sisters or of other female relations are kinsmen they cannot be taken in adoption. This custom was embodied in the *wajib-ul-arz* when no direct questions were addressed to the persons who had assembled at the spot. It has been held repeatedly that if the revenue authorities have not put any direct questions on the point to the persons from whom the custom was ascertained, it is not safe to make any presumption in favour of the custom to which the entry relates, *Ujagar Singh and others v. Mst. Diyal Kaur and others* (1). The females whose rights have been adversely affected by this entry had no opportunity of appearing before the revenue officers concerned. Their Lordships of the Privy Council have expressed the view that where the *riwaj-i-am* affects adversely the rights of females who had no opportunity whatever of appearing before the revenue authorities, the presumption of correctness which attaches to entries in revenue papers is considerably weakened, *Mst. Subbani and others v. Nawab and others* (2).

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(1) A.I.R. 1936 Lah. 991

(2) A.I.R. 1941 P.C. 21

Two witnesses appeared before the trial Court to show that certain proprietors of land did in fact take in adoption either their own daughters or their daughters' children. Gainda Singh, D.W. 3, testified to the fact that his own father was adopted by his maternal-uncle, and Mahan Singh, D. W. 5, stated that one Partap Singh adopted his own daughter. These two instances are, in my opinion, sufficient to rebut the weak presumption which has arisen in this case. It is scarcely necessary to mention that adoption of daughter's son is regarded as valid in the territory which formed part of the erstwhile State of Patiala *Fateh Singh v. Partap Singh* (1), and *Puran Singh v. Jaswant Singh* (2). It is prevalent in the territory which forms part of the Punjab for in *Mt. Sukhwant Kaur v. Balwant Singh* (3), a Division Bench of this Court held that a sister has a right to succeed in preference to collaterals.

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For these reasons I am of the opinion that it is within the competence of a sonless proprietor to take in adoption a son of his daughter, that this practice is in consonance with the general Customary Law of the Province and that this general custom has not been varied by any special custom. I would accordingly accept the petition, set aside the order of the Courts below and direct that the declaratory suit filed by Ram Chand be dismissed. There will be no order as to costs.

REVISIONAL CIVIL.

Before Bhandari, C. J.

PREM SINGH-DEVIDITTA MAL,— *Petitioners.*

*versus*

SHRI SAT RAM DAS AND OTHERS,—*Respondents.*

Civil Revision No. 325-D of 1953.

*Transfer of Property Act (IV of 1882)—Section 130—Assignment—Meaning of—Valid assignment, conditions for.*

1957

March, 8th

(1) 1 Patiala L.R. 334  
(2) 1 Pepsu L.R. 117  
(3) A.I.R. 1951 Simla 242