

(1926) 01 CAL CK 0004**Calcutta High Court****Case No:** None

Srikrishna Mandal

APPELLANT

Vs

Khadiar Chand Pali and Srimaty
Biradasundari Dasi and Others

RESPONDENT

Date of Decision: Jan. 6, 1926**Citation:** 96 Ind. Cas. 581**Hon'ble Judges:** Panton, J; Ewart Greavesa, J**Bench:** Division Bench**Judgement**

Ewart Greavesa, J.

These two appeals arise out of suits brought by two persons, named Nadiar Ohand Pali and Khadiar Chand Pali, claiming either joint khas possession or separate khas possession in respect of the land in suit to the extent of their 1/3rd share, that is to say, 2/3rd to each plaintiff after declaration of their title. The facts are shortly as follows. The property in suit originally belonged to one Fagu Mandal. Fagu, who was by caste Pali, married first of all a wife by whom he had one son Sukh Chand. Then after the death of his first wife or during her lifetime, 1 am not sure which--Fagu lived with one Rupasundari by whom he had two sons, the two plaintiffs Nadiar and Khadiar. Apparently, although Fagu belonged to Pali caste, there has been a recent movement according to the finding of the Munsif among this caste to claim the position as Khatriyas. For instance, they have assumed the sacred thread and have done other things to establish their claim to be Hindus belonging to this caste. This movement, however, took place after Fagu's death and after the inheritance had opened out. The learned Munsif has, as I understand his findings, arrived at this that Fagu belonged to the Pali caste, that in that caste widow marriage is prevalent in what he" calls nika form and that sons born of such marriage inherit equally with other admittedly legitimate sons: But what is urged, before us on behalf of defendant No. 2 who is appellant before us and who purchased some of the properties in suit from Sukhchand is that this is not the case put forward on behalf of Nadiar Chand and Khadiar Chand. It is said that they claimed to be Hindus of the

Khatriya caste and that this claim is inconsistent with their claim to inherit a share in the property of Fagu. It is said that if they claim to be Khatriyas then there must be for there to be a valid marriage, an observance of proper marriage ceremonies, namely, presence of a priest in the ceremony, presence of a barbar, taking of the seven steps and exchange of garland without which it is said there can be no valid marriage of Khatriyas and it is, accordingly, stated that both the Munsif and the Subordinate Judge have not approached the question from the proper point of view and we were asked to send back the case to the Court below in order that a definite finding should be arrived at as to whether the claim of Nadiar and Khadiar to be Khatriyas was correct or whether they were in fact Palis, and it is said that if the finding as regards the first of the question is in the affirmative then the marriage of Fagu with Rupasundari was not a valid marriage and accordingly, the claim of both Nadiar and Khadiar must fail. But as we have already stated, we think that both the Courts below have arrived" at definite findings, namely, that these two persons Nadiar and Khadiar belonged to the Pali caste, that in this caste union such as that of Fagu with Rupasundari is recognised and that the issue of such marriage according to the custom of the Pali caste inherit along with other sons born in ordinary wedlock. It is true that the Munsif starts his judgment by saying that Fagu was born of a low caste Hindu. But this is a loose form of expression and cannot be read, we think, with the strictness with which we are asked to read it. We think, therefore, that the findings arrived at by the Subordinate Judge which in fact on this point accord with those of the Munsif are sufficient and that according to the custom of the Pali caste to which Nadiar and Khadiar belonged, they were entitled on the death of Fagu to one-third share in the property left by him jointly with Sukhchand.

2. Then comes the second point urged in appeal. The Munsif decided against the" claim of Khadiar to the property or at any rate to a portion thereof on the ground that the suit was not brought within three years of his attaining majority. Apparently the case for the plaintiffs was that Khadiar was born in the year 1305. The Courts below did not accept this date but, as I read the Subordinate Judge's judgment, he does arrive at a finding on the evidence that was before him that Khadiar was born in Aughran, 1304. This being so, Khadiar's claim must fail as the learned Subordinate Judge has stated and on the grounds stated by the Subordinate Judge. Then the Subordinate Judge to my mind has arrived at a sufficient finding with regard to Nadiar. Nadiar was born layears after Khadiar. Then if Khadiar's birth can be taken to be in Aughran, 1304, then Nadiar who was born a year and a half after him brought his suit within the necessary time. But it is urged on behalf of the appellants that there was no sufficient finding as to the date of Khadiar's birth and that if this is not certain, then the date of Nadiar's birth is also uncertain and, therefore, it was not possible to ascertain on the materials before the Court whether Nadiar's suit was within time or not. That would be so, unless there is the finding as to the date of Khadiar's birth to which we have referred and considering the

judgment of the Subordinate Judge, I have come to the conclusion that there is a sufficient finding on this point, namely, that Khadiar was born in Aughran 1304, that Nadiar was born one year and a half after him and that accordingly, Nadiar's suit was brought within time. We think, therefore, that the judgment of the Subordinate Judge was correct, that the findings on both points urged in appeals are sufficient and that no remand is necessary;

3. The result is that the appeals fail and are dismissed with costs.

Panton, J.

4. I agree.