

APPELLATE CIVIL

Before Khosla and Kapur JJ.

BIJJA SINGH AND OTHERS,—*Defendants-Appellants*

versus

MAYA CHAND AND OTHERS,—*Respondents*

Regular Second Appeal No. 326 of 1949

1954

 Dec., 23rd

Custom (Punjab)—Succession—Jats of village Jawan, Sonapat Tehsil of District Rohtak—Whether the rule of Pagwand or Chundawand, applicable.

Held, in a case of Jats of Sonapat Tahsil of Rohtak District that the succession to the estate of the last male holder was governed by the rule of Pagwand, which is the general Custom of the Punjab and even according to the Riway-i-am of Rohtak District answer to question No. 44 the ordinary rule of succession is the same.

Regular Second Appeal from the decree of the Court of Shri Guru Datt, Additional District Judge, Rohtak, dated the 30th day of December, 1948, affirming that of Shri Gian Das Jain, Sub-Judge, 1st Class, Sonapat, dated the 8th March, 1948, granting the plaintiffs a decree for 53/72 share of the property in suit jointly with defendants. The plaintiffs shall have share about the houses partitioned after obtaining the joint possession and leaving the parties to bear their own costs. The appellate Court ordered the contesting defendant to pay costs to plaintiffs in both courts.

S. C. MITTAL, for Appellants.

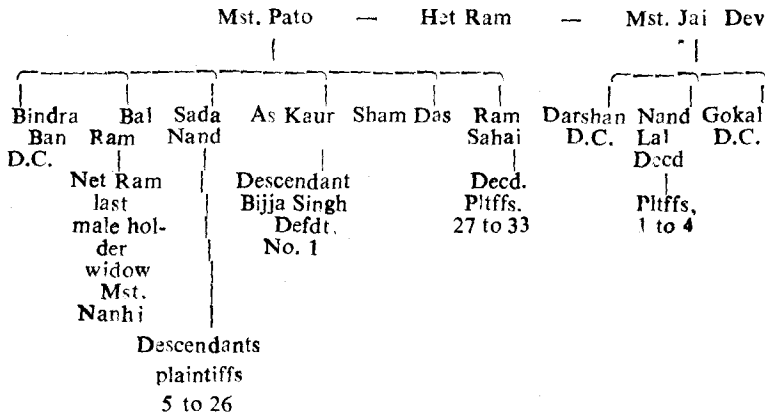
D. N. AGGARWAL, for Respondents.

JUDGMENT

Kapur, J.

KAPUR, J. In this appeal by Bijja Singh defendant against an appellate decree of the Additional District Judge, Rohtak, confirming the decree of the trial Court decreeing the plaintiffs' suit the question involved is whether the parties are governed by the rule of *pagwand* or *chundawand*.

The parties are Jats of village Jawan in the Sonapat Tehsil of Rohtak District and their relationship will be shown from the following pedigree-table :—



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The last male holder of the property in dispute which is a house was Net Ram. On his death it was succeeded to by Mst. Nanhi, his widow and on the succession opening out the revenue authorities applied the rule of *chundawand* and excluded the children of Jai Devi. The plaintiffs have brought a suit for possession of their share of the land and the house alleging that they are governed by *pagwand* and not by *chundawand*. The trial Court held that the share of the plaintiffs in the property in dispute was 53/72 and granted a decree for that share and the finding as to the rule applicable was upheld by the appellate Court.

The general custom of the Punjab is in favour of *pagwand*, and even according to the *riwaj-i-am* of Rohtak District the ordinary rule of succession is *pagwand* as is shown by question No. 44. It is also significant that on the death of Het Ram, the ancestor, the property did not devolve according to the rule of *chundawand* and at no stage during the various successions which opened out on the death of several of the descendants of Het Ram did the *chundawand* rule apply. The appellant, however, referred to and relied on two judgments, Exhibits D.1 and D.2.

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The former is a Chief Court judgment in which the rule of *chundawand* was applied, but this was based on the ground that the property of the ancestor had been divided according to that rule. No instances are given and the *Riwaj-i-am* has not been discussed and this instance is neither sufficient to rebut the general custom or the custom in the *riwaj-i-am* of the District nor is it an authority for the proposition that in this particular area the rule of *chundawand* prevails.

In Exhibit D. 2 it was only an incidental remark that the parties were governed by *chundawand* rule. This question does not seem to have been in dispute and it is not an adjudication on the question of custom. These are the only two instances which have been relied upon by the defendant.

There is no other reliable evidence which is relevant to the issue. I would therefore dismiss this appeal but leave the parties to bear their own costs in this Court.

Khosla, J. KHOSLA, J. I agree.

APPELLATE CIVIL

Before Khosla and Kapur JJ.

MESSRS RAM GOPAL DULA SINGH,—Defendants-Appellants

versus

SARDAR GURBUX SINGH AND OTHERS,—Respondents

Regular First Appeal No. 86 of 1951.

1954

Dec., 27th

Hindu Law and Transfer of Property Act (IV of 1882)—Section 6—Spes Successionis—Whether transferable—Transfer of right of expectancy for consideration—Estate vesting in the transferor—Contract, whether becomes enforceable—Transfer of Property Act (IV of 1882)—Principles of—Whether applicable to Punjab.

Held, that a right of expectancy or *spes successionis* is non-transferable both in accordance with the principles of Hindu Law as well as under section 6(a) of the Transfer of Property Act and, therefore, the contract transferring the right of expectancy, even if for consideration, does not become enforceable in equity on the estate vesting in the transferor of the right of expectancy.