

## APPELLATE CIVIL

*Before Khosla and Soni, JJ.*

DAYA RAM, ETC.,—*Plaintiffs-Appellants*

*versus*

GURTEG SINGH, minor, AND OTHERS,—*Defendants-Respondents.*

Regular Second Appeal No. 183 of 1950

*Custom (Punjab)—Source of—Principles in deciding disputed cases of custom, stated—Adoption—Jats of Rupar Tahsil, District Ambala—Custom of adoption, whether exists.*

1953

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May 26th

*Held*, that the custom is tribal as well as local. When dealing with the existence of custom Judges have recognized that there is such a thing as General Custom. Custom is nothing more than personal law, Muslim or Hindu, modified in certain respects by force of usage and in a very large number of cases usage is derived more from Hindu law than from any other source.

Where a certain custom is universally recognized the onus lies heavily upon him who seeks to prove a special custom to the contrary. The onus becomes all the heavier when there is a number of instances which go to rebut the special custom set up.

*Held further*, that the custom of adoption obtains among the Jats of Rupar Tahsil, District Ambala. In the eastern and central districts of what was united Punjab, the custom of adoption among Hindus is almost universal.

*Second appeal from the decree of Shri Sultan Singh, Senior Sub-Judge, Ambala, dated the 15th day of December, 1949, reversing that of Shri B. L. Malhotra, Sub-Judge, 1st Class, Rupar, dated the 12th March 1949, and dismissing the plaintiffs' suit and leaving the parties to bear their own costs in both the courts.*

TEK CHAND, for Appellants.

D. N. AGGARWAL and RAJINDAR NATH, for Respondents.

#### JUDGMENT.

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KHOSLA, J. The only question that arises in this second appeal is whether the custom of adoption obtains among the Jats of Rupar Tahsil, District Ambala. The learned trial Judge found that this custom did not exist and decreed the suit of the collaterals in respect of ancestral property belonging to one Chuhra who is alleged to have adopted one Gurteg Singh. The learned Senior Subordinate Judge on appeal considered the entire evidence produced in this case and came to the conclusion that custom did sanction adoption in this tribe. He accordingly dismissed the suit of the collaterals.

In second appeal Mr. Tek Chand has taken us through the various instances relied upon by the parties in this case. The decision of the matter rests upon the evidence produced in the case. A

large number of instances, both judicial and non-judicial, were cited by both sides. The learned trial Judge discussed the instances cited by the defendants-respondents at some length and held that they were of no value. At any rate they were not sufficient to rebut the entry in Mr. Whitehead's Customary law that the custom of adoption did not obtain in this tribe. After sorting out all these instances we find that there are nine clear cases of adoption having been recognized among Jats of Rupar Tahsil as against seven in which it was held that the custom of adoption did not obtain.

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There can be no doubt that custom is tribal as well as local, but when dealing with the existence of custom Judges have recognized that there is such a thing as general custom. Rattigan in his book of Customary Law, has referred to the existence of such a custom. If we trace the history of custom we find that custom is nothing more than personal law, Muslim or Hindu, modified in certain respects by the force of usage and in a very large number of cases usage is derived more from Hindu Law than from any other source, and we find that, at any rate, in the eastern and the central districts of what was the united Punjab, the custom of adoption among Hindus was almost universal and that being so it may be said that the existence of this custom is a general incident of Customary Law in the eastern and central districts of Punjab. If any tribe alleges that there is no custom of adoption, then the special custom must be proved by evidence. This is exactly what is meant by saying that where the special or local custom is at variance with the general custom, the special custom must be proved satisfactorily by cogent evidence. The matter was examined from this aspect by Mr. Justice Mahajan, in a case heard by a Division Bench of the Lahore High Court, reported as *Naurang Singh v. Arjan Singh* (1). In that case almost the entire material produced in the case before us was examined and discussed and the decision given in that case was that the custom of adoption

(1) 1947 P.L.R. 370.

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did exist among the Jats of Rupar Tahsil. In addition to this case, there are two other reported decisions—one of the Lahore High Court and the other of the Punjab Chief Court. *Kalu and others v. Sardara and another* (1), is also a Division Bench ruling which has dealt with a case arising out of the judgment of the District Judge of which the copy is Exh. D. 18. This case also related to Jats of Rupar Tahsil. The third case is *Suba and others vs. Gurdit Singh* (2). Then there are three instances of adoption mentioned in the pedigree-tables. These are Exhs. D. 7, D. 9 and D. 17 and finally there are three other instances, namely, Exhs. D. 10, D. 20 and D. 22. There are thus nine distinct cases in which adoption was recognized as sanctioned by custom among Jats of Rupar Tahsil. As against these instances there are seven instances in which adoption was held to be invalid under custom. In a case of this type where one party seeks to prove a special custom the onus lies heavily upon him and if we find that there are no less than nine instances which go to rebut the special custom the onus becomes all the heavier and in the present case the weight of evidence is clearly in favour of the custom of adoption obtaining among the Jats of Rupar Tahsil. I am, therefore, of the view that the collaterals have failed to prove their case and their suit is liable to be dismissed. I would accordingly dismiss the appeal with costs throughout.

Soni, J.

SONI, J.—I agree.