

The Custodian of Evacuee Property
 v.
 Pt. Jai Narain and Union of India

Delhi and Ajmer-Merwara Rent Control Act and the Court below rightly exercised jurisdiction under section 7 of that Act.

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—
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Mr. Dua then contended that the present respondents were not tenants in the disputed premises but merely licensees. This is really speaking a question of fact to be decided on the evidence in each case and the Court below has considered the evidence and come to the conclusion that these persons are in fact tenants, and there is nothing to show that the findings are in law erroneous. No other question arises for consideration. All the three petitions must, therefore, fail and I would dismiss all of them, but in the circumstances leave the parties to bear their own costs in this Court.

Harnam Singh.
 J. HARNAM SINGH, J.—I agree.

APPELLATE CIVIL

Before Bhandari, C.J., and Dulat, J.

RAGHBIR SINGH AND OTHERS,—Defendants-Appellants

versus

SHRIMATI KARTAR KAUR AND OTHERS,—Respondents

Regular First Appeal No. 47 of 1947.

1954

August, 4th

Custom (Punjab)—Applicability—Zargars of Gurdaspur District—Whether governed by Custom—Hindu Law—Marriage—Abandonment or desertion by wife of the husband—Whether dissolves marriage—Whether such wife can contract a second marriage during the lifetime of her first husband.

Held, that the zargars of Gurdaspur District are governed by their personal law and not by customary law. Members of an agricultural tribe following agriculture as their

main occupation are presumed to be governed by agricultural custom; and members of non-agricultural tribes not following agricultural pursuits are presumed to be governed by their personal law and not by custom. *Zargars* as a rule are neither proprietors nor *kamins*: they are *ghair biswedars* and are not connected with agriculture. They must be presumed to be governed by their personal law and not by custom. This presumption is strengthened by the fact that neither the *zargars* of the Gurdaspur District nor of the Amritsar District were consulted at the time of the preparation of the *Riwaj-i-am*.

Held further, that a woman governed by Hindu Law cannot marry another man while her husband is alive except where her marriage has been dissolved by divorce, which is not known to general Hindu Law. She is precluded from contracting a second marriage during the lifetime of her husband unless divorce is allowed by custom.

First Appeal from the decree of Shri Salahud-Din Hanif, Sub-Judge, 1st Class, Amritsar, dated the 23rd day of January, 1947, decreeing the suit and leaving the parties to bear their own costs, the decree being ex parte against defendants Nos. 6 to 21.

K. L. GOSAIN, C. RAI, H. L. SIBAL and K. S. THAPAR, for Appellants.

F. C. MITAL, H. S. DOABIA and I. S. KARWAL, for Respondents.

JUDGMENT

BHANDARI, C.J.—Two questions fall to be determined in the present case, namely—

- (1) whether *zargars* of the Gurdaspur District are governed by Customary Law; and if so,
- (2) whether according to the custom by which the members of the tribe are regulated abandonment or desertion of the wife by the husband dissolves the marriage tie and enables her to contract a second marriage during the lifetime of her first husband.

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 Bhandari. C.J. Sardar Bahadur Sadhu Singh, an Honorary Magistrate and a well-to-do *zamindar* of the Amritsar District contracted an illicit intimacy with Mst. Yudhishtar Kaur *alias* Lachhmi, wife of one Jagat Singh, a *zargar* of the Gurdaspur District. They commenced to live together on the established footing of man and wife and continued to do so till the death of Sardar Bahadur Sadhu Singh in the year 1943. Yudhishtar Kaur was murdered on the 1st January, 1944. She left behind no children of her own.

On the 13th October, 1944, Mst. Kartar Kaur, a real sister of Yudhishtar Kaur, brought a suit for the possession of certain properties against the five sons of Sardar Bahadur Sadhu Singh from another wife. Her case was that Yudhishtar Kaur contracted an illicit intimacy with Sardar Bahadur Sadhu Singh and lived as his concubine till his death in the year 1943; that she was the exclusive owner of certain properties situate in the Amritsar District; that after her murder in the year 1944 the five sons of Sardar Bahadur Sadhu Singh took forcible possession of the property belonging to Yudhishtar Kaur and induced the tenants of the properties to attorn to them and that according to Hindu Law the plaintiff in her capacity as a real sister of Yudhishtar Kaur was the legal and exclusive owner of all the properties owned by Yudhishtar Kaur even if the latter had contracted a marriage with Sardar Bahadur Sadhu Singh. The defendants on the other hand asserted that Yudhishtar Kaur was the lawfully wedded wife of Sardar Bahadur Sadhu Singh, that the property for the possession of which the present suit has been brought belonged exclusively to the Sardar Bahadur and that according to the agricultural

custom by which the parties are regulated defen- **Raghubir Singh**
 dants Nos. 1 to 5 in their capacity as the sons of **and others**
 the Sardar Bahadur were entitled to succeed to **v.**
 the property in preference to the plaintiff who is **Shrimati**
 only a sister-in-law of their father. The trial **Kartar Kaur**
 Court held that Yudhishtar Kaur was married to **and others**
 Jagat Singh, P.W. 1, that she deserted her husband **Bhandari, C.J.**
 and contracted a marriage by *chaddar andazi* with
 Sardar Bahadur Sadhu Singh, that as this marriage
 was solemnized during the lifetime of her first
 husband it was not valid in the eye of law, that
 even if the marriage were deemed to be in accor-
 dance with the provisions of law it was not in the
 approved form, that in the circumstances succes-
 sion to the property in dispute must be governed
 by Hindu Law and not by custom and that accor-
 ding to paragraph 147 of Mulla's Hindu Law the
 property of Yudhishtar Kaur must devolve on her
 own heirs and not on the heirs of Sardar Bahadur
 Sadhu Singh. In view of these considerations the
 trial Court granted a decree in favour of the
 plaintiff. The defendants are dissatisfied with the
 order and have come to this Court in appeal.

In order to decide whether the Court below has come to a correct determination on the matters which were referred to it for adjudication, it is necessary to ascertain (1) whether Yudhishtar Kaur had contracted a lawful marriage before she developed an illicit intimacy with Sardar Bahadur Sadhu Singh, (2) whether Yudhishtar Kaur was a concubine or a wife of Sardar Bahadur Sadhu Singh, (3) if she contracted a marriage with Sardar Bahadur Sadhu Singh, whether that marriage was solemnized in the lifetime of her first husband, (4) whether the property for the possession of which the present suit has been

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brought belonged exclusively to her or to Sardar Bahadur Sadhu Singh, (5) whether Yudhishtar Kaur is governed by her personal law or by customary law, and (6) if she is governed by Hindu Law, whether she could contract a lawful marriage with Sardar Sadhu Singh in the lifetime of her first husband.

It is common ground that Yudhishtar Kaur and Kartar Kaur were daughters of one Thakur Singh, a goldsmith of Village Kung of the Amritsar District. Yudhishtar Kaur was born in the year 1884 and was married to Jagat Singh P.W. 1, a goldsmith of the Gurdaspur District. When she attained maturity she allowed her attentions to drift to persons other than her husband and it is said that sometime in the year 1903 she eloped with or was abducted by one Chanda Singh. The irate husband initiated proceedings under section 498 of the Penal Code against Chanda Singh on the ground that he had abducted his wife and against her father Thakur Singh and her mother Parmeshwar Kaur on the ground that they had connived at this abduction. This complaint, however, was dismissed by the Tahsildar of Batala on the 23rd February, 1904, on the ground that the complainant had not been able to bring the guilt home to the accused. The history of her life during the next 15 or 16 years is shrouded in mystery. According to one version she took to evil ways, started living as a concubine of Sardar Bahadur Sadhu Singh and eventually married him in or about the year 1921. According to another version she went and married one Sham Singh, another goldsmith, and lived with him till his death on the 27th December, 1931. Sardar Bahadur Sadhu Singh died in the year 1944.

Two points arise for decision at this stage, namely (1) whether Yudhishtar Kaur was lawfully married either to Jagat Singh or to Sham Singh, and if so (2) whether she went and contracted a fresh marriage with Sardar Bahadur Sadhu Singh during the lifetime of her first or second husband.

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There can be little doubt that Yudhishtar Kaur was married to Jagat Singh while he was a boy of ten and she a girl of five. This is clear from the statements of Jagat Singh, P.W. 1, Kishan Singh, P.W. 2, Kirpa Singh, P.W. 3, and Lal Singh, P.W. 4, and from a copy of the Judgment, Exhibit P.W.1/1, delivered in a case under section 498 of the Penal Code brought by Jagat Singh against Chanda Singh and others. It is equally clear from the statement of Jagat Singh that she eloped with Chanda Singh in or about the year 1903, that he tried unsuccessfully to prosecute the offenders and that when she refused to return to him he gave her up in disgust.

While there can be no doubt whatever that Yudhishtar Kaur was married to Jagat Singh, the evidence in regard to her marriage with Sham Singh is of the flimsiest character. Bhag Singh, P.W. 5, and Bhagat Singh, P.W. 6, state that Yudhishtar Kaur was married to their brother Sham Singh by *chaddar andazi*, that the usual *tambol* was offered by friends and relations on this occasion and that Yudhishtar Kaur lived with Sham Singh till his death in the year 1931. Their evidence in this behalf is supported by the testimony of Amar Singh, P.W. 7, who performed the marriage ceremony and by that of Gurdit Singh, P.W. 8, Ganda Singh, P.W. 9, and Inder Singh,

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P.W.10 who were present at the ceremony and who gave *tambol* on the occasion. It is supported also by certain entries in *bahis* in regard to the payment of *tambol*. On the other hand the defendants produced an even larger number of persons belonging to the village of Sham Singh who categorically denied the assertion that Sham Singh was ever married to Yudhishtar Kaur. The entries regarding *tambol* appear in books of account which are not regularly maintained and cannot, therefore, be accepted at their face value. If Sham Singh was actually married to Yudhishtar Kaur and if she continued to stay in his house in his Village Noushera Dhala till his death in December, 1931, Sardar Bahadur Sadhu Singh would not have acknowledged her as his wife on the 5th December, 1928 (D. 70) and she would not have executed a will in his favour or described him as her husband on the 6th November, 1930 (D. 65). Even in the sale deed, Exhibit P. 7, of the second house which was purchased by Yudhishtar Kaur on the 13th August, 1919, she is described as a daughter of Thakur Singh and not as the wife of Sham Singh. In view of the unsatisfactory nature of the evidence which has been produced in this behalf and in view of the fact that Yudhishtar Kaur had probably married Sardar Bahadur Sadhu Singh in or about the year 1921, I am not prepared to accept the oral testimony of witnesses that she was married to Sham Singh and lived with him till his death in the year 1931. On the other hand I am inclined to agree with the trial Court that Yudhishtar Kaur's marriage with Sham Singh has not been established. All that has been established in the present case is that she was married to Jagat Singh when she was but a child, that she lived with him for a few years, that

she deserted him in or about the year 1903 and that many years later she went to live with Sardar Bahadur Sadhu Singh first as a concubine and then as a wife.

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The question whether Yudhishtar Kaur contracted a marriage with Sardar Bahadur Sadhu Singh must in my opinion be answered in the affirmative. In the first place, several members of the brotherhood have come forward to state that sometime in the year 1921 Yudhishtar Kaur was married by *chaddar andazi* to Sardar Sadhu Singh at Village Kakar during the lifetime of his first wife,—*vide* statement of D.W.s 25, 27, 28, 29, 30 and 33. Secondly, it has been stated that Yudhishtar Kaur was living with Sardar Sadhu Singh as his wife for more than 15 or 16 years before his death and that she was recognised as such,—*vide* statement of D. W.s 19 and 20. Thirdly, several documents have been produced in this case in which she has been described as the wife of Sardar Bahadur Sadhu Singh. The Sardar Bahadur acknowledged her as his wife in the deed of settlement dated the 5th December, 1928 (D. 70) and she acknowledged him as her husband in the will executed by her on the 6th November, 1930 (D. 65). Her mother Parmeshar Kaur described her as the wife of the Sardar Bahadur in the deed of gift, dated the 9th July, 1935,—(*vide* Exhibit D. 66), and in her written statement, (Exhibit D. 73) Yudhishtar Kaur described herself as the wife of Sardar Bahadur Sadhu Singh. In a notice, dated the 19th April, 1940 (Exhibit D. 260), and in an application, dated the 27th May, 1940 (Exhibit D. 261), Sardar Sadhu Singh described Yudhishtar Kaur as his wife. She was described in the same way in numerous rent deeds and lease deeds executed by witnesses in her

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favour. Sardar Sunder Singh, defendant, deposes that Yudhishtar Kaur lived with his father till his death, that the brotherhood acknowledged her as his wife and that she used to participate in the marriages which took place in the family. After the death of Sardar Bahadur Sadhu Singh the property belonging to him was mutated in her name as his widow and in later entries she was described as the mother of defendants Nos. 1 to 5. Her right to inherit was not challenged by the defendants. These facts make it quite clear that not only was she married to Sardar Bahadur Sadhu Singh but that she was living with him and was accepted and recognised as his wife for several years.

The question now arises whether the properties for the possession of which the present suit has been brought belonged exclusively to Yudhishtar Kaur so that they would devolve on her own heirs or whether they belonged to her husband Sardar Bahadur Sadhu Singh and would devolve on his heirs. The plaintiff has asked for the possession of two houses situate in Amritsar and of a plot of agricultural land situate in Village Kathanian of the Amritsar District. The first house is a three storeyed building situated near the Royal Talkies at Amritsar. It belonged originally to Mohammad Din and Mehraj-ud-Din who sold it to Parmeshar Kaur, widow of Thakur Singh, for Rs. 24,000 by virtue of the sale deed, dated the 30th November, 1929, Exhibit P. 1. Parmeshar Kaur made an oral gift of this house in favour of her daughter Yudhishtar Kaur and had a marble slab affixed to one of the walls in token of the transfer. On the 9th July, 1935, she executed a regular deed of gift (Exhibit D. 66) in favour of her daughter thereby confirming the transfer she had previously made. The

house which was originally a single-storeyed structure was pulled down by Yudhishtar Kaur and a three-storeyed building was constructed instead. The defendants allege that this house was purchased with the money provided by Sardar Bahadur Sadhu Singh but that the latter had the sale deed executed in favour of his mother-in-law Parmeshar Kaur on the understanding that she would transfer the house by way of gift to his wife Yudhishtar Kaur. In pursuance of this plan Parmeshar Kaur made an oral gift of the house in favour of her daughter and on the 9th July, 1935, she executed a regular deed of gift transferring the house to her. The statement to the effect that the money for the purchase of this house was provided by the Sardar Bahadur has not been substantiated by evidence on record. If he wanted merely to purchase the house in the name of his wife or to make a gift of that property to her there was nothing to prevent him from having the sale deed executed in her favour rather than to take the risk of having the sale deed executed in the name of his mother-in-law who might like to keep the house with herself and might refuse to transfer it to Yudhishtar Kaur. On the other hand the story put forward by the plaintiff to the effect that the house was really purchased by Parmeshar Kaur herself is fully corroborated by the oral and documentary evidence on record. The statements of Sunder Singh, P.W. 20, and Lal Singh, P.W. 21, appear to indicate that Rupa Singh, father-in-law of Parmeshar Kaur and grandfather of Yudhishtar Kaur, was a well-to-do *sahukar* of the Amritsar District and that on the 17th January 1899, he executed a will (Exhibit P. 13) by virtue of which some of his movable and immovable property devolved on his son Thakar Singh. On the death of Thakar Singh all the property naturally devolved on his

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Raghubir Singh widow Parmeshar Kaur who was thus in a position and others to purchase a house worth Rs. 24,000. The defendants have led no satisfactory evidence to show that Parmeshar Kaur was not in a position to make this purchase. It may be that Sardar Bahadur Sadhu Singh had the original house demolished and that he constructed a new building with his own money but that fact alone would not lead one necessarily to the conclusion that the original house was not purchased with the funds provided by Parmeshar Kaur herself. There is abundant material on the file to show that Yudhishtar Kaur was the owner of the house in question and that she used to let it out to tenants and to receive rents from them. I accordingly endorse the view taken by the trial Court that this house was purchased by Parmeshar Kaur with her own money and was later gifted by her to her daughter Yudhishtar Kaur. This building must, therefore, be deemed to be the exclusive property of Yudhishtar Kaur and must go to her own heirs and not to the heirs of her husband.

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The second building is a double-storeyed house situate in Katra Sher Singh, Amritsar. This house was purchased by and in the name of Lachhman Kaur by virtue of a sale deed, dated the 13th August 1919. The fact that she is described by her maiden name appears to indicate that the property was purchased before Yudhishtar Kaur had any connection with Sardar Bahadur Sadhu Singh and before she had abandoned her original name for that of Yudhishtar Kaur. The defendants allege that the house was purchased by Sardar Bahadur Sadhu Singh in the name of Yudhishtar Kaur but have not been able to substantiate this allegation except by stating vaguely that she had no money

of her own with which to make the purchase. Jagat Singh states that when she eloped with Chanda Singh she took away his money and jewellery. Is it inconceivable that this house was purchased by her from the proceeds of the articles that she had taken away from the house of her husband? Assuming for the sake of argument that Sardar Bahadur Sadhu Singh was carrying on with her before the year 1919 and provided her with funds for the purchase of this house, the only inference that may reasonably be drawn is that he made a gift of the money with which the house was purchased and that Yudhishtar Kaur became full and exclusive owner of the property.

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The third property is a plot of land measuring 99 *kanals* 4 *marlas* and situate in Mauza Kathanian of the Amritsar District. It is common ground that this land was gifted by Sardar Bahadur Sadhu Singh to Yudhishtar Kaur. In the absence of evidence to indicate that the land was given as a life estate it must be assumed that it was given to her finally and for good and that Yudhishtar Kaur became the full owner thereof. My finding, therefore, is that Yudhishtar Kaur was full and exclusive owner of all the three properties for the possession of which the present suit has been brought.

The following facts have, I think, been established by the evidence which has been produced in this case, namely (1) that Yudhishtar Kaur was the lawfully wedded wife of Jagat Singh, P.W. 1, a *zargar* of the Gurdaspur District, (2) that she deserted her husband and eloped with one Chanda Singh, (3) that although Jagat Singh gave up his wife he did not repudiate her by the execution of a deed of release or any other document, (4) that during the lifetime of her first husband Yudhishtar

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The next and perhaps the most important question which has been argued before us is whether Hindu *zargars* of the Gurdaspur District are governed by Customary Law or by Hindu Law. One of the principles which has long been followed by the Courts in this Province and which was recently reiterated by their Lordships of the Supreme Court in *Gokal Chand v. Parvin Kumari* (1), is that there is no presumption that a particular person or class of persons is governed by custom and that a party who is alleged to be governed by Customary Law must prove that he is so governed and must also prove the existence of the custom set up by him. In the present case it is vaguely alleged that the parties are governed by custom but no custom has been alleged or proved. No question was put to any of the witnesses to prove the existence of the custom on which the defendants rely.

It is common ground that members of an agricultural tribe following agriculture as their main occupation are presumed to be governed by agricultural custom, also that members of non-agricultural tribes not following agricultural pursuits are presumed to be governed by their personal law and not by custom. *Zargars* as a rule are neither proprietors nor *kamins*: they are *ghair biswedars* and are not connected with agriculture, *Prima facie*, therefore, they must be presumed to be governed

(1) A.I.R. 1952 S.C. 231.

by their personal law and not by custom. This presumption is strengthened by the fact that neither the *zargars* of the Gurdaspur District nor of the Amritsar District were consulted at the time of the preparation of the *Riwaj-i-am*. In *Abdul Karim and Muhammad Bakhsh v. Mst. Amat-ul-habib* (1), it was held that the *zargars* of Batala, being non-agriculturists would, *prima facie*, follow their personal law and that the defendants on whom the onus lay had failed to prove that these *zargars* as a whole or the family of the plaintiff in particular were governed by Customary Law in matters of succession. In *Mangtu and another v. Chuni Lal and others* (2), the Chief Court expressed the view that Hindu *zargars* of Ambala City are not governed by custom in matters of inheritance but by Hindu Law. A similar view was taken in *Baroo and another v. Makhan and others* (3), which relates to non-agricultural Hindu *zargars* trading at Dagshai who had migrated from the Saharanpur District. The learned counsel for the defendants has not been able to invite our attention to any decision in which a contrary view was taken. I would accordingly hold that *zargars* of the Gurdaspur District are governed by their personal law and not by customary law.

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Assuming for the sake of argument that *zargars* are governed by Customary Law it is the duty of the Court to ascertain the particular custom by which they are governed. The general agricultural custom of the Punjab as embodied in paragraph 74 of Rattigan's Digest is that until the former marriage is validly set aside, a woman cannot marry another man while her husband is alive.

(1) I.L.R. (1922) 3 Lah. 397.

(2) 51 P.R. 1903.

(3) 61 P.R. 1903

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A special custom, however, exists among certain classes according to which a woman who has been repudiated and renounced by her husband may marry again. No such custom exists in the Amritsar District and even if it does it is not applicable to *zargars* of that district. The relevant Questions and Answers in the *Riwaj-i-am* of the Amritsar District prepared in the year 1947 are as follows:—

Question 13.—Is a woman allowed to have more than one husband at a time?

Answer.—No.

Question 25.—Is divorce of a wife by a husband recognised? If so, on what grounds and what formalities are necessary to constitute a valid divorce?

Answer.—* * * * * Among Hindus and Sikhs there is no divorce but a wife is sometimes turned out and repudiated.

Question 26.—Can a wife claim release from the tie of marriage, and if so, on what grounds?

Answer.—A wife cannot claim release from marriage under Customary Law, but a Muslim woman has acquired statutory rights in regard to dissolution of her marriage under the Dissolution of Muslim Marriages Act, 1939”.

The *Riwaj-i-am* of the Gurdaspur District is equally unhelpful. The Answer to Question 3 (b) of section III runs as follows:—

“3(b) Among the Hindus the custom of divorce does not generally exist; but the following tribes state that the wife can be repudiated by the execution of a deed of release:—

- (1) Labanas of the Gurdaspur and Shalkargarh Tahsils.
- (2) Hindu Jats of the Batala and Gurdaspur Tahsils.
- (3) Sainis, Bhats, Lohars and Tarkhans of the Gurdaspur Tahsil.

All these tribes with the exception of Labanas and Sainis state that a wife so repudiated can be taken back by mutual consent”.

It will be seen from the above that the custom of divorce does not exist among Hindu *zargars* of the Gurdaspur District and that even the tribes which recognise divorce can repudiate the wife only by executing a deed of release. A considerable amount of importance appears to be attached to the deed of release for even in the case of Sikh Jats who hold liberal views on the question of marriage, a married woman who has not received such a document is not free to contract a second marriage in the lifetime of her first husband, *Basant Singh and another v. Bhagwan Singh and another* (1), *Sunder v. Nihala and others* (2).

(1) I.L.R. 14 Lah. 659.

(2) 84 P.R. 1889.

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Two submissions have been placed before us on behalf of the defendants. It is contended in the first place that a *zargar* wife who has been repudiated by her husband is at liberty to remarry. Reliance is placed on certain observations which appear in a judgment of the Chief Court at Lahore which has been reproduced at pages 106 and 107 of the paper book. In this case the learned Judges found as the result of an enquiry that among *kahars* an abandoned wife is free to contract a second marriage. In arriving at this conclusion the learned Judges observed as follows :

“The next argument for appellant is that such a custom if established is immoral and opposed to public policy :

We are unable to concur in this view. Hindu Law proper provides for neither re-marriage of widows nor divorce.

Remarriage of widows has been legalized by statute and among tribes, e.g., most of the inferior Hindu tribes of the Punjab who do not observe the strict Brahmin Law, abandonment takes the place of divorce.”

Mr. Gosain contends that *zargars* of the Gurdaspur District are an inferior Hindu tribe of the Punjab, that they do not observe the strict Brahmin Law, and consequently that an abandoned wife is at liberty to contract a lawful marriage in the lifetime of her husband. I regret I am unable to concur in this contention.. There is not an iota of evidence on the record to justify the assertion that the members of this tribe or the members of the plaintiff's family do not observe the strict Brahmin Law and

it cannot be said, therefore, that in their case an abandoned wife is at liberty to remarry. In any case general observations of this kind which can at best be regarded as *obiter* cannot enable a person to discharge the burden which rests on him to establish by evidence the special custom on which he relies. It has not been established in the present case that the family of the plaintiff is regulated by any custom by which the repudiation of a wife by her husband dissolves the marriage tie and entitles her to contract a second marriage during the lifetime of her husband.

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The second submission is that as *zargars* live in villages the law by which they are regulated must be deemed to be modified by the customs of the Jats. It may be that according to the custom which prevails among Hindu and Sikh Jats of the Gurdaspur District a woman who is expelled and repudiated by her husband is entitled to remarry, *Lachu v. Dal Singh* (1), *Ishar Singh v. Mst. Budhi and others* (2), but it does not follow as a corollary that *zargars* are also governed by the same custom. The mere fact that *zargars* live in villages and may possibly be influenced by customs of Jats would not justify the Court in extending custom by logical process or analogy. Custom is a matter of proof and not of speculation. Existence of a particular custom must be proved as a positive fact in one or more of the ways set out in Paragraph 3 of Rattigan's Digest of Customary Law.

After a careful consideration of all the facts and circumstances of the case I have come unhesitatingly to the conclusion that Yudhishtar

(1) 33 P.R. 1896.

(2) (1913) 14 P.L.R. 595

Raghubir Singh Kaur was governed by her personal law, that this and others law has not been shown to be modified by custom or at any rate it has not been established that Shrimati Kartar Kaur the *zargars* of the Gurdaspur District or the family and others of the plaintiff are governed by a special custom which entitled a woman to contract a marriage in Bhandari. C. J. the lifetime of her husband.

The only other question which requires determination is whether the Hindu Law empowered Yudhishtar Kaur to contract a lawful marriage with Sardar Sadhu Singh during the lifetime of her first husband. The answer is in my opinion clearly in the negative. Paragraph 431 of Mulla's Hindu Law lays down the proposition that a woman cannot marry another man while her husband is alive except where her marriage has been dissolved by divorce, and paragraph 441 declares that divorce is not known to the general Hindu Law. It follows as a consequence that a woman governed by the Hindu Law is precluded from contracting a second marriage during the lifetime of her husband unless divorce is allowed by custom. No such custom has been proved in the present case.

For the reasons I would hold that Yudhishtar Kaur was not lawfully married to Sardar Sadhu Singh, that the property for the possession of which the present suit has been brought belonged exclusively to her and that the plaintiff who is her sister must succeed to the property in preference to the defendants who are sons of Sardar Sadhu Singh. I would accordingly confirm the order of the trial Court and dismiss the appeal with costs.

Dulat, J. DULAT, J.—I agree.