

(1966) 05 P&H CK 0013
In the Punjab And Haryana At Chandigarh
Case No : Second Appeal No. 1431 of 1965

Smt. Luxmi Bai

APPELLANT

Vs

Smt. Sita Bai

RESPONDENT

Date of Decision : 04-05-1966

Acts Referred:

Citation : AIR 1967 P&H 511

Hon'ble Judges : D.K. Mahajan, J

Bench : Single Bench

Advocate : Roop Chand and Subhash Chand, for the Appellant; Harbans Lalsarin, (Sr.) Advocate and Asha Kohli, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Mahajan, J.—The dispute in this 2nd appeal is between two daughters of the last male holder. Smt. Laxmi Bai, who is the unmarried daughter, is seeking to exclude the married daughter. It is no doubt true that now Smt. Laxmi Bai is married but at the time the succession opened, she was unmarried daughter. It was contended at the trial that the parties are Aroras of Multan district and governed by Hindu Law. The plaintiff's contention was that they were governed by Custom, and the defendant's contention was that they were governed by Hindu Law. Both the courts below. (sic)ve found that the Aroras are governed by Custom and that according to the Answer to Question 63 of H. W. Emerson's Customary Law of Multan district, both married and unmarried daughters succeed equally. In this view of the matter, the plaintiffs' suit was decreed. The defendant, the unmarried daughter at the time when the succession opened out, lays claim in this second appeal to the whole or the father's property to the exclusion of the married daughter.

2. Mr. Roop Chand's contention was that the Custom, so far as the Aroras are concerned it not correctly recorded in Emerson's Customary Law. There are a number of instances of Aroras of Multan district given under the Ana war to Question 63. Moreover, there are decided cases that Aroras of Multan district

follow Custom: e.g. Bahadur Chand v. Mt. Ramon Bai AIR 1935 Lah 514 and Bhai Asu Ram v. Bulaqi Das AIR 1937 Lah 500. A presumption of correctness attaches to the entries in the Riwayat-i-Am and that presumption is strengthened in case the entries are supported by instances. In the present case there are instances in support of the Custom and those instances are tabulated at Nos. 2 and 3 of page 301 below the Answer to Question 63 of Emerson's Customary Law of Multan district. Consequently, I see no reason why an unmarried daughter among Aroras of Multan can exclude a married daughter to her father's patrimony. Mr. Roop Chand also contends that the Custom is not clear on the subject, but I am unable to agree with it for the reasons, already recorded. I would, therefore reject this appeal with no order as to costs.