



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

101

RSA-1447-1989 (O&M)
XOBJ-11C-1989
Reserved on : 29.07.2024
Pronounced on : 24.09.2024

Bhupinder Pal Singh and others Appellants

versus

Shamsher Singh (now deceased) through his LRs. Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: None for appellant No.1.

Mr. K.B.S. Mann, Advocate
for appellant No.2.

Mr. Kanwaljit Singh, Senior Advocate with
Mr. K.S. Brar, Advocate
for appellants No.6 & 7.

Mr. Kartik Sachdeva, Advocate
for respondents No.1 & 6.

Mr. Manjit Singh Khera, Senior Advocate with
Mr. Ripudaman Singh Sidhu, Advocate
for respondent No.1(iii).

Mr. J.S. Bhatia, Advocate
for respondents No.2, 3, 5 & 6.

PANKAJ JAIN, J. (Oral)

Before adverting to the main appeal, two applications need
to be decided.

Present appeal was filed at behest of plaintiffs namely
Bhupinder Pal Singh s/o Balwant Singh and Mohinder Kaur widow of
Balwant Singh. By way of CM-2552-C-2006, Jang Singh s/o of



Jaswant Singh, Paramjit Singh s/o Jaswant Singh, Sukhjinder Singh s/o of Jaswant Singh were impleaded as appellant No.3, 4 and 5 respectively being necessary parties in terms of provisions of Order 22 Rule 10 CPC. Bhupinder Pal Singh filed application i.e. CM-8495-C-2006. It was brought on record that appellant No.2 i.e. Mohinder Kaur has died and appellant No.2 as her son and legal representative does not wish to continue with the appeal. Name of appellant No.2 was ordered to be struck off from the memo of parties. The appeal was permitted to be withdrawn on behalf of appellant No.1 subject to right of the other appellants to continue with the appeal.

Later on, an application was moved i.e. CM-6255-C-2014 on behalf of Magandeep Singh s/o Bhupinder Singh claiming that Bhupinder Pal Singh had no right to withdraw the appeal on behalf of Mohinder Kaur-appellant No.2. Appellant No.2-Mohinder Kaur died on 07.03.2003. Copy of the death certificate was produced on record alongwith the application. It was further pleaded that Mohinder Kaur executed registered Will in favour of the applicant Magandeep Singh being her grandson qua the property in dispute. Registered Will dated 12.08.2002 also placed on record as Annexure R-2/2. It was further pleaded that the mutation also stood sanctioned in favour of Magandeep Singh on 24.03.2005 which was never challenged by Bhupinder Pal Singh. Thus, Bhupinder Pal Singh on the date the order was passed, was not competent to withdraw the case on behalf of appellant No.2.

Reply to the application was filed on behalf of appellants No.6 and 7 arraigned vide CM-5182-C-2013 being subsequent



purchasers. It was claimed that Balbir Singh, Malkiat Singh and Rajinder Singh have purchased the land of Bhupinder Pal Singh. Though, the other facts were not disputed.

In view of above, this Court finds that the order of withdrawal of appeal qua Mohinder Kaur is recalled. Applicant Magandeep Singh s/o Bhupinder Singh is allowed to be impleaded as legal representative of appellant No.2-Mohinder Kaur subject to just exceptions.

Applications stand disposed off.

Main case

1. Plaintiffs are in appeal. For convenience, parties hereinafter are referred to by their original position in the suit i.e. the appellants as plaintiffs and respondents as defendants.

2. Plaintiffs filed suit for joint possession of land measuring 1554 Kanal, 4 marlas as described in the plaint claiming that plaintiff No.2 being widow of deceased Gurcharan Singh is owner to the extent of $\frac{1}{3}^{\text{rd}}$ share i.e. 518 Kanal 1 marlas and in the remaining land measuring 1036 Kanal, 3 marlas plaintiffs and defendants No.1 to 6 have equal share and the mutations bearing No.2263, 2264 and 2272 sanctioned on 25.07.1971 are not binding upon the rights of the plaintiffs.

3. As per the case pleaded by the plaintiffs, one Sampuran Singh was owner in possession of the suit land. On his death in the year 1940, his estate was succeeded by his three sons namely, Balwant Singh, Gurcharan Singh and Gurbax Singh. Sampuran Singh was also



survived by two wives namely Ass Kaur and Kartar Kaur. Gurcharan Singh died in the year 1954 leaving behind two widows namely Mohinder Kaur I and Mohinder Kaur II. Both the widows succeeded to his estate in equal share. In the same year, Mohinder Kaur I contracted karewa marriage with Balwant Singh and Mohinder Kaur II contracted karewa marriage with Gurbax Singh. Before marrying Mohinder Kaur II, Balwant Singh was already married to Surjit Kaur. From the loins of Balwant Singh, Surjit Kaur gave birth to two sons namely Shamsheer Singh and Rachhpal Singh and a daughter Surinder Pal Kaur. From the loins of Balwant Singh, Mohinder Kaur gave birth to one son namely Bhupinder Pal Singh-plaintiff No.1 and a daughter namely Rano @ Harjinder Pal Kaur.

4. Present suit is at the behest of Bhupinder Pal Singh son of Balwant Singh, Mohinder Kaur I, Rano @ Harjinder Pal Kaur. Mohinder Kaur claims $\frac{1}{6}$ th share inherited by her being widow of Gurcharan Singh. Plaintiffs further claim share out of $\frac{1}{3}$ rd estate inherited by Balwant Singh from Sampuran Singh being legal heirs of Balwant Singh.

5. Suit was contested by defendants No.1 to 6, 9 to 11, 13 to 15 and 18 to 22. Defendants No.1 to 6 admitted the relationship, but claimed that Mohinder Kaur I who inherited $\frac{1}{2}$ share out of the estate succeeded by Gurcharan Singh, forfeited her right as widow of Gurcharan Singh after she married Balwant Singh. It was pleaded that the parties to the lis being governed by general custom of agricultural community known as Rawaj-i-am Zimidara, a widow who remarries



forfeits her right in the estate of her late husband. It was further claimed that Mohinder Kaur and her children have no right in the estate left by Sampuran Singh or by Gurcharan Singh and it is only the descendants of Surjit Kaur-the first wife of Balwant Singh, who are the owners of the suit land. They further propounded Will dated 08.12.1970 executed by Balwant Singh in favour of defendant No.5 and 6.

6. On the basis of pleadings, Trial Court framed following issues:-

- “1. Whether the plaintiffs are entitled to joint possession of the suit property as alleged in the plaint? OPP.
2. Whether the mutations No.2263, 2264, 2273 are void ineffective and not binding on the rights of the plaintiffs? OPP.
3. Whether the plaintiff Mohinder Kaur is the exclusive owner in possession of land measuring 518 kanals 1 marlas as given in para No.9? OPP.
4. Whether the plaintiffs have no cause of action? OPD
5. Whether the suit is not properly valued for the purposes of court fee and jurisdiction? OPD
6. Whether the estate of Sampuran Singh was inherited by his three sons as alleged? OPP.
7. Whether the parties are governed by custom in matters of succession and Mohinder Kaur plaintiff forfeited her rights to inherit the estate of Gurcharan Singh by her second marriage by Chadder Anda-zi with Balwant Singh? OPD.
8. Whether Balwant Singh executed a valid will dated 8.12.78 in favour of defendants No.5 and 6? OPD.
- 8A. Whether plaintiffs and defendants constituted a joint Hindu family with Balwant Singh? OPD.
- 8B. Whether the property in the hands of Balwant Singh was a coparcenary property and parties are governed by Hindu law in matters of succession and alienations? OPP.
9. Relief.”



7. Trial Court decided all the issues in favour of plaintiffs and decreed the suit. Defendants No.1 and 2 preferred appeal which stands allowed by the Lower Appellate Court. Suit qua Mohinder Kaur and Rano stands dismissed on the basis of a compromise alleged to have been entered between the parties during pendency of the appeal. Suit qua Bhupinder Pal Singh stands decreed for joint possession of 1/6th share of the land left by Balwant Singh barring land alienated prior to filing of the suit.

8. Learned senior counsel appearing on behalf of appellant Nos.6 and 7 impleaded as legal representatives of the deceased-appellant submits that the Lower Appellate Court erred in holding that Mohinder Kaur forfeited her rights to the estate of Gurcharan Singh after her karewa marriage with Balwant Singh. He submits that once Mohinder Kaur was bestowed with full ownership rights on death of Gurcharan Singh, she became full owner thereof and cannot be divested of her rights in the said property. Further submits that decree dated 25.01.1969 and 30.01.1970 have not seen the light of day and the same cannot be relied upon to take away the rights of the appellants. It has been further submitted that the reliance by the Lower Appellate Court on the compromise also is misplaced. Admittedly, the same was without consideration as the respondents deposited amount of Rs.1 lakh after decree in the Court which also now stands withdrawn by them.

9. *Per contra*, counsel for the respondents submits that the Lower Appellate Court has rightly held that on re-marriage Mohinder Kaur lost her rights in the suit land. Mohinder Kaur as well as Rano



further during the pendency of the appeal accepted Rs.1 lakh each from the respondents to give away their rights. Both the Courts below have wrongly discarded the Will dated 08.12.1970 executed by Balwant Singh.

10. I have heard counsel for the parties and have carefully gone through the records of the case.

11. The issues that arise for consideration before this Court are:-

(i) Whether Mohinder Kaur who succeeded to half share in estate of Gurcharan Singh being his widow, forfeited her rights after effecting karewa marriage with Balwant Singh, brother of Gurcharan Singh?

(ii) Whether unregistered Will dated 08.12.1970 propounded in favour of defendants No.5 and 6 has been wrongly discarded by the Courts below?

(iii) Whether defendants can be allowed to agitate issue viz-a-viz Will by filing cross-objections when the beneficiaries of the Will defendants No.5 and 6 failed to file an appeal against judgment and decree passed by the Trial Court rejecting the Will?

(iv) What is the effect of alleged compromise executed between defendant Shamsher Singh, Rachhpal Singh and Mohinder Kaur widow of Balwant Singh?

(v) Effect of mutation Ex. P-7.

12. Lower Appellate Court relied upon exchange between Balwant Singh and Gurbax Singh. Balwant Singh and Gurbax Singh both brothers exchanged their lands. Land situated in village Abul Khurana came to the share of Bawant Singh in exchange of the land



owned by him in village Deon Khera. Relying upon this exchange, Lower Appellate Court held that the land at the hands of Balwant Singh became self acquired. In view of the admitted case of the defendants, that the land at hands of Balwant Singh was inherited from his father Sampuran Singh, the said findings cannot be sustained. Thus, the estate at the hands of Balwant Singh, having been inherited from his father Sampuran Singh is not a self acquired property.

13. The next issue is the Will alleged to have been executed by Balwant Singh dated 08.12.1970. Both the Courts below found that the Will dated 08.12.1970 propounded by defendants No.5 and 6 was shrouded by suspicious circumstances. Though scribe of the Will, Gurlal Singh, was examined as DW-1 and Gurtej Singh attesting witness appeared in the witness box as DW-2. Trial Court rightly discarded the Will. Findings recorded by the Trial Court discarding the Will were never impugned by defendants No.5 and 6 by filing any appeal or cross-objections before the Lower Appellate Court. Thus, cross-objections at the hands of defendants No.5 and 6 in the present appeal cannot be considered and are thus ordered to be dismissed.

14. The next issue is the effect of karewa marriage between Mohinder Kaur and Balwant Singh on the estate of Mohinder Kaur. As already mentioned above, Mohinder Kaur was earlier married to Gurcharan Singh s/o Sampuran Singh. Gurcharan Singh died in the year 1954. 1/2 share of his estate was succeeded by Mohinder Kaur i.e plaintiff No.2. Mohinder Kaur married Balwant Singh. It has come on record that the parties are Sidhu Jats of Tehsil Mukatsar, District



Ferozepur. The issue regarding effect of widow's karewa marriage on her estate in husband's property was considered by a Full Bench of this Court in ***RSA No.1456 of 1964*** titled as ***Sada Kaur vs. Bakhtawar Singh and another*** decided on 03.11.1966. The question that was posed that the Full Bench was considering reads as under:-

“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.”

15. Full Bench dealt with the same elaborately and answered as under:-

“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, AIR Privy Council 21*** and by the Supreme Court in ***Salig Ram v. Mt. Maya Devi, AIR 1955 Supreme Court 266 and Jai Kaur v. Sher Singh, AIR 1960 Supreme Court 1118.***

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 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 (supra).

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, AIR 1964 Supreme Court 1821.***

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 Rattigan's 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 (supra), 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, 25 P.R. 1988***. In this case, one Gara had left two widows 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, 88 F.R. 1900***, 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 obtain to a very considerable extent amongst Sikh Jats of Sirsa District, though it may not be universal"

Punjab Singh's case was followed in ***Mst. Indi v. Bhanga Singh and others. 115 P.R. 1900***. 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 recognised 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 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) Punjab Singh's case (supra), reliance was also placed on ***Hira Singh v. Mst. Rami*, 74 P.R. 1893**, (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 widow's estate or remarriage with her husband's brother was established.

12. There is no reported case after Mst. Indi's case (supra), from Ferozepur District recognising this exception. ***Hardam Singh and another v. Mst. Mahan Kaur*, 64 P.R. 1910**, 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 negated following the decision in ***Mst. Jai Devi v. Harnam Singh*, 117 P.R. 1888**, 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, 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 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. Riwayat-i-am compiled 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, 90 P.R. 1889***. 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 remarriage with the 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 without 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 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 forfeiture 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. Dharmo* (supra). 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 Riway-i-am was not a properly compiled document. See in this connection Salig Ram's case. So far as Riway-i-am of Ferozepur district compiled 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 far 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. As against this, at page 178 of the District Riway-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 (supra), taking a contrary view.

20. As has been noted above, Mr. Justice Chatterji, while dealing with Mst. Indi's case (supra), 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 recognized. 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 possibly the brothers allowed a widow to remain in possession of life interest because in a 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 (supra), 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. Rari Bai (supra), 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 (supra) and Basanti v. Partapa (supra), a case from Ludhiana District, for coming to the conclusion that among the Sikh Jats re-marriage 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 (supra) has already been discussed above, the Basanti's case (supra) 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 custom is 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 (supra) 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 Assistance cited in the Riwayat-i-am as against one reported case of Didar Singh (supra) 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.”

16. The ratio of law was approved by Supreme Court in Civil Appeal No.1057 of 1970 holding as under:-

“5. In reaching this conclusion the learned judges had to deal with the earlier Full Bench decision of three fudges of the same High Court. Charan Singh v Gurdial Singh (supra) 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's case 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's case suggesting as if this was the custom among the jats in the entire State of Punjab. The basis of the decision in Charan Singh's case 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 ***Mst. Subhani v. Nawab, 68 Ind App 1*** and also by this Court in *Salig Ram v. Mst. Maya Devi (supra)* and *Jai Kaur v. Sher Singh (supra)*. In *Jai Kaur's* case 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's case 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, Ferozepur 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 of the deceased." A decision of the Sindh Judicial Commissioner's court, ***Sant Singh v. Rari Bai, reported in AIR 1924 Sindh 17*** and also in 76 Ind Cas 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's case 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's case in which the parties were Sikh Jats from Jullundur District relies on a decision of the



Punjab Chief Court: "In *Basant v. Pratapa*, (51 Pun Re 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."

In view of the aforesaid ratio of law, this Court upholds the findings recorded by the Lower Appellate Court that Mohinder Kaur on affecting karewa marriage with brother of his deceased husband forfeited her right in the estate inherited by her from her late husband.

17.

During the pendency of the appeal before the Lower



Appellate Court, defendants propounded compromise alleged to have been entered by them with Mohinder Kaur and Rano. Lower Appellate Court framed issue No.1 vide order dated 21.09.1987 which reads as under:-

“whether the case has been adjusted by a lawful compromise? If so, its effect.”

18. Harjinder Pal Kaur accepted the compromise and claimed that the suit and appeal be dismissed as per compromise. Her statement was recorded on 24.01.1999. Mohinder Kaur however disputed the same. She claimed that her signatures were taken on the pretext that so far as her land inherited from Gurcharan Singh is concerned, the same will remain with her. No finding has been recorded with respect to the stand taken by Mohinder Kaur. Shamsheer Singh and Rachhpal never paid the amount of Rs.1 lakh each to Mohinder Kaur or Harjinder Pal Kaur. Thus, this Court finds that the Lower Appellate Court erred in believing the compromise and dismissing the suit qua Mohinder Kaur.

19. In view of the aforesaid discussion, the cross-objections are ordered to be dismissed. Suit filed by the plaintiffs Bhupinder Pal Singh and Mohinder Kaur is ordered to be decreed. They are held to be owners in joint possession of 1/6th share each in the estate left by Balwant Singh. The impugned decree passed by Lower Appellate Court is modified to the said extent.

20. Disposed off, accordingly.

24.09.2024

Dinesh

Whether speaking/reasoned :

Whether Reportable :

(PANKAJ JAIN)

JUDGE

Yes

Yes