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**Court :** Delhi

**Decided On :** May-27-1970

**Reported in :** 6(1970)DLT342

**Judge :** Om Parkash, J.

**Acts :** Hindu Succession Act, 1966; Hindu Law of Inheritance (Amendment) Act, 1922 - Sections 2 and 3; Hindu Law

**Appeal No. :** Regular Second Appeal No. 40 of 1967

**Appellant :** Kamla Devi

**Respondent :** Janki and ors.

**Advocate for Pet/Ap. :** S. Malhotra and; H.S. Thakur, Advs

**Judgement :**

**Om Parkash, J.**

(1) The dispute, in this appeal, against an appellate Judgment of the learned District Judge, Hoshiarpur Division at Dharamsala, relates to the estate of Roop Singh. Roop Singh had died in 1909 and was succeeded to by his mother, Smt. Koklu. Smt. Koklu died on 5-31-1948. The mutation of the estate inherited by Smt. Koklu from Roop Singh was sanctioned in favor of Smt. Janki and Smt. Daropati, sisters of Roop Singh, and Man Singh son of Smt. Janki. The collaterals of Roop

Singh had filed a suit for possession of the estate of Roop Singh on the ground that they were preferential heirs as against sisters of Roop Singh. The suit was ultimately dismissed by the High Court. The copy of the judgment of the High Court is Ex. P. 12. It was held that sisters of Roop Singh were preferential heirs as against collaterals.

(2) The plaintiff in the present suit, a daughter of Smt. Sahni, a third sister of Roop Singh, had filed a suit, out of which the present appeal has arisen, claiming one-third share in the estate left by Roop Singh on the ground that, according to the agricultural custom, governing Roop Singh and the parties, she was entitled to one-third share which her mother Smt. Sahni, would have got had she been alive. The suit was resisted by Smt. Janki, Man Singh and Smt. Daromati. They denied that the plaintiff had got any claim to any share in the estate left by Roop Singh. They had also r

(3) The trial Court dismissed the suit, holding that the plaintiff had failed to establish any custom under which she could claim any share in the estate of Roop Singh and that neither the plaintiff was entitled to get any share in that estate under Hindu Law.

(4) Aggrieved by the decree of the trial Court, the plaintiff had gone up in appeal. The learned District Judge, Hoshiarpur Division, dismissed the appeal and confirmed the findings and the decree of the trial Court. Hence, the present second appeal.

(5) The appeal was filed in the High Court of Judicature of the State of Punjab. It was transferred to this Court on the reorganisation of the State of Punjab and the transfer of the area, in which the estate of Roop Singh, is situated, to Himachal Pradesh.

(6) The learned counsel for the parties have been heard.

(7) The first contention of the learned counsel for the plaintiff was that inheritance on the death of Smt. Koku should have been traced from Sudama, father of Roop Singh, from whom Roop Singh had inherited the estate and not from Roop

Singh. This contention is without any substance. Smt. Koklu had died on the 5th March, 1948. The case is to be governed by Hindu Law as it stood before the coming into force of the Hindu Succession Act, 1956. It was settled law, at that time, both under Hindu Law and custom, that on the death of a female, who had succeeded as a limited owner, the inheritance would pass to the next heirs of the person from whom the female had inherited the estate. Smt. Koklu had inherited the estate from Roop Singh and not from Sudama. The last male holder of the estate was Roop Singh; inheritance was, therefore, to be traced from him and not from Sudama, on the death of Smt. Koklu. In fact, the matter stands concluded by the judgment of the High Court in the suit of the collaterals, copy Ex. P. 12. That judgment shows that inheritance was traced from Roop Singh and Smt. Janki and Smt. Daromati were held heirs of Roop Singh as his sisters.

(8) The second contention of the learned counsel for the plaintiff was that two Courts below had erred in rejecting the claim of the plaintiff that she was entitled to represent her predeceased mother. Smt. Sahni, and to succeed to the share of the estate which would have been inherited by her (Smt. Sahni), had she been alive at the time of the death of Smt. Koklu. Now, Roop Singh was a Hindu. The parties to the litigation are also Hindus. Hindu Law applied, in the first instance, to the case and whoever asserted a custom at variance with the Hindu Law should have to prove it, vide *Salig Ram v. Munshi Ram*. Hindu Law recognizes right of representation in case of sons, grandsons and great grandsons only. It does not recognize the right of a sister's daughter to represent her mother. The burden lay on the plaintiff to establish, by cogent and unimpeachable evidence, that the parties were governed by custom and that according to that custom, she was entitled to represent her mother at the time of succession on the death of Smt. Koklu. The same result would follow from the provisions of the Hindu Law of Inheritance (Amendment) Act, 1922 which was in force, at the time, when Smt. Koklu had died and governed the case. Sections 2 and 3 of that Act read:- '2. A son's daughter's daughter, sister and sister's son shall in the order so specified be entitled to rank in the order of succession next after a father's father and before a father's brother 3. Nothing in this Act shall- (a) affect any special family or local custom having the force of law, or (b) (e)

(9) It is clear that sister's daughter was not recognized as an heir under the Act. but under section 3(a), a daughter could prove any special family or local custom that she was entitled to succeed, as representing her mother.

(10) As already stated, the burden lay on the plaintiff to prove a custom that she was entitled to represent her predeceased mother and to succeed along with her mother's sisters. The plaintiff did not adduce any documentary evidence in support of the custom. She had produced only three witnesses-Ram Lal (Public Witness - 1), Rikhi Ram (Public Witness -2) and Ranbir Singh (Public Witness -3). None of the witnesses had cited any instance of predeceased siter's daughter succeeding along with sisters. Both the Courts below had rejected the evidence of the three witnesses. I see no reason to differ from them. The Courts below were right in holding that the plaintiff had failed to prove that, under custom, she was entitled to represent her deceased mother and to succeed along with her mother's sisters.

(11) The authorities, cited by the learned counsel for the plaintiff, are not at all applicable to the presnt case. The authorities related to a widow represnting her deceased husband in case of collateral succession or to a daughter representing her father. None of the authorities related to a daughter, representing her predeceased mother, as against her mother's sisters. Some of the authorities cited may be noted. The fiist authority, cited, as Mehtab ud Din and anothers v. Abdullah The parties in that case were Mohammdans The dispute related to the estate of one Nur Din. The plaintiffs were the descendants of four sons of Mohhammad Baksh, uncle of Nor Din, all of whom had predeceased Nur Din. The defendant was the fifth son of Muhammad Ba'ksh. The plaintiffs claimed that Aishan, mother of Nur Din, had only a life estate and on her death they were entitled to receive by custom 4/5th share in the estate left by Nur Din. Fhe defendant pleaded that he was the sole heir, under the Mohammdan Law to the exclusion of the plaintiffs as their father had predeceased Nur Din. It was observed by Lal Chand

'IT is thereforee clear that the customary rule of representation has been found by judicial Inquiry as well as experience to prevail generally throughout the province amongst agriculturists as well as non-agriculturists whenever the matter was

disputed, and not a single case to the contrary is traceable or was quoted. The presumption, therefore, might be -that a custom so generally prevalent was also followed by the parties to the present case. especially when it is found that in other matters relating to succession they follow and are governed by the rules of customary law as found to prevail generally and not by the strict provisions of the Mohammadan Law. ' Further on, the learned Judge said :- 'But as a matter of fact the plaintiffs had succeeded in this case in proving the alleged custom by instances which are entirely unrebutted on the record.'

Provided that a sister's son shall not include a son adopted after the sister's death.

(12) It is clear that in that authority, the plaintiffs had successfully proved the custom of representation. The observations that the customary rule of representation generally prevails are to be confined to the representation by sons. They cannot be pressed into service to hold that a sister's daughter represents her mother.

(13) The second case cited was Husmat Ali and another v. Mt. Nasibul-Nisa. The learned Counsel for the plaintiff placed reliance on the following passage;- That there is a customary rule which entitled Barkat Ali's widows to succeed as heirs to his estate for limited interests is not disputed it is equally clear that there is a rule of inheritance in this family which entitles brothers to succeed to the exclusion of sisters. Applying these two rules to the succession on the surviving widow's death if Sarfaraz Ali had survived he would have inherited Barkat Ali's property to the exclusion of his sisters. But Sarfaraz Ali was dead and the plaintiff his daughter, alleges that by the Code of customary rules regulating succession in this family, the principle of representation is sanctioned and she claims that by virtue of it she as Sarfaraz Ali's daughter in the absence of male issue represents him and stands in his place. Their Lordships agree that representation is a part of the rules of succession in her family. It is set aside by Judicial decision that a son in matters of inheritance represents his deceased father, and the record discloses instances of succession in which a widow was recognized as the representative of her husband, and a daughter as the representative of a deceased uncle. It is thus shown that sex is not a bar to representation, but that widows and daughters in the

absence of sons can claim the right in their favor.'

(14) In the case, cited, a special family custom, recognizing representation by widow and daughters, had been proved. In the present case, the plaintiff had failed to prove any custom in her favor. The expression 'It is thus shown that sex is not a bar to representation is to be read in the context of that case where the right of representation by widows and daughters was recognized. In the present case, there is no evidence that a sister's son has a right to represent his deceased mother as against his mother's sisters. So, the plaintiff cannot derive any assistance from the aforesaid expression.

(15) The next authority, relied upon by the learned counsel was Surian Singh and others v Ujjagar Singh. This was a case which related to collateral succession by a widow. The learned counsel had also referred to Smt Chambeli v Smt. Kago and Bachan Kaur v. Bishn. These cases related to daughter's right to succeed collaterally as a representative of her father.

(16) It is well settled that custom cannot be established or extended by logical process or by a process of deduction. There can, therefore, be no warrant for the argument that as the right of a widow to represent her husband or the right of a daughter to represent her father had been recognized in certain cases, the right of the plaintiff to represent her deceased mother (sister of the last holder) should also be recognized in the present case.

(17) The result is that the appeal in which no other point was urged, fails and is dismissed with costs.