(9) In this view of the matter, the impugned order cannot be sustained. The writ petition is, therefore, allowed with costs and the order of the Registrar, Annexure A-5, passed on 24th April, 1968, cancelling the licence of the petitioner, is quashed. The petitioner can carry on his profession as document-writer subject to the terms and conditions of the licence issued to him and subject to the provisions of the relevant rules and the Act. The costs of the petitioner are assessed at Rs. 100 which will be payable by the respondent.

K. S. K.

FULL BENCH

Before Mehar Singh, C.J., Harbans Singh, D. K. Mahajan, Gurdev Singh and Bal Raj Tuli, JJ.

SADA KAUR,—*Appellant.*

versus

BAKHTAWAR SINGH AND ANOTHER,—*Respondents*

R.S.A. 1456 of 1964.

Custom—Jats of Punjab—Widow's re-marriage with her husband's brother in Karewa form—Forfeiture of her life estate in husband's property—Universal Custom barring forfeiture—Whether exists—Such Custom—Whether admits of exceptions among Dhaliwal Jats of Muktsar Tehsil in Ferozepur District. .. ..

Held, that there is no Universal Custom among the Jats of Punjab by which a *widow does not forfeit her life estate in her husbands property by reason of remarriage in Karewa form with her husband's brother and the same holds good with regard to Dhaliwal Jats of Muktsar Tehsil in Ferozepur District.*

(Para 4)

Case referred by the Hon'ble Mr. Justice Tek Chand on 5th September, 1967 to a Division Bench for decision of an important question of law involved in the case. The Division Bench consisting of Hon'ble the Chief Justice Mr. Mehar Singh and the Hon'ble Mr. Justice Bal Raj Tuli again referred the case to a Full Bench, on 31st July, 1968 and the case was finally decided by a Full Bench consisting of Hon'ble the Chief Mr. Mehar Singh, the Hon'ble Mr. Justice Harbans Singh, The Hon'ble Mr. Justice D. K. Mahajan, the Hon'ble Mr. Justice Gurdev Singh and the Hon'ble Mr. Justice Bal Raj Tuli on 3rd November, 1969.

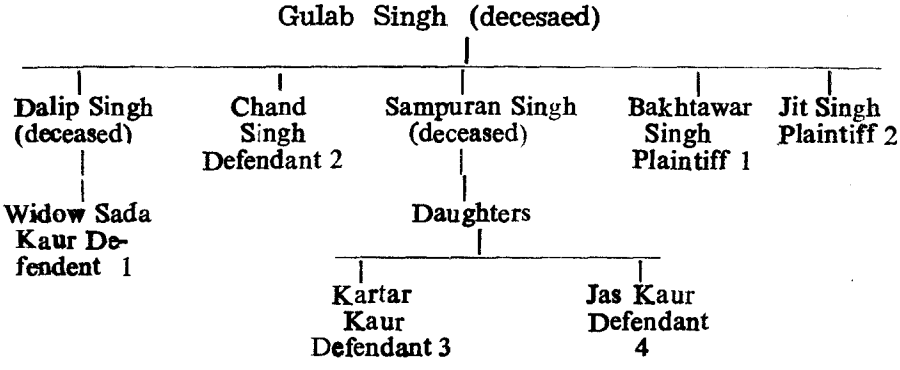
Regular Second Appeal from the decree of the Court of Shri C. S. Tiwana, Additional District Judge, Ferozepur, dated the 7th day of August, 1964 modifying that of Shri N. S. Swaraj, Sub-Judge, 1st Class, Muktsar, dated the 13th June, 1963.

G. C. MITTAL, AND P. C. JAIN, ADVOCATE, for Appellants.

N. L. DHINGRA AND M. S. DHILLON, ADVOCATES, for the Respondents.

ORDER OF DIVISION BENCH

MEHAR SINGH, C.J.—The following pedigree-table of the parties assists in appreciation of the facts of the case—



The land in dispute was inherited by his five sons on the death of Gulab Singh, the common ancestor. The suit, out of which the present second appeal arises, was instituted by the two plaintiffs on January, 22, 1962. They averred that some thirty years earlier to that Dailp Singh had died issueless, leaving him surviving his widow Sada Kaur, defendant 1, who, within a few months of the death of her husband, remarried, by Karewa, the real brother of her husband, Chand Singh, defendant 2. They have had a number of children out of that marriage. On the death of Sampuran Singh, his two daughters (defendants 3 and 4) sold one-fifth share of their father to the remaining four branches of the common ancestor. The plaintiffs averred that the land is ancestral qua them and their brother Dalip Singh deceased, that they were governed by custom among Dhaliwal Jats in Muktsar Tehsil of Ferozepur District in regard to inheritance, widow's right to succession, and forfeiture of estate on widow's unchastity or remarriage, and that throughout

they have remained in possession of the land as owners and co-shares. They sought declaration that they were owners of two-thirds of the land, the rest one-third remaining with Chand Singh, defednant 2. This they claimed on the ground that on remarriage Sada Kaur, defendant 1, forfeited her right to the estate of her deceased husband Dalip Singh.

The trial Court found that the suit of the plaintiffs was within time, that though the parties are Dhaliwal Jats, by the custom applicable to them, Sada Kaur, defendant 1 did not forfeit her first husband's estate on remarriage to his real brother Chand Singh, defendant 2, that the plaintiffs failed to prove their title by prescription, that the land is ancestral qua the plaintiffs and Dalip Singh deceased, and that Sada Kaur, defendant 1 has become full owner of her share of the land in view of the provisions of the Hindu Succession Act, 1956. The learned trial Judge by his judgment and decree of June 13, 1963, thus did not grant declaration to the plaintiffs as prayed for by them, but he made a declaration that they alongwith Chand Singh, defendant 2, are owners and in possession of four-fifths of the land in dispute. Decree was ordered to be made according to that, leaving the parties to their own costs. On an appeal by the plaintiffs from the decree of the trial Court, the learned Additional District Judge of Ferozepur by his judgment and decree of August 7, 1964, reversed the decree of the trial Court and decreed the claim of the plaintiffs as a whole. He pointed out that no other issue was a matter of argument before him except whether Sada Kaur, defendant 1, having remarried, within a few months of the death of her first husband, his real brother Chand Singh, defendant 2, forfeited the estate she inherited from her first husband or not ? He answered the question in favour of the plaintiffs and against the defendants, relying very greatly upon the statement of custom in this behalf as given at page 166 of Currie's Customary Law of Ferozepur District, of the Settlement of 1914. Question 47 is—What is the effect of unchastity upon the right of a widow to the estate of her deceased husband ? What is the effect of her remarriage ? And the answer given is—

"Answer.—At last settlement Mr. Francis wrote:—

> 'Unchastity or remarriage deprives a widow of her right to the property'. The Muktsar Code gives a similar answer. The Sirsa Code, however, stated:—"If a sonless widow have succeeded to her husband's estate,

and be proved unchaste or leave her husband's house to reside permanently with her parents elsewhere, or marry by nikah or karewa any one except a near agnate of her husband, she looses all right to her husband's estate'. Further on (page 124) it says:—'Whenever a widow remarries, even if she marry the brother of her deceased husband, she loses her right to her deceased husband's estate, which reverts at once to his agnates (mostly Sikh Jats, Kumhar, Khatri, Lohar, Bodla, Chisti Wattu). If a sonless widow in possession of her husband's estate marries his brother, she is often allowed to remain possession of her deceased husband's estate for her lifetime (Bagri Jats, Musalman Jats and Rajputs).

As regards the question of unchastity, there seems to have sprung up a greater laxity. Most tribes now say that unchastity does not affect the widow's rights. The following groups, however, say that unchastity entails forfeiture :—Among Sikh Jats, Dhaliwals of Moga and Muktsar, Siddhus in Ferozepore, Gils and miscellaneous Jats in Moga and Sandhus and Khosas in Muktsar, and among other tribes—Bodlas, Nipals and Chishtis in Fazilka, and in Ferozepore Pathans, Arains and Moghals.

Note.—The truth on this point I think, is that as long as the widow remains in her deceased husband's house and her unchastity is not an open scandal, no one will object.

As regards the effect of remarriage, all tribes that admit widow remarriage agree that no matter whom the widow marries, she forfeits all right to her deceased husband's estate.

Note.—Despite the rulings to the contrary that are quoted below, I am convinced that the above answer is a true expositions of the custom. The people when pressed on the point put it as follows :—The widow on remarriage ceases to be the widow of her late husband and becomes the wife of the man she has married; she

thus forfeits her right, which is really only one of maintenance from the income of the deceased's property. Instances to the contrary will generally be found to be rather of the nature of family arrangements, whereby if the widow has daughters by the previous husband, she may be allowed to retain the whole or a part of the estate till they have been married or where the new husband has already a wife and it is anticipated that the two women may quarrel.

Many of the refusals in succession cases to admit that a **karewa** marriage has taken place are simply due to the belief that **ipso facto** the widow's rights are extinguished."

The learned Author then discusses the decisions of the Chief Court and cites one hundred and two instances in support of his conclusions. Of those there are nine of Dhaliwal Jats, seven from Moga Tehsil and two from Fazilka Tehsil, appearing at pages 173, 174 and 185. Of those nine instances of Dhaliwal Jats in Ferozepur District, eight are in support of the plaintiffs and one against them. All the seven instances from Moga Tehsil are in support of the plaintiffs. Of the two instances from Fazilka Tehsil one is in their favour and one is against them, that is to say, one instance is in favour of Sada Kaur defendant 1. No instance of Dhaliwal Jats is available from Muktsar Tehsil, but the enquiries of the learned Author as digested at page 106 give an answer even with regard to Dhaliwal Jats of Muktsar Tehsil on the questions posed. It will be seen that so far as the question of remarriage is concerned, all tribes said that remarriage, no matter whom the widow remarries, causes forfeiture of all rights to her deceased husband's estate. Overwhelming instances of other Jats in Ferozepur District are also in support of the plaintiffs and against Sada Kaur defendant 1, as enumerated and listed in this book. Now, apparently Riwaj-i-Am, unless rebutted, is a relevant and strong piece of evidence in support of custom. No doubt, the females were not consulted at the time of preparation of Riwaj-i-am but in spite of this no substantial evidence to the contrary in the form of sufficient number of instances is available in this book which rebuts the presumption of correctness of the custom stated therein.

The learned Additional District Judge thus proceeded on this evidence and was of the opinion that the Full Bench decision of this

Court reported as *Charan Singh-Harnam Singh* v. *Gurdial Singh—Harnam Singh and another* (1) was not quite in point because it was a case from another district, that is to say, Ambala District.

There has been an appeal by the defendants other than the daughters of Sampuran Singh deceased against the appellate judgment and decree of the Additional District Judge of Ferozepore. It came for hearing before Tek Chand J., and the learned Judge was of the opinion that *Charan Cingh's case* (1) has stated, following paragraph 33 and Exception 1 to that paragraph of Rattigan's Digest of Customary Law, 1938 Edition, that among Jats remarriage in Karewa form with the brother of the deceased husband does not cause forfeiture of a widow's life estate in the property of her first husband, the proposition therein too broadly and it is not really supported by authority. The learned Judge points out in his order of reference of September 5, 1967, that in the first nine eidtions of Rattigan's Digest of Customary Law, of which the first six were by the Author himself, Sir William Rattigan, between 1880 and 1921, there was no reference to any such custom in the Digest. It was for the first time introduced by Mr. K. J. Rustomji when he edited the Digest in 1925 and has continued in it ever since. The learned Judge then points out that when it was introduced in the Digest by Mr. Rustomji there was no authority in support of it but a mistaken view taken in *Sant Singh* v. *Rari Rai* (2) decided on August 1, 1923, by the Judicial Commissioner of Sind. There the learned Judicial Commissioner by mistake stated that among Sikh Jats of Punjab, instead of Sikh Jats of Jullundur, which was the case before him, a widow does not forfeit her life estate in her deceaed husband's property by reason of remarriage in Karewa form with her husband's brother whether he be the sole surviving brother or there are other brothers as well of the deceased. The learned Judicial Commissioner was relying upon *Basanti* v.*Partapa* (3) which was a case from Ludhiana District and did not state a general custom applicable to all the districts in the Punjab. This mistake has eversince, according to the learned Judge, been repeated and unjustly attributed to Sir William Rattigan, the original Author of the Digest. The learned Judge felt that he was bound by the decision of the Full Bench in *Charan Singh's case* (1) and so he has made

(1) I.LIR. (1961) 2 Pb. 340 (F.B.)=A.I.R. 1961 Pb. 301.

(2) 76 I.C. 408=A.I.R. 1924 Sind 17.

(3) 51 P.R. 1911.

reference of this case to a larger Bench, which means a Bench of five Judges, because Charan Singh's case (1), was decided by a Bench of three Judges.

The question that has been posed by the learned Judge is, whether by universal custom among the Sikh Jats of the Punjab, a widow does not forfeit her life estate in her husband's property by reason of her remarriage in Karewa form with her husband's brother, and, if so, whether the custom admits of exceptions among different tribes of Sikh Jats and in particular among Dhaliwal Jats of Muktsar Tehsil of Ferozepore District. In *Charan Singh's case* (1) it was not stated that there is a universal custom of this type, but from the judgment an argument in support of such a claim may be urged. That was a case which decided the dispute between the parties from Ambala District. Now, it is acknowledged that custom in Punjab is not only local but also tribal. It may vary from district to district, from tehsil to tehsil, and from Pargana to Pargana in the case of the same tribe. It may vary from tribe to tribe and, what is more, it may vary among different sections or castes of the same tribe. If my memory serves me right, except in one case, it has never been accepted that there is any such thing as a general custom prevailing in Punjab. Custom has every time to be alleged and proved as a fact. True, instances of reported cases may offer ready precedents in support of a claim in this respect, but a custom has still to be alleged and proved. In a given case proof may be readily available in the form of reported cases or as is more common in the statement of the custom in the Riwaj-i-Am, to which attaches a presumption of correctness and truth unless otherwise rebutted. So that it would be a point whether the Full Bench in *Charan Singh's case* (1) intended to lay down any road proposition that the statement of custom therein is applicable as a general or a universal custom among Jats in the whole of Punjab. I was a party to that case but mine was a dissenting judgment. What has been brought to light by the learned Judge was never placed before us when that case was heard. Apart from this whatever may be the case of a custom on the aspect of the matter among a particular tribe of Jats in Ambala, in Ferozepur District among the tribe of the parties, according to Carrie's Customary Law of Ferozepur District, 1914 Settlement, the custom with them is quite to the contrary. In these circumstances, I think it would not be proper to

pose a definite question for the larger Full Bench in this case. The reason is that the vast majority of cases on custom are more disposed of upon the evidence than upon abstract statement of custom as law. As I have already said, in so far as my memory serves, there has only been one statement of general custom applicable to the whole of Punjab in a decision of the Privy Council, but only on one isolated aspect of the customary law and no other. In these circumstances, I think it more appropriate that this second appeal be placed before a Bench of five Judges for final disposal on all aspects that arise in this appeal including the consideration of the Full Bench decision in *Charan Singh's case* (1). So the case is referred to a Bench of five Judges.

BAL RAJ TULI, J. I agree.

JUDGMENT OF FULL BENCH

HARBANS SINGH, J.—The facts of the case have been given in detail in the referring order and for the purpose of this appeal, it is not necessary to give them *in extenso*.

(2) After the demise of one Gulab Singh, a Dhaliwal Jat of Muktsar Tehsil in district Ferozepur, the property was inherited by his five sons in equal shares some thirty years before 22nd of January, 1962, when the suit, out of which the present second appeal has arisen, was filed. Dalip Singh, one of the sons of Gulab Singh, died leaving him surviving only his widow Sada Kaur, defendant No. 1. Within a few months of the death of her first husband, Sada Kaur remarried in Karewa form the real brother of her husband, Chand Singh, defendant No. 2. The third brother Sampuran Singh died leaving two daughters, who transferred one-fifth share of their father to the surviving three brothers including Chand Singh. It appears that the possession of the entire land continued with the three brothers though in the revenue record, Sada Kaur was mentioned as the owner of one-fifth share, belonging to her first husband. The present suit was brought by the remaining two brothers, namely, Bakhtawar Singh and Jit Singh for a declaration that they were governed by custom according to which Sada Kaur on remarriage forfeited the estate inherited by her from Dalip Singh and the same devolved, on her remarriage, on the remaining three brothers, that is, two plaintiffs and Chand Singh, defendant

No. 2. They sought a declaration that they are the owners in possession of the two-third share. As modified by the lower appellate Court, the plaintiffs were granted a decree as prayed and this second appeal was filed by Sada Kaur, challenging this decision. The main contention on behalf of the appellant was that a remarriage by the widow with the real brother of her deceased husband does not involve a forfeiture of the estate inherited by her from the deceased husband.

(3) This appeal in the first instance came up before the learned single Judge, who referred it to a Division Bench for an authoritative decision. The Bench, however, by its order dated 31st of July, 1968, felt that the question involved in the case required more authoritative consideration particularly in view of an earlier Full Bench decision in *Charan Singh-Harnam Singh and another* v. *Gurdial Singh Harnam Singh and another* (1). This Regular Second Apeal was, therefore, directed to be placed before a Bench of five Judges and that is how the case is before us.

(4) The question involved in the case and which was posed by the Division Bench is in the following terms:...

> "Whether by universal custom among the Sikh Jats of the Punjab, a widow does not forfeit her life estate in her husband's property by reason of her remarriage in Karewa form with her husband's brother, and, if so, whether the custom admits of exceptions among different tribes of Sikh Jats and in particular among Dhaliwal Jats of Muktsar Tehsil of Ferozepur District."

Charan Singh's case (1) was from Ambala District and the question referred to the Full Bench was not the same as arises in the present case, but slightly different, namely, "Whether in the case of Jats governed by custom in matters of succession, a widow, by remarrying her deceased husband's brother, is entitled to collateral succession in the family?" The question argued before the Bench was. Whether by remarriage with the real brother of her first husband, she would forfeit the life interest inherited by her from her first husband was discussed and the conclusion arrived at by the Full Bench was that to the general rule that a widow on remarriage forfeits her life interest in the estate inherited by her from her first husband was subject to an exception or a special custom prevailing among Jats

that a remarriage in the Kerewa form with the brother of the deceased husband does not cause such a forfeiture. In fact, this proposition was accepted by the learned counsel for both the parties and consequently the question, which is before this Bench, was not examined at any considerable length either by the Division Bench or by the Full Bench.

(5) Paragraph 32 of Rattigan's Digest of Customary Law is to the following effect:—

> "In the absence of custom, the remarriage of a widow causes a forfeiture of her life interest in her first husband's estate which then reverts to the nearest heir of the husband."

No exception can be taken to this statement of general custom prevailing among the Jats. Rattigan's Digest of Customary Law of Punjab has received the seal of being a book of undisputed authority by the Privy Council in *Mst. Subhani* v. *Nawab* (4), and by the Supreme Court in *Salig Ram* v. *Mt. Maya Devi* (5), and *Jai Kaur* v. *Sher Singh* (6).

(6) There are number of exceptions mentioned to this statement of general custom and we are concerned with Exception I, which is stated in the following terms:—

> "Amongst certain tribes a remarriage in the Karewa form with the brother of the deceased husband does not cause a forfeiture of the widow's life estate in the property of her first husband."

Some of the cases cited in support of this statement relate to Sikh Jats of different districts in Punjab including Sirsa, Amritsar, Ferozepur and Ludhiana. In the twelfth edition of this Digest of Customary Law, the following statement is found added for the first time:—

> "By custom among the Sikh Jats of the Punjab a widow does not forfeit her life-estate in her deceased husband's property

(4) A.I.R. 1941 P.C. 21.
(5) A.I.R. 1955 S.C. 266.
(6) A.I.R. 1960 S.C. 1118.

by reason of her re-marriage in Karewa form with her husband's brother, whether he be the sole surviving brother or there are other brothers as well of the deceased."

The case quoted in support of this general statement is *Sant Singh* v. *Rari Bai* (2).

(7) It is now well-settled that agricultural custom in Punjab is not only local, but also tribal and may even differ from Tehsil to Tehsil and from tribe to tribe. *Mara and others* v. *Mst. Nikko* (7),

(8) On behalf of the respondents, who are brothers other than the one who married the widow by Karewa marriage, it was vehemently argued that the Sind case is no authority for the recognition of such a universal exception to the general rule as stated in paragraph 32 of Rattigans' Digest of Customary law. It was further urged that in the District of Ferozepur and more so amongst Dhaliwal Jats, this exception was not recognised and the general rule resulting in the forfeiture of the life estate by the widow on remarriage applied notwithstanding the fact that remarriage was with a brother of the deceased husband.

(9) As was observed by the Privy Counsel in *Mst. Subhani's case* (4), custom to be treated as a general custom may not be an immemorial custom as is contemplated under the English law, and if a particular custom is well-recognised by judicial decisions and otherwise, then the same may be taken judicial notice of by the Courts without any further proof by producing particular instances. The question, therefore, before us is whether the exception mentioned in the Rattigan's Digest of Customary Law under paragraph 32 that the forfeiture does not take place in case of widow's remarriage with her husband's brother is so universally recognised all over Punjab and particularly amongst the Dhaliwal Jats of Ferozepur District as to be treated as their generally recognised special custom. As instances from other districts will not be of much avail, unless the position is not clear so far as the instances from Ferozepur District are concerned, it would be necessary in the first instances to examine decided cases and other instances arising out of the Ferozepur District, to which the parties belong.

(10) Earliest reported case from Ferozepur District is *Didar Singh* v. *Mst. Dhaimo* (8), In this case, one Gara had left two widows

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

(8) 25 P.R. 1888.

J and D. D remarried younger brother of Gara. In a litigation between the widow and the collaterals, it was held that this remarriage did not result in the forfeiture of the half share of the estate which had earlier been mutated in favour of D. Later, J., died and the question was whether D as a co-widow of J was entitled to inherit J's share as well. The Punjab Chief Court, held in view of the previous decision between the parties, that if D had been the sole widow; she would have been entitled to retain the entire estate in spite of her remarriage and consequently D should be held to be entitled to inherit the other half of the estate which was inherited by J on the demise of the latter.

(11) *Punjab Singh* v. *Mst. Ghandi* (9), was a case from Sirsa, but the parties were Gill Jats and had migrated from Fazilka Tehsil and they owned property in tehsil Muktsar also, to which Tehsil the parties in the present case before us belong. The defendants relied upon the custom of non-forfeiture of the estate of the widow on remarriage with her husband's brother and it was observed by the Bench as follows:—

> "It is clear that the custom relied on by the defendants does obtain to a very considerable extent amongst Sikh Jats of Sirsa District, though it may not be universal."

Punjab Singh's case (9), was followed in *Mst. Indi* v. *Bhanga Singh and others* (10). In the first instance, this case was remanded by the Court for detailed enquiry and number of instances were brought on the record for and against the aforesaid exception. At page 450 of the report, Mr. Justice Chatterji, who delivered the judgment, observed as follows:—

> "The decision of the question is not free from difficulty, but on the whole I am disposed to think that the plaintiffs' claim ought not to succeed. Having regard to the customs and notions of the Jats, I am inclined to hold that there is a substantial distinction recognized by them between the marriage of a widow with her husband's brother and her marriage with a stranger. The Jat notion undoubtedly is that by marrying a member of a family a woman not only becomes a member of it but comes to be looked upon

(9) 88 P.R. 1900.
(19) 115 P.R. 1900.

> as if she were the property of the family. If her husband dies his male relations in the order of propinquity to him have a preferential claim to take her to wife. In practice in most instances she follows this rule if she contracts a second marriage at all."

In addition to *Didar Singh's case* (supra) (8), *Punjab Singh's case* (supra) (9), reliance was also placed on *Hira Singh* v. *Mst. Rami* (11), (a case of Cohabitation, and not of remarriage, from District Amritsar) for coming to the conclusion that the custom in favour of non-forfeiture of widows' estate or remarriage with her husband's brother was established.

(12) There is no reported case after *Mst. Indi's case* (supra (10), from Ferozepur District recognising this exception. *Hardam Singh and another* v. *Mst. Mahan Kaur* (12), however, is a case from Ferozepur District. In that case, the deceased left him surviving his son and widow. On the demise of the son, widow, who had remarried a brother of her deceased husband, claimed inheritance. Her claim was negatived following the decision in *Mst. Jai Devi* v. *Harnam Singh* (13), which was a case of Jats from Hoshiarpur District and in which also the question involved was inheritance of a son. This case consequently did not deal directly with the question of forfeiture by widow of the estate of her husband.

(13) Thus it is clear that so far as the reported cases are concerned, we have only three cases relating to Jats of Ferozepur District and all these cases are prior to 1900. Out of these, *Didar Singh's case* (8), related to Dhaliwal Jats.

(14) There is no reported case directly dealing with the point from Ferozepur District taking a contrary view. The learned counsel for the respondents, however, urged that the only three decided cases (the third one following the other two and only one of them relating to Dhaliwal Jats) are hardly sufficient for holding that the exception is generally recognised among the Dhaliwal Jats, so as to be taken a judicial notice of. The learned counsel rightly contended that it is for the party who pleads the special custom, not only to plead it, but also to prove the same unless such a special custom has been

(11) 74 P.R. 1893.
(12) 64 P.R. 1910.
(13) 117 P.R. 1888.

recognised to be in existence in such a large number of cases that even no instance may be established to discharge the burden.

(15) In order to ascertain the custom prevailing in a tribe residing in any district or a sub-division of a district. Riwaj-i-am complied by the authorities of a district normally affords a good and reliable source. Question No. 47 of Currie's Customary Law of the Ferozepur District deals with the question of the effect of unchastity and remarriage upon the right of a widow to the estate of her deceased husband. Relevant portion of the reply dealing with the remarriage is in the following terms:—

"At last settlement Mr. Francis wrote:—

"Unchastity or re-marriage deprives a widow of her right to the property." The Muktsar Code gives a similar answer..... Further on (page 124) it says:—"Whenever a widow—remarries, even if she marries the brother of her deceased husband, she loses her right to her deceased husband's estate, which reverts at once to his agnates (mostly Sikh Jats, Kumhar, Khatri, Lohar, Bodla, Chishti, Wattu). If a sonless widow in possession of her husband's estate marries his brother, she is often allowed to remain in possession of her deceased husband's estate for her lifetime (Bagri Jats, Musalman Jats and Rajputs).

As regards the effect of re-marriage, all tribes that admit widow remarriage, agree that no matter whom the widow marries, she forfeits all rights to her deceased husband's estate."

This statement is very categorical. There is a note given by the compiler to this answer in the following terms:—

"Despite the ruling to the contrary that are quoted below, I am convinced that the above answer is a true exposition of the custom. The people when pressed on the point put it as follows:—

The widow on remarriage ceases to be the widow of her late husband and becomes the wife of the man she has married; she thus forfeits her right, which is really

only one of maintenance from the income of the deceased's property. Instances to the contrary will generally be found to be rather of the nature of family arrangements, whereby if the widow has daughters by the previous husband, she may be allowed to retain the whole or a part of the estate till they have been married or where the new husband has already a wife and it is anticipated that the two women may quarrel."

Apart from the rulings noted above, namely, *Didar Singh's case, Punjab Singh's case, Mst. Indi's case and Hardam Singh's case,* another judicial instance cited recognising the exception in case of a brother is that of *Mst. Romon* v. *Raisakha Singh* (13). This case, however, is not relevant because in this case the marriage of the widow was with the first cousin and not with the real brother of the deceased and the forfeiture by the widow of a husband's estate or such a remarriage would not be an instance of recognition of the exception. Under this question, the compiler has quoted a very large number of instances, from different Tehsils and of different categories of Jats numbering nearly 70, in which the widow forfeited the estate inherited from husband on remarriagee ven witht he brother.

(16) On going through these instances, I find that there are some instances, which are not really instances of remarriage with the brother, but out of these 70 instances, there are about 59 instances of Jats, which do support the answer given by the compiler to this question. As against this, seven instances are given wherein remarriage with the brother did not result in the forfeiture of the widow.

(17) Out of these seven instances, first instance is of Sidhu Jats of Tehsil Moga, but here the question seems to have been decided by a compromise because 42 Kanals 2 Marlas of land wihtout the share of Shamlat were allowed to remain in the name of the widow and the rest of the land was mutated in the name of two brothers of her deceased husband including Ratna on her remarriage. The fourth instance is of Gill Jats of Tehsil Moga. Here the marriage of the widow was with the cousin of her deceased husband and the mutation entered for removal of her name was rejected on the ground of her apprehension that she might be expelled by her second husband as he already had a wife. Again instance No. 6 relates to Jat Bhuttar of Tehsil Muktsar, in which 10/11th of the estate was mutated in the

(14) 90 P.R. 1889.

names of Lal Singh and Budha Singh, brothers of the husband of the widow and only 1/11/(stated 1/10 in the book) was in the name of the widow and on that also the widow had no separate possession. The last instance from Chak Jowahrewala relates to Dhillon Jat of muktsar Tehsil, wherein the land inherited by the widow on remarriage with Sher Singh, her Dewar, was mutated in equal shares between Sher Singh, aforesaid, and his two brothers, and she was given only 40 Ghumaons for her maintenance till the marriage of her daughters and after the marriage of the aforesaid daughters, the three brothers divided these 40 Ghumaons among themselves.

(18) The aforesaid instances, therefore, hardly support the contention that the remarriage did not result in the forefeiture of the estate. The remaining three are, however, instances, in which even after remarriage the widow continued in possession of the estate inherited by her from her husband. Instance at serial No. 3 relates to Dhaliwal Jats being the same as reported in *Didar Singh* v. *Mst. Dhamo* (8). Instance at serial No. 2 is of Sidhu Jats of Fazilka Tehsil and at serial No. 5 of Sandhu Jats of Muktsar Tehsil, but in this case there is also a mention that the brother, whom the widow had remarried, had already a wife. Thus it is clear that there are three reported cases and three other instances in support of this exception as against 59 instances to the contrary. It is now well settled that the statement of custom incorporated in the Riwaj-i-am of a district, even without any instance quoted in support thereof, is entitled to an initial presumption of correctness unless it is found that the Riwaj-i-am was not a properly compiled document. See in this connection *Salig Ram's case* (5). So far as Riwaj-i-am of Ferozepur district complied by Mr. Currie is concerned, it was conceded that the same has not been adversely commented upon and so far as question and answer No. 47 is concerned, the same finds ample support from a large number of instances.

(19) So for as Ferozepur District as a whole is concerned, it is thus obvious that the preponderance is against the exception and it appears that the general custom as incorporated in paragraph 32 of the Rattigan's Digest was followed in this District and the exception was not generally recognised. So far as Dhaliwal Jats are concerned, the only instance in favour of the exception is the judicial one as noticed above, being *Didar Singh's case* (8). As against this, at page 178 of the District Riwaj-i-am, a number of instances have been given of Dhaliwal

Jats, of which instances at serial numbers 31, 32, 33 and 34; all of the year 1911-12; are against the recognition of this exception. All these instances relate to Tehsil Moga and not to Tehsil Muktsar. Here it may be assumed that the custom that is followed by the Dhaliwal Jats in Moga would not be much different from the one followed by them in Tehsil Muktsar and more so because this is the usual custom generally prevailing in the whole of the District amongst the other Jats also. So, as regards Dhaliwal Jats, we have got four clear instances, in which widow even in spite of her marriage with her deceased husband's brother forfeited the estate and we have one judicial instance of *Didar Singh's case* (8), taking a contrary view.

(20) As has been noted above, Mr. Justice Chatterji, while dealing with *Mst. Indi's case* (10), expressed the view that the decision of the question was not free from difficulty and that this exception to the general custom of forfeiture by widow on remarriage with the brother of the deceased husband was not universally recognised. There is no instance after the year 1900, reported or otherwise, from Ferozepur District in which a widow on remarriage with a brother of the deceased husband was allowed to retain the property after remarriage. As has been observed in the note, reproduced above, by Mr. Currie, the cases in which a widow is allowed to keep the property with herself are more by way of family arrangement than otherwise. Furthermore, in the earlier years, the landed property was not of very great value and possible the brothers allowed a widow to remain in possession of life interest because in an case after her death the property devolved, in equal shares, among all the surviving brothers. In fact Mr. Justice Chatterji, in *Mst. Indi's case* (10), at 454 of the report, states as follows :—

> "After all the matter is of no vital importance to the plaintiff; their succession to the property of their deceased brother is, if their suit fails, only postponed till the death of the widow; their rights remain unaffected."

It appears that as the value of the landed property increased, the brothers, other than one who remarried the widow were more alert as regards their rights and asserted the same and got the property mutated equally in the names of all the brothers and did not allow the estate to remain with the widow to be enjoyed exclusively by the brother whom she had remarried.

(21) It was vehemently contended that the statement that appeared in Rattigan's Digest of Customary Law in its edition of 1925 and the subsequent editions, saying that among Sikh Jats in Punjab this exception is generally recognised, was not correct, because the case of *Sant Singh* v. *Raribai* (2), on which it purported to be based, was hardly an authority for such a general statement. I feel, there is force in this contention. In this case, the parties to the litigation were Bhullar Jats, who had migrated to Hyderabad Sind from Jullundur District and it was held that the parties, on migration to Sind, carried with them their personal law as to custom prevailing in the province of Punjab. The learned Judges simply relied on *Mst. Indi's case* (10) and *Basant* v. *Partapa* (3), a case from Ludhiana District, for coming to the conclusion that among the Sikh Jats remarriage of a widow with the brother of her husband did not result in forfeiture of her estate inherited by her, irrespective of the fact whether he be the sole surviving brother or there are other brothers as well of the deceased. *Mst. Indi's case* (10) has already been discussed above the *Basant's case* (3) is a case from Ludhiana District, in which it was laid down that amongst Sikh Jats in the District of Ludhiana, widow does not forfeit her life estate in her deceased husband's property by reason of her remarriage in Karewa form. None of these two cases is an authority for the general proposition that amongst Sikh Jats in the Punjab this special customs recognised. This statement, therefore, introduced by the editor for the first time in 1925 edition of Rattigan's Digest was not borne out by the decision in *Sant Singh's case* (2) or otherwise.

(22) Be that as it may, so far as the District of Ferozepur is concerned, the number of instance in support of the general custom not recognising this exception are so overwhelmingly large that it is not possible to say that this special custom prevails in the district of Ferozepur. So far as Dhaliwal Jats are concerned, there are four instances cited in the Riwaj-i-am as against one reported *case of* ***Didar Singh*** (8) and consequently it cannot be held that this special custom is recognised universally amongst the Dhaliwal Jats. No specific instance was proved in the case relating to the family of Dhaliwal Jats in Muktsar Tehsil, to which the parties belong, and, therefore, the main question posed in the case has to be replied in the negative, namely, that there is no universal custom amongst the Jats of Punjab, by which a widow does not forfeit her life estate in

her husband's property by reason of her remarriage with her husband's brother and the same holds good with regard to Dhaliwal Jats of Muktsar Tehsil in the Ferozepur District.

(23) As this is the only point involved in the case and the entire case was referred to the Full Bench, this appeal must be dismissed and the decree of the lower appellate Court confirm. As the point involved in this case was not free from difficulty, there would be no order as to costs in this Court, but the costs of the Courts below will be borne by the parties as directed by the lower appellate Court.

Mehar Singh, C.J.—I agree.

D. K. Mahajan, J.—I agree.

Gurdev Singh, J.—I agree.

Bal Raj Tuli, J.—I also agree.

K.S.K.

FULL BENCH

Before Mehar Singh, C. J., Gurdev Singh and Bal Raj Tuli, JJ.

THE STATE OF HARYANA,—*Appellant*

versus

MULKH RAJ,—*Respondent*

Letters Patent Appeal No. 369 of 1967

December 1, 1969

Punjab Police Rules (1934)—*Volume* II—*Rules* 13.10, 13.12 *and List E*—*Constitution of India* (1950)—*Article* 311(2)—*Reversion of an officiating Police Officer on grounds of incompetancy or unsuitability*—*Removal of his name from list E as well*—*Whether entails penal consequences*—*Such reversion*—*Whether reduction in rank*—*Article* 311(2)—*Whether attracted.*

Held, that an officiating officer has no right to the post in which he officiates and it is always open to the proper authority to revert him to his substantive rank on grounds of inefficiency and unsuitability to hold that post. A police officer has no right to have his name on list E under Punjab Police Rules. However, if his name has come on this list, but was subsequently removed, he can again come back to it provided his work or conduct is of outstanding merit and justifies the same. There is thus no permanent or prolonged bar to his coming back to