

LETTERS PATENT APPEAL

*Before Bhandari, C. J. and Falshaw, J.*

**HIRA MAL AND OTHERS,—Appellants**

*versus*

**RONQI RAM AND OTHERS,—Respondents**

Letters Patent Appeal No. 20 of 1951

1955

April, 12th

*Hindu Law—Widow—Widow taking possession of property in her own right and not as representing her husband's estate or by succession as an heir—Possession held for over 12 years—Whether the property becomes her absolute property or she only prescribes for a widow's estate.*

Held, that when a widow takes possession of property belonging to another and retains it for the statutory period, the question often arises whether it vests in her exclusively as her *stridhan* or whether it descends on her death to her husband's heirs. The answer depends upon the capacity in which she took possession and the nature of the title asserted by her. If she took possession absolutely in her own right under a claim of title hostile to the rightful heir, it becomes her absolute property and she is at liberty to deal with it in any way she pleases. If, on the other hand, she took possession in her capacity as a Hindu widow claiming only the limited estate of a Hindu widow, she does not acquire the property as her *stridhan* but makes it good to her husband's estate. The widow having taken possession of the property without any semblance or shadow of actual right or title, her possession ripened into ownership by efflux of time and she had full power to deal with it in any way she pleased.

*Letters Patent appeal under clause 10 of the Letters Patent from the decree of the Hon'ble Mr. Justice Harnam Singh, dated the 25th day of October, 1950, affirming that of Shri G. C. Behl, the additional District Judge, Ferozepore, dated the 16th day of June, 1947 which affirmed that of Shri M. Saleem, Sub-Judge, II Class, Zira, District Ferozepore, dated the 12th day of July, 1946, granting the plaintiffs decree for possession of the land in suit on payment of Rs. 80 to defendants Nos. 1 to 4. It is further ordered that the costs of the plaintiffs be paid by all the defendants.*

D. K. MAHAJAN, for Appellant.

D. N. AGGARWAL and H. R. MAHAJAN, for Respondents.

#### JUDGMENT

BHANDARI, C.J.—This appeal raises the question whether the Courts below were justified in holding that Mst. Ram Rakhi, who took possession of the property of her father-in-law in the year 1903, did so in her capacity as a widow of the family and prescribed for the limited estate of a Hindu widow. One Karman Mal, a resident of the Ferozepore district, died in the year 1903

Hira Mal and others  
 v.  
 Ronqi Ram and others  
 Bhandari, C. J.

leaving behind him a daughter by the name of Mst. Sohawi and a daughter-in-law by the name of Mst. Ram Rakhi, widow of his predeceased son, Lachha Mal. On the 18th May, 1903 the revenue officer mutated the land belonging to Karman Mal in the name of his daughter-in-law by means of an order which was in the following terms:—

“Mst. Ram Rakhi, who is the widow of a son of Karam Chand and is identified by Sikander *lambardar*, states that her father-in-law Karam Chand has died issueless and that she being the widow of a son of Karam Chand is the heir of Karam Chand. That being so, mutation of the land is sanctioned in favour of Mst. Ram Rakhi. The *lambardar* also verified this fact”.

Mst. Ram Rakhi took possession of the property shortly afterwards and remained in possession thereof for a period of thirty-four years. On the 12th November, 1937 she transferred it by way of sale to Imam Din and Pir Bakhsh for a sum of Rs. 600 and they in turn passed it on to Hira Lal and certain other persons who figure as appellants in the present case.

Mst. Ram Rakhi's death in the year 1943 gave rise to a crop of litigation which has culminated in the present appeal. The first suit for possession was brought by Mst. Sohawi in her capacity as heir of her father Karman Mal and owner of the property in question. She alleged that the land in suit was given to Mst. Ram Rakhi in lieu of maintenance, that she had no power to alienate the same and consequently that the sale in favour of Imam Din and Pir Bakhsh was void and of no effect. The

second suit was brought by Raunqi Ram and his brothers, sons of Mst. Durgi, a daughter of Mst. Ram Rakhi, on the ground that Mst. Ram Rakhi had a widow's estate in the land and that the sale made by her in favour of Imam Din and Pir Bakhsh was void for want of consideration and necessity. The trial Court consolidated both these cases and decided them by a single judgment. The suit brought by Mst. Sohawi was dismissed on the ground that it was barred by time but the suit brought by Raunqi Ram and others was decreed on payment of a sum of Rs. 80. The orders passed by the trial Court were affirmed by the learned District Judge in appeal and by a learned Single Judge of this Court in second appeal. Hira Lal and his brothers have come to this Court in appeal under clause 10 of the Letters Patent and the question for this Court is whether the Courts below have come to a correct determination in point of law.

Hira Mal and  
others  
v:  
Raunqi Ram and  
others  
Bhandari, C. J.

The finding of the District Judge which was later endorsed by a learned single Judge of this Court briefly was that at the time of the mutation, Mst. Ram Rakhi came forward to claim the property as an heir of Karman Mal and not in any other capacity, that when a Hindu widow claims property as an heir, she must be presumed to claim it as a limited heir, that the property acquired by a Hindu widow by adverse possession which was claimed and held by her not in her own right but as a widow representing her husband's estate is not her *stridhan* but an accretion to her husband's estate and that on her death the property passes not to her heirs but to those of her husband. It was accordingly held that Mst. Rakhi's possession was not adverse to that of her sister-in-law and did not ripen into ownership by efflux of time.

Hira Mal and others  
 v.  
 Ronqi Ram and others  
 Bhandari, C. J.

The decision of this case must obviously turn on the decision of the question whether Mst. Ram Rakhi obtained possession of the land belonging to her father-in-law in her own independent right asserting a title in herself or whether she took possession thereof with the consent of her sister-in-law and in recognition of the latter's right as the true owner. Although it is a recognized rule that adverse possession of land, maintained for the statutory period, vests the possessor with title thereto, this rule may or may not apply if the possessor happens to be a Hindu widow. When a Hindu widow takes possession of property belonging to another and retains it for the statutory period, the question often arises whether it vests in her exclusively as her *stridhan* or whether it descends on her death to her husband's heirs. The answer depends upon the capacity in which she took possession and the nature of the title asserted by her. If she took possession absolutely in her own right under a claim of title hostile to the rightful heir, it becomes her absolute property and she is at liberty to deal with it in any way she pleases [*Lachhan Kunwar and others v. Manorath Ram*, (1)]. If, on the other hand, she took possession in her capacity as a Hindu widow claiming only the limited estate of a Hindu widow, she does not acquire the property as her *stridhan* but makes it good to her husband's estate [*Lajwanti and others v. Safa Chand and others*, (2)].

Now, what exactly was the capacity in which Mst. Ram Rakhi assumed possession of the land belonging to her father-in-law Karman Mal? Did she assert an absolute title in herself as the heir of her father-in-law or did she claim it in her

(1) I.L.R. 22 Cal. 445

(2) I.L.R. 5 Lah. 192

capacity as a widow of the family who was en-  
 titled to maintenance ? It is common ground that  
 when Karman Mal died in the year 1903, the  
 only person who could be regarded as his heir  
 was his daughter Mst. Sohawi and no one else.  
 Mst. Ram Rakhi was neither an heiress entitled  
 to a full estate nor a widow entitled to hold for  
 life. She had no right to succeed to the prop-  
 erty of her father-in-law, for the Hindu Women's  
 Rights to Property Act, which confers a right of  
 inheritance on the widow of a pre-deceased son,  
 was not enacted till the year 1937. She was  
 entitled only to maintenance out of the estate of  
 her father-in-law. Notwithstanding the fact  
 that she had no semblance or shadow of actual  
 right or title to the property in question she ap-  
 peared before the revenue officer and boldly as-  
 serted her own heirship although she must  
 have been aware that the right of inheritance  
 vested solely in her sister-in-law. It is said  
 that a person who wishes to acquire  
 title by adverse possession "must unfurl his  
 flag on the land, and keep it flying, so that  
 the owner may see, if he will, that an enemy has  
 invaded his domains, and planted the standard  
 of conquest." Mst. Ram Rakhi unfurled her  
 flag as soon as she asserted before the revenue  
 officer that she was the only heir of Karman  
 Mal. By making a wrongful claim of title as the  
 only heir to her father-in-law and by claiming  
 exclusive ownership in the property belonging to  
 him, she denied the right of her sister-in-law to  
 any interest in the property and evinced an in-  
 tention of holding dominion over it in hostility  
 to the true heir. To put in a slightly different  
 language, she took possession of the property for  
 herself, as her own, and not for her sister-in-law  
 and her possession operated as an ouster of the  
 true owner. She occupied the land under a claim

Hira Mal and  
 others  
 v.  
 Ronqi Ram and  
 others  
 Bhandari, C. J.

Hira Mal and others  
 v.  
 Ronqi Ram and others  
 Bhandari, C. J.

of title and not in lieu of maintenance. She did undoubtedly allege that she was the widow of a son of Karman Mal but she never stated that she was claiming the property with the permission of her sister-in-law or that she was entitled only to a widow's estate or that she wanted merely to obtain such possession as would yield her maintenance for life. In *Lachhan Kunwar and others v. Manorath Ram* (1), their Lordships of the Privy Council laid down the proposition that "unless it was clearly shown that when the widow took possession, she professed to do it as claiming only the limited estate of a widow, it would be impossible to hold that the rights of the other claimants were not extinguished." In a long string of authorities the Courts have laid down the broad general doctrine that when a Hindu widow, who has no right to property, fakes and retains possession of property for the statutory period to the exclusion of the rightful heir, the Court is entitled to presume that she intended to prescribe for an absolute title, unless it can be shown that she was prescribing for a limited estate or that there was an arrangement between her and the rightful heir that the property was to be held by her in lieu of maintenance *Lachhan Kunwar and others v. Manorath Ram* (1), *Sham Kaur v. Dah Kaur* (2), *Satgur Prasad v. Raj Kishore Lal and another* (3), *Suraj Balli Singh v. Tilakdhari Singh* (4), *Rikhdeo Tiwari v. Sukhdeo Tiwari and others* (5), *Mukh Ram and others v. Mst. Sundar and others* (6), and *Udai Pratap Singh Raja and others v. Narotam Singh* (7).

- 
- (1) I.L.R. 22 Cal. 445  
 (2) I.L.R. (1902) 29 Cal. 664  
 (3) I.L.R. (1920) 42 All. 152  
 (4) I.L.R. (1928) 7 Pat. 163  
 (5) I.L.R. 49 All. 713  
 (6) A.I.R. 1934 Lah. 270  
 (7) I.L.R. (1946) 21 Luck. 143

Applying the principles enunciated in the cases *Hira Mal and others v. Ronqi Ram and others* cited above, I entertain no doubt whatever that Mst. Ram Rakhi obtained possession of the property in her own independent right, and with the intention of appropriating and using it as her own to the exclusion of all others. There is not an iota of evidence on the record to justify the conclusion that she was entitled to a full estate or to a widow's estate or that the property was obtained by her in lieu of maintenance or with the consent, or in recognition of the title, of the true owner.

Bhandari, C. J.

Our attention has been invited to certain admissions by the appellants *qua* the status of Mst. Ram Rakhi but these admissions cannot, in my opinion, alter the fact that she took possession of the property of her father-in-law in her own independent right and not in her capacity as a widow of the family who was entitled to maintenance.

For these reasons, I would hold that Mst. Rakhi's possession ripened into ownership by efflux of time and that she had full power to deal with it in any way she pleased. I would accordingly allow the appeal, set aside the orders of the Courts below and dismiss the suit brought by Raunqi Ram and his brothers. Having regard, however, to the peculiar circumstances of the case, I would leave the parties to bear their own costs.

FALSHAW, J. I agree.

Falshaw, J.