

**Chinti Vs. Harminder**

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**SooperKanoon Citation :** [sooperkanoon.com/889173](http://sooperkanoon.com/889173)

**Court :** Himachal Pradesh

**Decided On :** Nov-17-1986

**Reported in :** AIR1987HP56

**Judge :** T.R. Handa, J.

**Acts :** Hindu Law

**Appeal No. :** Second Appeal No. 2 of 1976

**Appellant :** Chinti

**Respondent :** Harminder

**Advocate for Def. :** P.N. Nag, Adv.

**Advocate for Pet/Ap. :** Inder Singh, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

**T.R. Handa, J.**

1. This Regular Second Appeal arises out of Civil Suit No. 79 of 1967 instituted in the Court of Sub Judge, Una, by the present appellant, hereinafter called 'the plaintiff'. The relief claimed in the suit was for possession of different parcels of land measuring in all 74 Kanals 16 Marias and as detailed in the decree sheet of

the Court below. The suit was decreed by the trial Court but on appeal that decree was reversed and the suit dismissed by the District Judge.

2. The following pedigree table, the correctness of which is not in dispute, would help in appreciating the controversy involved in this appeal : --

Kharkhu

\_\_\_\_\_ | \_\_\_\_\_

|||

Chandu Kamal Likhu

(Died issueless) | |

Dalipu=Chinti-pliff (Window) Balanda

||

Babu Ram (Died issueless) Harminder

(Defendant)

3. The land forming subject matter of this litigation is comprised in four different Khewats, being Khewat Nos. 46, 11, 34 and 120. Khewat No. 46 was jointly owned by Dalipu and Balanda in equal share. Khewat No. 120 was owned exclusively by Dalipu. The other two Khewat Nos. 11 and 34 were jointly owned by Balanda and Dalipu along with several other co-sharers. Dalipu and Balanda each had 1/6th share in Khewat Nos. 34 and 4971176th share in Khewat No. 11.

4. On the death of Dalipu, his share in the joint holdings referred to above was inherited by his son, Babu Ram, who came to be recorded as co-sharer in the suit land in place of his deceased father. Babu Ram died in or about the year 1949 and on his death his share was inherited by his mother, Chinti plaintiff, the widow of Dalipu. The plaintiff thus became a co-sharer in the joint holdings to the same extent as was earlier owned by her son and husband. This position is reflected in the jamabandi of 1955-56, found at Ex. P-1.

5. It appears that in the year 1952 Balanda made a report to the patwari that Chinti plaintiff had performed a second marriage after the death of her son, Babu Ram, and thereby forfeited her right in the suit land. He prayed that the share of the plaintiff in the suit land be mutated in his favour, he being the collateral of Babu Ram and Dalipu. On the basis of that report made by Balanda mutations. No. 777 (Ex. D4) and 776 (Ex. D4/A) were entered by the patwari on 25-2-1952 and 15-2-1952 respectively. In the course of the mutation proceedings, the plaintiff was summoned. She, however, put in appearance before the Revenue Officer on 10-1-1956 for the first time in those proceedings. She refuted the allegations that she had performed a second marriage and forfeited her right in the land in question. On the other hand she asserted that she was settled at the house of her deceased husband and was very much in possession of the suit land. Harminder, the present defendant, who then represented his father Balanda, challenged the denial made by Chinti and the proceedings were then adjourned. On 10-10-1956 the mutation in respect of the plaintiff's share in the suit land was sanctioned in favour of Balanda vide Ex. D4 and Ex. D4/A. This was, however, done in her absence.

6. The suit giving rise to this appeal was later filed on 29-6-1966 by the plaintiff praying for a decree of possession in respect of her share in the suit land as recorded in the jamabandi of 1955-56. Her simple case was that about a year prior to the institution of the suit, the defendant had assumed forcible possession of the suit land without any right and was, therefore, liable to surrender that possession.

7. The main contention of the defendant was that soon after the death of Babu Ram, the plaintiff had turned unchaste and had also performed a second marriage with one Amin Chand. As a result of her unchastity and second marriage, she had forfeited her right, title and interest in the land in suit which she had inherited from her husband through her son. This plea was advanced on the assertion that the parties, in the matter of alienation and succession, were governed by custom in terms of which a widow on turning unchaste or on remarriage would forfeit her rights in the estate inherited by her from her husband or son. In the alternative the defendant claimed that he had been coming in exclusive possession of the suit land for the last more than twelve years prior to the date of the suit and had thus

acquired ownership thereof by adverse possession. The plaintiff filed replication controverting the allegations made by the defendant.

8. The suit was tried by the trial Court on the following issues : --

1. Whether the plaintiff is the owner of the land in suit? OPP

2. Whether the plaintiff has remarried and as such lost her right in the property in suit?

OPD

2A. Whether the family of Babu Ram was governed by custom, if so what that custom is? OPD

3. Whether the defendant has become owner of the suit land by adverse possession by more than 12 years? OPD

4. Whether the suit is within time? OPP

5. Relief.

9. The suit was initially decreed by the trial Court on 23-11-1967. The matter however, being taken in appeal before the District Judge, the learned District Judge remanded the suit for fresh decision after framing the following additional issue :--

'Whether Smt. Chinti turned unchaste after the death of Babu Ram and lost her right in his estate? OPD'

10. After the remand, the parties were afforded an opportunity by the trial Court to adduce additional evidence on the above mentioned new issue but they preferred to confine to the evidence already on the record.

11. The trial Court once again decreed the suit of the plaintiff. In doing so, it accepted the plaintiff's claim that she was the owner of the suit land. The plea that the plaintiff had forfeited her right, title and interest in the suit land on account of her remarriage or unchastity was negated after returning the finding that there

was no custom governing the parties under which a widow would forfeit, her right in the estate of her deceased son as a result of her remarriage or unchastity. The trial Court, however, accepted the contention of the defendant that the plaintiff after the death of her son had turned unchaste though it did not agree with the plea that the plaintiff had remarried after the death of her son. The claim of the defendant that he had acquired ownership of the suit land by adverse possession was also negated.

12. On appeal, the learned District Judge reversed the judgment and decree of the trial Court and dismissed the suit of the plaintiff. The learned District Judge accepted both the claims of the defendant, namely, that he had acquired ownership of the suit land by adverse possession and that the plaintiff had forfeited her right in the suit land on account of remarriage and unchastity. Differing with the view taken by the trial Court, the learned District Judge held that the parties were governed by custom and as per that custom a widow forfeited her right in the estate of her deceased son or husband if she turned unchaste or remarried. According to the findings of the learned District Judge, the plaintiff had not only turned unchaste but had also performed a second marriage after the death of her son and had, therefore, forfeited her right, title and interest in the suit land.

13. As is obvious from the narration given above, the plaintiff had been non-suited by the first appellate Court on two grounds namely, (i) that on account of her remarriage after the death of her son she forfeited her right in the suit land and (ii) the defendant had acquired ownership of the suit land by adverse possession of more than twelve years. Shri Inder Singh, the learned counsel appearing for the plaintiff, made a determined effort to show that the view taken by the Court below in support of either of these two grounds was not sustainable. While dealing with the first of these two grounds, the learned counsel at the very outset conceded the correctness of the findings of the learned first appellate Court on the point of unchastity and remarriage of the plaintiff after the death of her son, Babu Ram. He also made no effort to call in question the verdict of that Court that the parties were, in the matter of succession, governed by customary law and that the particular custom applicable to them was the one reflected in the Riwaje Aam

entry found in Ex. D-7.

In other words, the learned counsel agreed that in terms of the custom governing the parties, a widow on turning unchaste or on her remarriage, forfeits her rights in the estate of her deceased husband. The contention of the learned counsel, however, was that this custom could not be attracted to the facts of the instant case and despite her remarriage after the death of her son, the plaintiff could not be said to have forfeited her rights in the suit land. The reasoning adopted in support of this contention was two fold. The first line of reasoning adopted by the learned counsel was that the plaintiff having inherited the land in suit not from her husband as his widow but from her son as his mother, her case fell outside the purview of the custom found in Ex. D-7. Elaborating his point further, the learned counsel argued that a custom pleaded must be specific and proved by direct evidence. It cannot be deduced by inferences, however logical the same may appear to be. In the instant case, proceeds the argument of the learned counsel, there was neither pleaded nor proved any special custom under which a mother on remarriage after the death of her son would-forfeit her right in the estate inherited by her from her son. The custom stated in Ex. D-7, therefore, could not be invoke to defeat the claim of the plaintiff who had succeeded to the suit land not as a widow of her first husband but as the mother of her son.

The reasoning attractive as it does look at first thought, is based on a misconceived notion. It ignores the well recognized rule of customary law that on extinction of the male line of descent it is treated as never having existed and on the last male owner dying issueless, the succession is to be reckoned with reference to the last male owner who died leaving behind male descendants. In the instant case Babu Ram, the last male owner admittedly died unmarried. On his death, therefore, the succession was to be reckoned with reference to his father Dalipu. The plaintiff, in the circumstances, cannot be said to have succeeded to the suit land as mother or as an heir of her son. She got this land only as widow of Babu Ram's father, Dalipu, it being not in dispute that Babu Ram had inherited this land from his father only. The following illustrations would further clarify the position :--

14. Take the case of a male holder dying, leaving behind a widow and two sons. The estate would undoubtedly devolve on his two sons subject, of course, to the right of maintenance of the widow. Now suppose one of the sons dies unmarried. Would his share in the estate inherited by him from his father or any part thereof devolve on his mother? The answer must be in the negative. His share would pass on to his brother as the heir of his father, treating the succession with reference to his father, the last male holder who died leaving behind male descendants.

15. Still more appropriate would be the case of a male holder who dies leaving behind two widows and a son by one of them, the other being issueless. The estate on his death would naturally pass on to the son subject to, the maintenance of the two widows. Now the son dies unmarried. What happens to the estate? It would certainly not pass on to his mother, to the exclusion of the other widow of his father. It must pass on to both the widows jointly. They would succeed as widow of the father of the last male holder dying issueless. This is in accordance with the principle that on extinction of the male line of descent, succession is to be reckoned with reference to the last male holder who dies leaving behind male descendants.

16. There thus can be no escape from the conclusion that the plaintiff in the instant case succeeded to the land in dispute not in her capacity of mother of Babu Ram but only in her capacity of widow of Dalipu, the father of Babu Ram, as the succession on the death of Babu Ram was to be reckoned with reference to Dalipu. The custom as proved on the record was thus rightly invoked by the first appellate Court to deprive the plaintiff of her rights in the suit land.

17. The second reasoning advanced on behalf of the plaintiff, though rather half heartedly, was that the custom found in Riwaje Aam governs succession ancestral property only and in the absence of any allegations in this case that the suit land was ancestral, the custom referred to above could not be attracted to non-suit the plaintiff. The rule that the customs contained in Riwaje Aam governs ancestral property only, though normally true, is not a universal rule applicable to every type of custom. The custom which makes a widow on her remarriage to forfeit the estate of her deceased husband, has its origin in the theory that after her

remarriage, the widow breaks all her ties with the family of her deceased husband and accepts membership of the family of her new husband, she in fact continues to remain widow of her deceased husband only till her remarriage. Once she remarries she is not considered as a member of the family of her deceased husband nor is she considered entitled to any part of the property belonging to the family of her deceased husband. If we consider the custom which has been applied in the instant case, in the light of this theory, it must be held applicable to the entire property of the deceased husband of the widow irrespective of the fact whether it was ancestral or non-ancestral in his hands.

18. I thus find no force in the arguments advanced on behalf of the plaintiff to challenge the verdict of the Court below that the plaintiff on account of her remarriage lost all her rights in the suit land to which she had succeeded only as widow of her first husband.

19. Now coming to the next ground with respect to the claim of adverse possession as set up by the defendant and which has also found favour with the learned first appellate Court, I have no hesitation in remarking at the very outset that this claim was without substance and could not be accepted. Admittedly, the defendant had claimed adverse possession against a co-sharer. The law of adverse possession as between co-sharers is by now well settled and admits of no conflict. The fundamental rule is that the possession of a co-sharer is presumed to be on behalf of and for the benefit of all the co-sharers. This possession being in itself lawful, cannot be considered as adverse. This is in accordance with the well recognized principle that a possession which can be referred to a lawful title, shall not be considered adverse. A co-sharer who, therefore, claims adverse possession against his other co-sharers, must plead and establish that therein was an open and unequivocal denial by him of the title of his co-sharers' and that such denial or repudiation was to the knowledge of such other co-sharers. He has next to show that he continued to enjoy the property exclusively for the entire statutory period after the aforesaid unequivocal denial by him of the title of his co-sharers.

20. Now in the instant case there, is no evidence whatsoever except the statement recorded in the mutation proceedings found at Ex. D-4 and Ex. D-4/A to suggest if

the defendant or his predecessor in interest ever repudiated or denied the title of the plaintiff with respect to the suit land. Neither the defendant nor any of his two witnesses, Chain Singh (D.W. 1) and Udham Singh (D.W. 2) made any reference to this aspect of the matter in their depositions. The only evidence relevant on this point is found in the mutations Ex. D-4 and Ex. D-4/A. These mutations were entered by the patwari on 25-2-1952 and 15-2-1952 respectively at the instance of the father of the defendant, who had reported that the plaintiff having performed a second marriage had forfeited her rights in the suit land. The plaintiff was apprised of these proceedings only on 10-1-1956 when she put in appearance in such proceedings for the first time. On her appearance, the plaintiff in unequivocal terms denied if she had performed a second marriage and stated in clear language that she was continuously living in the house of her deceased husband and was also in possession of the suit land. There is nothing in these mutations to suggest if the defendant or his father had at that time asserted their hostile possession or title over the suit land.

Even if it be assumed for the sake of arguments that the title of the plaintiff was denied by the defendant on that day, that is, 10-1-1956 and that thereafter it had become adverse, such adverse possession had obviously not completed the statutory period of twelve years when the plaintiff filed her suit on 29-6-1966. In this connection I may further observe that there is absolutely no evidence on record to suggest if the defendant or his predecessor-in-interest had ever assumed exclusive possession of the suit land before the date of sanction of the mutations Ex. D-4 and Ex. D-4/A. The only relevant evidence on this point is found in the Jamabandi of 1955-56 (Ex. P-1) and Khasra Girdawari (Ex. D-1) both of which show that the plaintiff continued to enjoy possession of the suit land as before till at least 1956. Thus, looking from either angle, the defendant cannot be said to have acquired title of the suit land by adverse possession as on the date of the suit.

Since one of the two grounds on which the plaintiff had been non-suited by the first appellate Court has been endorsed by me, this appeal must fail and is accordingly dismissed with no order as to costs.

