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upon them of proving that they are governed by custom in matters of alienation.

The plaintiffs have produced copies of two judicial decisions—one in the case of *Basanta Ram v. Udhu Ram* and the other in the case of *Radha Ram v. Narain*—to show that Brahmans in some parts of the district of Jullundur follow custom at variance with Hindu Law. But the decisions in question are not in point. In the case of *Basanta Ram v. Udhu Ram* the parties were Brahmans of *Mouza Khiwa* in Tahsil Nakodar, and it was found that that village was owned entirely by Brahmans; was named after its Brahman founder; and all the proprietors tilled the soil with their own hands and none of them followed priestly functions. Similarly, the parties in the other case were Brahmans of village Shankar in Tahsil Nakodar and they formed a compact village community, the village having been founded by, and named after, their common ancestor between 200 and 300 years ago. It is clear that these two judicial decisions have no bearing on the present case; for the constitution of the village Man is wholly different from the constitution of the villages of *Khiwa* and *Shankar* to which the cases just mentioned relate.

For these reasons I agree with the learned District Judge in holding that the plaintiffs upon whom the onus lay have failed to prove that they are governed by agricultural custom, and not by Hindu Law. I accordingly maintain the decree of the District Judge and dismiss this appeal with costs.

R.M./R.K.

*Appeal dismissed.***A. I. R. 1917 Lahore 143 (1)**

JOHNSTONE, C. J.

Saif-Ud-Din—Convict—Petitioner.

v.

Emperor—Respondent.

Criminal Revn. Petn. No. 1815 of 1916, decided on 12th January, 1917, from the Order of Magte., First Class, Sialkot, dated 13th September, 1916.

Punjab Municipal Act (3 of 1911), S. 219—Building house without sanction—Trial—Acquittal—Retrial is not allowable—Offence does not constitute continuing offence—Criminal P. C. (1898), S. 403.

A person who has been once tried for building a house without the sanction of a Municipal Committee and acquitted, cannot be re-tried for the same offence simply on the ground that the house continues to stand and thus constitutes a continuous offence. [P. 143, C. 2.]

Muhammad Iqbal—for Petitioner.

Judgment.—In my opinion the order of Seikh Abdul Rahman, Extra Assistant Commissioner, dated 3rd March, 1915, closed the case. On 29th June, 1914 petitioner applied for leave to build. He was told to furnish a site-plan. He did so on 7th July, 1914. On 2nd September 1914, *i.e.*, within two months, he was told not to build until the town planning scheme was decided upon. Nevertheless he built and for this he was prosecuted. On 3rd March, 1915, he appeared in Court, but the Committee defaulted, and the consequent dismissal of the case amounted to acquittal on the charge of disobeying the order of 2nd September, 1914. He did not *again* disobey that order. He may have been actually guilty, but he was acquitted. The Magistrate's talk about a continuing offence is opposed to the facts. The house was built before *this* prosecution began—accused cannot be said to have disobeyed the order of 2nd September 1914, merely because the house still stands.

I allow the petition and set aside conviction and sentence and refund fine. R.M./R.K.

*Petition allowed.***A I. R. 1917 Lahore 143 (2)**

SCOTT-SMITH AND SHADI LAL, JJ.

Nanda and *others*—Plaintiffs—Appellants.

v.

Hira and *others*—Defendants—Respondents.

Second Appeal No. 924 of 1914, decided on 18th January, 1917, from the Decree of Divl. Judge, Ludhiana, dated 12th January, 1914.

Custom (Punjab) — Succession — Non-resident agnates are entitled to succeed.

Prima facie agnates of a deceased person are entitled to a share in his estate, even though they live in another village and own no land in the village in which the land in dispute is situate. 143 P. R. 1888; 64 P. R. 1893 and 73 P. R. 1896, dist. [P. 144, C. 2.]

Rambhaji Datta—for Appellants.*Abdul Ghani*—for Respondents.