



2026:PHHC:019137



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.691 of 1999

Jameel Ahmed and others

. . . . Appellants

vs.

Zarib Hassan and others

. . . . Respondents

Reserved on: February 03, 2026

Pronounced on: February 09, 2026

Pronounced fully/operative part : Fully

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CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued By:- Mr. R.S. Mamli, Advocate for the appellants

Mr. Rohit Singh and Mr. Arvind Singh Jhanda, Advocates
For the respondents.

DEEPAK GUPTA, J.

The present Regular Second Appeal has been filed by defendants Nos.1 to 3, assailing the judgment and decree dated 22.02.1999 passed by the learned Additional District Judge, Jagadhri, whereby the appeal filed by the plaintiff was allowed; and the judgment dated 29.08.1996 passed by the learned Additional Civil Judge (Senior Division), Jagadhri, dismissing the suit, was reversed.

2. For the sake of clarity, the parties shall hereinafter be referred to as per their original status before the Trial Court. On requisition, trial court has been perused.

3. ***Pleadings of the Plaintiff*** : The plaintiff Zarib Hassan (*respondent N: 1 herein*) instituted a suit for declaration and possession in respect of 76 kanal 03 marla of land situated in village Muzafat Khurd, Tehsil Jagadhri. The foundation of the plaintiff's claim was that the suit land was originally owned

by Mohammad Baksh, the common ancestor of the parties. Upon his death, the land devolved upon his son Roshan, thereafter upon his son Hayatoo, and finally upon Smt. Jano, widow of Hayatoo, who died issueless.

4. The plaintiff pleaded that he, along with defendant Nos.4 and 5, being collaterals of the deceased husband, were the legal heirs of Smt. Jano. It was further pleaded that the parties belonged to the Mohammedan Gujjar community, were agriculturists by profession, and were governed by customary law in matters of succession, alienation, marriage and adoption. According to the plaintiff, as per the prevailing custom, a widow or female inheriting property from her husband acquires only a life estate, has no right of alienation, and upon her death, the property reverts to the collaterals of the last male holder. On this premise, the plaintiff challenged the registered gift deed dated 28.07.1977 executed by Smt. Jano in favour of defendants Nos.1 to 3 (*appellants herein*) as illegal, void and not binding, and sought possession after setting aside the said alienation.

5. ***Defence of Contesting Defendants*** : Defendant Nos.1 to 3 contested the suit by denying the alleged custom in its pleaded form. While admitting that the parties were Mohammedans by religion and Gujjars by caste, it was specifically denied that there existed any custom restricting a widow to a life estate. It was pleaded that the suit property was the self-acquired property of Hayatoo, and that Smt. Jano became the absolute owner thereof. The defendants further pleaded that Smt. Jano had full authority to gift the property and that the gift deed was executed in recognition of the services rendered by them to her during her lifetime. The pedigree pleaded by the plaintiff was also disputed, and the defendants asserted that the plaintiff had no subsisting right, title or interest in the suit land.

6. Defendant Nos.4 and 5 supported the case of plaintiff.

7. ***Issues and Trial Court Findings*** : On the basis of pleadings, the Trial Court framed necessary issues regarding (i) Nature of the suit property,

(ii) Applicability and proof of custom, (iii) Validity of the gift deed, and (iv) Limitation.

8. During evidence, though plaintiff proved general custom as pleaded, but the defendants cited and proved several instances from the same Tehsil, where Muslim widows had alienated inherited property as absolute owners. Upon appreciation of entire evidence led by the parties, the Trial Court recorded the material findings that the suit property was treated as non-ancestral in the hands of Hayatoo, a finding which attained finality; that Smt. Jano inherited the property upon the death of her husband; that though the parties were agriculturists and generally governed by custom, the specific custom pleaded by the plaintiff was not proved; and that no cogent evidence was produced to establish that a Mohammedan widow of Gujjar caste held only a life estate. Consequently, Smt. Jano was held competent to execute the gift deed dated 28.07.1977. On these findings, the Trial Court dismissed the suit.

9. Findings of the First Appellate Court : The First Appellate Court reversed the judgment of trial court primarily on the reasoning that:

- Punjab customary law governs all agricultural tribes irrespective of religion;
- The plaintiff had pleaded and proved the existence of custom through oral evidence;
- A widow under customary law holds only a limited estate, even in non-ancestral property;
- The gift deed executed by Smt. Jano was therefore invalid.

The Appellate Court further held that proof of custom was not confined to documentary evidence like Wajib-ul-Arz or Riway-i-Am and could be established through oral testimony alone.

10. **Contentions in Second Appeal** : Assailing the above reversal, it is contended by Ld. Counsel for the appellants that the First Appellate Court

committed a grave error of law by presuming a restrictive custom without strict proof. It was argued that Personal law governs Mohammedans unless a custom to the contrary is proved; that the concept of a life estate is unknown to Mohammedan law; that the plaintiff failed to prove a custom specific to the locality and community; and that contrary instances proved by the defendants completely destroyed the plaintiff's case.

11. ***Per contra***, learned counsel for the respondent supported the appellate judgment and contended that customary law of Punjab overrides personal law for agricultural tribes.

12. ***Substantial Question*** : The core issue that arises for determination is whether the First Appellate Court was justified in presuming a restrictive custom limiting the estate of a Mohammedan widow without strict proof, thereby invalidating a registered gift deed executed by her.

13. ***Analysis of Law and Evidence*** : There is no dispute that agriculturist communities in Punjab have historically been influenced by customary law. However, it is equally well settled that custom is an exception to personal law and must be strictly proved. Under Section 5 of the Punjab Laws Act, 1872, succession and alienation among Mohammedans are governed by Mohammedan personal law, unless a valid and binding custom to the contrary is established.

14. Mohammedan law does not recognise the concept of a limited or life estate. As stated by Mulla (*Principles of Mohammedan Law, paras 41, 45 and 52*) and Tyabji (*Muslim Law, paras 554 and 560*), under Mohammedan law an heir, including a widow, takes an absolute interest in the inherited property, the doctrine of limited or life estate being unknown to Muslim jurisprudence.

15. Thus, an heir, including a widow, succeeds to the property as an absolute owner, fully competent to alienate it. Therefore, the burden squarely lay upon the plaintiff to prove that among Mohammedan Gujjars of

Tehsil Jagadhri, even non-ancestral property inherited by a widow was held only for life.

16. Though, pre-Independence Lahore High Court decisions such as ***Ahmad Din ad others v. Mst. Fatima Bibi and others, 1928 AIR (Lahore) 290,*** and ***Fazal Karim and others v. Allah Rakha and others [1939-40 Ind. Rul. 62],*** undoubtedly recognise restrictive customs governing female inheritance. However, those cases were decided in contexts where the existence of such custom was either admitted or stood established through consistent local recognition, often supported by *Riwaj-i-Am* or *Wajib-ul-Arz* entries.

17. Moreover, the Lahore High Court decisions relied upon by the First Appellate Court were rendered prior to authoritative pronouncements of the Hon'ble Supreme Court in ***Ujagar Singh v. Jeo 1959 AIR SC 1041,*** ***Thakur Gokal Chand v. Parvin Kumari (AIR 1952 SC 231), Mara and others v. Mst. Nikko @ Punjab Kaur and another (1964 AIR SC 1821)*** and ***Sant Ram and others v. Labh Singh and others (AIR 1965 SC 314),*** which have clarified that custom is a question of fact requiring strict proof, that no distinction exists between general and special custom for the purposes of proof, and that judicial notice cannot be taken where conflicting instances or evidence exist.

18. The earlier Lahore view proceeded on presumptive acceptance of customary restrictions and therefore, cannot be mechanically applied without first examining whether the alleged custom has been proved in the locality and community concerned.

19. In the present case, the very existence of the pleaded custom was seriously disputed and stood contradicted by multiple local instances (Ex.D2 to Ex.D6) produced by the defendants.

20. The plaintiff also relied upon decisions of this Court such as ***Sher Singh and others v. Des Raj and others [1977 PLJ 73]*** and ***Bachna v. Sadhu (deceased) by his LRs [1993 (2) RRR 600].*** These decisions recognise that custom may be proved by instances. However, significantly, ***Bachna's case***

dealt with ancestral property, where customary restrictions traditionally operate with greater force. In the present case, the suit property has been conclusively held to be non-ancestral, and therefore, these authorities do not advance the plaintiff's case.

21. Reliance was further placed upon ***Abdul Rehman v. Jumma Khan [2002 (3) LJR 342]***, where a widow of the Meo Mohammedan community in District Gurgaon was held to possess only a life interest. That decision, however, was founded upon a proved *Rewaj-i-Am* of Gurgaon district. It is settled law that custom varies from district to district and even from village to village, as held by Supreme Court in ***Mara vs Nikko (supra)***. A custom prevailing among Meos of Gurgaon cannot be imported into Tehsil Jagadhri in the absence of proof of a similar custom.

22. On the other hand, the legal position stands authoritatively settled by the Hon'ble Supreme Court in ***Ujagar Singh v. Jeo (supra)***, wherein it has been categorically held that all customs, whether general or special, must be strictly proved unless they have attained judicial notice through long and consistent recognition. It was further held that where conflicting instances exist, courts cannot take judicial notice of an alleged custom and, in such circumstances, the matter must be decided according to personal law.

23. As noticed above, the principle that custom changes from district to district and proof in one area cannot be extended to another has also been reaffirmed by the Hon'ble Supreme Court in ***Mara v. Mst. Nikko @ Punjab Kaur (supra)***.

24. Applying these binding principles, the Trial Court correctly took note of several documented contrary instances from Tehsil Jagadhri, where Mohammedan widows inherited and alienated property absolutely. Such instances are sufficient in law to demolish the alleged custom. The First Appellate Court failed to deal with these instances altogether, which vitiates its findings.

25. Once it is held that the alleged custom has not been proved, the inevitable consequence is that Mohammedan personal law applies. Smt. Jano, therefore, inherited the suit property as an absolute owner and was fully competent to execute the registered gift deed dated 28.07.1977. The plaintiff, being merely a collateral of the deceased husband of Jano, had no vested or reversionary right capable of invalidating such alienation.

26. **Conclusion :** The Trial Court correctly appreciated the pleadings, evidence and settled legal position. The First Appellate Court reversed the judgment on presumptions unsupported by strict proof, misapplied customary law, ignored binding Supreme Court precedent, and failed to consider decisive contrary evidence. Such reversal suffers from substantial errors of law and warrants interference under Section 100 CPC.

27. Consequently, the present Regular Second Appeal is allowed. The judgment and decree dated 22.02.1999 passed by the learned Additional District Judge, Jagadhri, are set aside; and the judgment and decree dated 29.08.1996 passed by the Trial Court, are restored. The suit stands dismissed. There shall be no order as to costs.

February 09, 2026

Sarita

(DEEPAK GUPTA)

JUDGE

Whether speaking/reasoned?

Yes/No

Whether reportable?

Yes/No

Uploaded on: February 09, 2026