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re-hear the appeals and dispose of them in accordance with law, had I not found that the application for revision was made with very great delay, that is, after the expiration of nearly nine months from the date of the lower appellate Court's orders. On this ground, and also because I think that valid reasons might have been given for dismissing or rejecting the appeals, I decline to interfere in this revision case and reject the application.

Application rejected.

PRIVY COUNCIL.

P. C. *
1886
February 10.

MUHAMMAD ISMAIL KHAN (DEFENDANT) *v.* FIDAYAT-UN-NISSA AND OTHERS (PLAINTIFFS).

[On appeal from the High Court for the North-Western Provinces.]

Family custom—Wajib-ul-arz—Muhammadan Law—Appeal to Her Majesty in Council—Question of fact.

It having been alleged that an estate, by custom, descended to a single heir in the male line, the High Court, concurring with the Court of first instance, found that this custom had not been proved to prevail in the family.

On an appeal contesting this finding, it was argued, among other objections, that the High Court had not given sufficient effect to an entry in the *wajib-ul-arz* of a zamindari village, the principal one comprised in the family estate now in dispute; the last owner of that estate, who held all the shares in the village, having caused an entry to be made to the effect that his eldest son should be his sole heir, the others of the family being maintained.

Held that, though termed an entry in a *wajib-ul-arz*, the document was not entitled to the name, but was rather in the nature of a testamentary attempt to make a disposition contrary to the Muhamadan law of descent.

The appeal was not taken out of the rule as to the concurrent findings of two Courts, primary and appellate, on a question of fact.

APPEAL from a decree (21st April, 1881) of the High Court, confirming a decree (14th July, 1880) of the Subordinate Judge of Meerut.

Ghulam Ghaus Khan, of an ancient Biluch family in the Bulandshahr district, died in 1879, leaving one son, the appellant, and three daughters, the respondents, besides certain illegitimate children. Upon his death, his son took possession, and alleged a sole title to the inheritance by the custom of the family. Between the brother and the sisters, the question on this appeal was whether

* *Present:*—LORD BLACKBURN, LORD MONKSWELL, LORD HOBHOUSE, and SIR RICHARD COUCH.

it had been proved that, by custom, the ancestral estate descended to a single heir in the male line, instead of to sharers according to the Muhammadan law of the Sunni sect to which the parties belonged. In the Court of first instance, when the respondents brought this suit, other children of Ghulam Ghaus Khan were joined as plaintiffs; and, altogether, the claim was made for 82 sahams, as portions, out of 96 sahams, representing the whole estate.

All obtained a decree in their favour, which, however, was maintained in the High Court only in favour of the three daughters, now respondents; the other plaintiffs being found to be of illegitimate birth. The latter did not appeal against the decision; but the defendant, the brother, appealed; and the principal question now raised related to the proofs given by him of the alleged family custom. Among these was an extract from the *wajib-ul-arz* of village Jhagir, pargana Dankaur, tahsil Sikandrabad, zila Bulandshahr, in which village Ghulam Ghaus Khan, in his lifetime, was the recorded proprietor of all the 20 biswas. This contained an entry dated the 12th September, 1870, to the effect that, after his death, his eldest son should be heir to, and should manage, all his estate; it being declared that two other sons, who, however, both died in their father's lifetime, should receive only maintenance.

Mr. *C. W. Arathoon* appeared for the appellant.

Reference was made to *Lekraj Kuar* v. *Mahpal Singh* (1), in which it was held that *wajib-ul-araiz*, or village administration papers, properly prepared and attested, were admissible to prove a custom of inheritance stated therein.

The respondents did not appear.

Their Lordships' judgment was delivered by

SIR R. COUCH.—The appellant in this case is the only surviving son of Ghulam Ghaus Khan, who died on the 6th November, 1879, and the respondents are his three daughters, who it is not disputed were legitimate. The suit was brought by the three respondents, together with one Nanhi Begam, who was alleged to be a wife of Ghulam Ghaus Khan, and her children, who were

(1) L. R., 7 Ind. Ap. 63; I. L. R., 5 Calc. 744.

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alleged to be legitimate. It has been found by the High Court that Nanhi Begam was not the wife of Ghulam Ghaus Khan, and that her children were illegitimate, and there is no question as to them in this appeal.

The plaint claimed on the part of the plaintiffs that they were entitled to 82 parts of the estate of the deceased, the whole being divided into 96 parts, that being the shares which they would be entitled to under the Muhammadan law, supposing all were entitled. The Subordinate Judge gave a decree in favour of all the plaintiffs for the 82 parts. The only part of the defence set up by the present appellant which it is now material to consider was that there was a family custom by which the eldest son was entitled to succeed to the whole of the property of the deceased. The Subordinate Judge found this custom was not proved. The present appellant, who was defendant, appealed to the High Court. The High Court, coming to the conclusion that Nanhi Begam and her children were not entitled to any share of the property, modified the decree of the lower Court and made a decree in favour of the appellant and the three respondents, dividing the property, as it then became necessary to do, in a different way. The property was divided into 35 parts, and 21 of these were given to the respondents, the plaintiffs, and the remainder to the present appellant, the defendant, the property being divided according to the Muhammadan law. The High Court also found, as the Subordinate Judge had found, that the family custom had not been proved.

The defendant has appealed to Her Majesty in Council, and the ground of appeal taken is that the High Court was wrong in finding that the custom was not proved. Objections have been taken to the judgment of that Court, but when they are examined they appear to their Lordships to amount only to this, that they contest the propriety of the finding of the Court on the construction of the evidence. The principal argument turns upon the contents of what is called a *wajib-ul-arz*, which does not appear properly to be a document entitled to that name, but rather a document in the nature of an administration or testamentary paper, by which Ghulam Ghaus Khan indicated the way in which he

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should like the property to be enjoyed after his death. It seems to be rather an attempt on his part to make a disposition of his property contrary to the Muhammadan law.

The case appears to their Lordships to come within the rule that when there is a concurrent judgment of the two lower Courts upon a question of fact, it ought not to be disturbed; and their Lordships will therefore humbly advise Her Majesty to dismiss the appeal and affirm the decision of the High Court. There will be no order as to costs.

Appeal dismissed.

Solicitors for the appellant:—Messrs. *Barrow* and *Rogers*.

CIVIL REVISIONAL.

1886
July 1.

Before Mr. Justice Oldfield and Mr Justice Mahmood.

DHAN SINGH (JUDGMENT-DEBTOR) *v.* BASANT SINGH AND OTHERS (DECREE-HOLDERS.)*

High Court's powers of revision—Civil Procedure Code, s. 622—Meaning of "jurisdiction"—Amendment of decree—Civil Procedure Code, s. 206—Act XV. of 1877 (Limitation Act), sch ii, No 178.

In execution of a decree for partition of immoveable property passed in 1872, a dispute arose as to the execution in reference to a portion of the property, and in 1881 it was finally decided that the decree was defective in its description of the property, and therefore incapable of execution. In May, 1885, on application by the decree-holder, the Court passed an order amending the decree, the amendment having reference to an arithmetical error. The judgment debtor applied to the High Court for revision of this order, on the grounds that the amendment of the decree was barred by limitation, and that the decree itself being barred by limitation and finally pronounced to be incapable of execution, the Court had acted beyond its jurisdiction in amending it.

Held that the application for revision must be rejected.

Per OLDFIELD, J., that the High Court had no power to entertain the application under s. 622 of the Civil Procedure Code, with reference to the decision of the Privy Council in *Amir Hassan Khan* v. *Sheo Baksh Singh* (1), and of the Full Bench in *Badami Kuar* v. *Dinu Rai* (2), and further that, upon the facts stated, the Court ought not to interfere.

Per MAHMOOD, J., that the Court was not precluded from entertaining the application for revision under s. 622 of the Civil Procedure Code. *Amir Hassan Khan*

* Application No. 98 of 1886, for revision, under s. 622 of the Civil Procedure Code, of an order of Maulvi Mazhar Husain, Munsif of Nagina, dated the 5th May, 1885.

(1) I. L. R., 11 Calc. 6. (2) *Ante*., p. 111.