

Sada Kaur

Vs

Bakhtawar Singh and Others

Civil Appeal No. 1057 of 1970

(A. C. Gupta, N. L. Untwalia JJ)

24.07.1980

JUDGMENT

GUPTA, J. –

1. This appeal by certificate granted by the Punjab and Haryana High Court is from the judgment of a Full Bench of that court answering the following question referred to it :

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.

The relevant facts are these. The first three respondents, Bakhtawar Singh, Jit Singh and Chand Singh, and the deceased husband of the appellant Sada Kaur were brothers. The appellant's husband died sometime in the year 1937 and a few months later she married the third respondent Chand Singh who was a younger brother of her husband in karewa form. The suit out of which this appeal arises was brought by the first two respondents, Bakhtawar Singh and Jit Singh, as plaintiffs for a declaration that they were entitled to two-third share of the land in possession of the present appellant Sada Kaur which belonged to the appellant's deceased husband. Appellant Sada Kaur and her second husband Chand Singh were impleaded as defendants 1 and 2 respectively. The plaintiffs' case was that Sada Kaur having married for the second time had forfeited her interest in her deceased husband's estate. The parties are Dhaliwal Jats of Muktsar Tehsil in the Ferozepur District of Punjab. In her written statement Sada Kaur pleaded that the parties were governed by customary law and according to their custom a widow marrying her deceased husband's brother did not forfeit her interest in the estate of her deceased husband. The plaintiffs filed a replication stating that according to the custom governing Dhaliwal Jats of Tehsil Muktsar, a widow on remarrying even her deceased husband's brother forfeited her right in the estate. The only question that arises for consideration in the present appeal is whether there is a custom governing the parties to the suit according to which on remarriage the widow forfeits her interest in the estate of her deceased husband as claimed by the plaintiffs. The trial Court declined to grant a declaration as asked for by the plaintiffs who preferred an appeal to the District Judge which was allowed. Sada Kaur took a second appeal to the High Court challenging the decision of the lower appellate Court. The learned Single Judge before whom the second appeal came up for hearing was inclined to accept the plaintiff's case and dismiss the appeal but felt that a Full Bench of three learned Judges of the Punjab High Court in an earlier case, Charan Singh v. Gurdial Singh (AIR 1961 Pun 301 (FB)), appeared to have taken a contrary view on the question and referred the appeal to a larger Bench. A

Division Bench of the High Court thereafter referred the case to a Full Bench of five Judges and it is the judgment of this Full Bench that is under appeal before us.

2. In *Mara v. Nikko* ((1964) 7 SCR 430 : AIR 1964 SC 1821 : (1965) 1 SCJ 484), this Court observed that it is "well known" that "custom in the Punjab changes from District to District, Tehsil to Tehsil and Pargana to Pargana". The judgment under appeal relies mainly on the *riwaj-i-am* of Ferozepur District compiled in 1915 by M.M.L. Currie, Settlement Officer. The evidentiary value of the entries in the *riwaj-i-am* has been discussed in more than one decision of this Court. In *Mahant Salig Ram v. Maya Devi* ((1955) 1 SCR 1191 : AIR 1955 SC 266 : 1955 SCJ 248) it was held :

There is no doubt or dispute as to the value of the entries in the *riwaj-i-am*. It is well settled that though they are entitled to an initial presumption in favour of their correctness irrespective of the question whether or not the custom, as recorded, is in accord with the general custom, the quantum of evidence necessary to rebut that presumption will, however, vary with the facts and circumstances of each case. Whether, for instance, the *riwaj-i-am* lays down a custom in consonance with the general agricultural custom of the province, very strong proof would be required to displace that presumption; but whether, on the other hand, the custom as recorded in the *riwaj-i-am* is opposed to the custom generally prevalent, the presumption will be considerably weakened, likewise, whether the *riwaj-i-am* affects adversely the rights of the families who had no opportunity whatever of appearing before the revenue authorities, the presumption will be weaker still and only a few instances would be sufficient to rebut it.

There is however material to suggest that the *riwaj-i-am* in this case suffers from any such infirmity.

3. In *Jai Kaur v. Sher Singh* ((1960) 3 SCR 975 : AIR 1960 SC 1118 : (1961) 2 SCJ 62) this Court has said :

The value of entries in the *riwaj-i-am* has ... been repeatedly stressed. That they are relevant evidence under Section 35 of the Evidence Act is clear and the fact that the entries therein are the result of careful research of persons who might also be considered to have become experts in these matters, after an open and public inquiry has given them a value which should not be lightly underestimated. There is therefore an initial presumption of correctness as regards the entries in the *riwaj-i-am*

4. Question No. 47 of Currie's compilation reads :

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 ? The answer to the question insofar as it deals with remarriage is as follows :

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 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 remarriage, all tribes that admit widow remarriage agree that no matter whom the widow marries, she forfeits all rights to her deceased husband's estate.

The answer is followed by a note recorded by the compiler saying : "Despite the rulings to the contrary I am convinced that the above answer is a true exposition of the custom". The rulings to the contrary which relate to Jats of Ferozepur District are : Didar Singh v. Dharmon (25 PR 1888), Punjab Singh v. Chandi (88 PR 1900) and Indi v. Bhangra Singh ((1940-41) 68 IA 1 (PC) : 41 PC 21). Out of these three cases again only Didar Singh case (25 PR 1888) relates to Dhaliwal jats. The impugned judgment points out that as against these cases the riwaj-i-am mentions numerous, instances, fifty-nine of them relate to Jats, which support the compiler's note that on remarriage, no matter whom she marries, the widow forfeits her right to her deceased husband's estate. There are also three instances wherein remarriage did not result in forfeiture of the widow's right. Didar Singh case (25 PR 1888) which relates to Dhaliwal Jats was of the year 1888. The impugned judgment mentions four instances from the riwaj-i-am of the years 1911-12 supporting the case of forfeiture. No instance has been found either way relating to Dhaliwal jats of Tehsil Muktsar. However, these four instances relate to Dhaliwal jats of Tehsil Mogha which is adjacent to Muktsar. On these facts and figures gathered from the entries in the riwaj-i-am the High Court did not find it possible to accept that there was a special custom among Dhaliwal Jats of Tehsil Muktsar which permitted a widow who married her deceased husband's brother to retain her interest in her deceased husband's estate.

5. In reaching this conclusion the learned Judges had to deal with the earlier Full Bench decision of three Judges of the same High Court, Charan Singh v. Gurdial Singh (AIR 1961 Pun 301 (FB)) in which the view taken by the majority, one learned Judge dissenting, is apparently in conflict with that taken in the judgment under appeal. In Charan Singh case (AIR 1961 Pun 301 (FB)) it was held that as regards Jats governed by custom in matters of succession, a widow on remarrying her deceased husband's brother remains entitled to collateral succession in the family. The parties in that case were Jats from Ambala District, and remembering that custom in Punjab often varies from district to district and Tehsil to Tehsil, it seems the proposition was stated too broadly in Charan Singh case (AIR 1961 Pun 301 (FB)) suggesting as if this was the custom among the Jats in the entire State of Punjab. The basis of the decision in Charan Singh case (AIR 1961 Pun 301 (FB)) is a statement in Sir W. H. Rattigan's Digest of Customary Law in the Punjab. The authoritative value of Rattigan's compilation has been recognised by the Privy Council in Subhani v. Nawab ((1940-41) 68 IA 1 (PC) : 41 PC 21) and also by this Court in Mahant Salig Ram v. Maya Devi and Jai Kaur v. Sher Singh ((1960) 3 SCR 975 : AIR 1960 SC 1118 : (1961) 2 SCJ 62). In Jai Kaur case ((1960) 3 SCR 975 : AIR 1960 SC 1118 : (1961) 2 SCJ 62). however it was held that "when the custom as recorded in the riwaj-i-am is in conflict with the general custom as recorded in Rattigan's Digest or ascertained otherwise, the entries in the riwaj-i-am should ordinarily prevail" Paragraph 32 of Rattigan's Digest on which Charan Singh case (AIR 1961 Pun 301 (FB)) relies states :

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.

It is thus clear that there is no conflict between the statement in Rattigan's Digest and the entry in riwaj-i-am as regards the general custom that remarriage of the widow entails a forfeiture of her interest in her first husband's estate. However, a number of exceptions to this general custom have

also been recorded. Exception 1 which is relevant for the present purpose is as follows :

Among 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.

The cases cited in support of the special custom relate to Sikh Jats of certain districts of Punjab, namely Sirsa, Amritsar, Ferozpur and Ludhiana. There is no mention in this catalogue of Dhaliwal Jats of Tehsil Muktsar. It was for the first time in the 12th edition of Rattigan's book which was published long after Sir Rattigan's death, the following statement was added :

By custom among the Sikh Jats of the Punjab a widow does not forfeit her life estate in her deceased husband's property by reason of her remarriage in karewa form with her husband's brother, whether he be the sole surviving brother or there are other brothers as well as of the deceased.

A decision of the Sindh Judicial Commissioner's court, Sant Singh v. Rari Bai (AIR 1924 Sindh 17 : 76 IC 408), has been cited there in support of the statement. It has been pointed out very clearly by the learned Judge in his order by which he referred the case to a larger Bench that Sant Singh case (AIR 1924 Sindh 17 : 76 IC 408) does not lay down any such broad proposition to justify the statement added in the 12th edition of Rattigan's book. The mistake results from relying on the head-note of the case as appearing in the Indian Cases as also in the All India Reporter. Sant Singh case (AIR 1924 Sindh 17 : 76 IC 408) in which the parties were Sikh Jats from Jullundur District relies on a decision of the Punjab Chief Court :

In Basant v. Pratapa (51 PR 1911), a judgment of Punjab Chief Court, it was held that among the Sikh Jats in the District of Ludhiana a widow does not forfeit her life estate in her deceased husband's property by reason of her 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.

What is found there as the custom "among the Sikh Jats in the District of Ludhiana" appears in the head-notes of the two reports as the custom "among Sikh Jats in the Punjab". Clearly, the head-notes are wrong and do not set out the decision correctly. That being so, it cannot be said that there is any real conflict between the riwaj-i-am and Rattigan's Digest on this point. In any event the statement cannot be attributed to Sir Rattigan.

6. Five learned Judges of the Punjab and Haryana High Court composing the Full Bench after a close examination of the available material on the question whether among Dhaliwal Jats of Tehsil Muktsar there is a special custom which permits a widow on remarriage with her deceased husband's brother to retain her interest in the estate of the deceased, have answered the question in the negative. On the material before us we find no reason to take a different view. The facts and figures gathered from the entries in the riwaj-i-am have not been challenged by the appellant, that the statement introduced in the 12th edition of Rattigan's Digest is wrong cannot also be questioned. We therefore dismiss the appeal but in the circumstances of the case without any order as to costs.

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