
(1926) 01 AHC CK 0014
In the Allahabad High Court

Kishun Singh

APPELLANT

Vs

Gobind Ram and Others

RESPONDENT

Date of Decision : 12-01-1926

Acts Referred:

Citation : AIR 1926 All 215

Hon'ble Judges : Walsh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Walsh, J.—The only question of law which can be said fairly to be raised by this appeal is academic, namely, whether the Privy Council in the case of H.H. Mir Abdul Hussein Khan v. Mt. Bibi Sona Dero AIR 1917 PC 181 really said that a custom should be immemorial. I do not think they said that. It was recognized that the rules regulating custom in India are very different from those in England. At any rate there was no Richard I in India, and these family customs in India are somewhat special. But the case in question does decide that they must be ancient and exact. Lord Buckmaster says: It is necessary to define what the custom is and then examine the evidence to see if it satisfies the conditions so laid down." Both the Courts have done that in this case, and both of them are dissatisfied with the evidence, and hold that it does not prove the custom. Ordinarily a half-brother does not inherit, and a custom to the contrary ought to be clearly established by convincing evidence. I agree with the appellant that it is a mixed question of fact and law, and where the evidence is practically all one way, the Court of appeal, even in second appeal, may overrule the finding. But the lower Courts in this case are agreed that the custom is not satisfactorily alleged, and that the evidence in support of it was quite insufficient. The lower appellate Court gives three strong reasons for discarding in fact this case of custom set up by the plaintiff, and the learned Judge says that he sees no reason to differ from the Munsif. It is quite true that the Munsif dealt with this issue rather summarily, because he was deciding the case on other points. But he

made it quite plain that the plaintiff only produced some oral evidence, and that he, the Munsif, was not satisfied with it in view of the standard required by law. He considered the arguments and thought it proper to express his opinion, and he found that the custom was not established. The Subordinate Judge could find no reason to differ from this conclusion, and as he was overruling the Munsif on another point, it was necessary for him to decide it, and it must be assumed that he gave it full consideration. I therefore on the ground that it is a concurrent finding by both the Courts, arrived at according to law, and with due regard to the legal standard in cases of family custom, hold that the appellant has no grievance, and that the appeal must be dismissed.