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agree with the interpretation thus put upon the wajib-ul-arz. It has been contended before us that the words contained in the wajib-ul-arz do not in reality differ from the words contained in the particular wajib-ul-arz which was considered in the case of *Tasadduq Husain Khan* v. *Ali Husain Khan* (1), and that as in that case the words there used were held to indicate the making of a contract only amongst the co-sharers and not the keeping alive of a pre-existing custom, we should in this case construe the wajib-ul-arz before us in the same way. Now, the wajib-ul-arz referred to in the case of *Tasadduq Husain Khan* v. *Ali Husain Khan* does differ in one material respect from the wajib-ul-arz before us. Between the words "*rawaj*" and "*shafa*" there comes in the important word "*haq*." To that decision one of us was a party, and it was pointed out that every question of the kind must be governed by the language which is to be found in the documents under which rights of the kind arise, and the case law rarely is of much assistance to the court in determining such questions. This has been repeatedly laid down. In the present case we are concerned merely with the language of the wajib-ul-arz before us. We have no doubt as to what the meaning of this wajib-ul-arz is, namely, that there was a pre-existing custom of pre-emption and that the persons who dictated that wajib-ul-arz did intend that that pre-existing custom of pre-emption should continue. We accordingly dismiss this appeal with costs.

Appeal dismissed.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Banerji.

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January 5.

KANHAI RAM AND ANOTHER (PLAINTIFFS) *v.* MUSAMMAT AMRI AND OTHERS (DEFENDANTS).*

Hindu Law—Succession—Stridhan—Property acquired by adverse possession.

Where a Hindu female acquires a title to property by means of adverse possession, such property becomes her *stridhan* and descends as such to her heirs. *Brij Indar Bahadur Singh* v. *Ranee Janki Koer* (2) and *Mohim Chunder Sanyal* v. *Kashi Kant Sanyal* (3) followed.

THE facts out of which this appeal arose were as follows:—One Salig Ram had two sons—Ganga Dan and Sheo Lal. Ganga Dan had a son named Khushal Ram, who died in his

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* First Appeal No. 191 of 1908, from a decree of Muhammad Shafi, Subordinate Judge of Aligarh, dated the 1st of June, 1908.

(1) Weekly Notes, 1908, p. 121. (2) (1877) L. R., 5 I. A., 1.
(3) (1897) 2 C. W. N., 181.

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father's life time, leaving a widow, Musammat Ishri, him surviving. Sheo Lal had a son, Narain Das, whose wife was one Musammat Amri. Ganga Dan died in 1882 or 1883, and after his death his daughter-in-law Ishri took possession of his property and held it until her death in 1899. It was found that she acquired a title by adverse possession. After the death of Musammat Ishri the property was taken possession of by Musammat Amri and one Gopal. In 1906 the present suit was brought by Kanhai Ram and Daya Ram, who claimed to be the nearest heirs of Musammat Ishri, against Amri and Gopal and various transferees from them. The court of first instance (Subordinate Judge of Aligarh) dismissed the suit upon various grounds which are detailed in the judgment of the High Court. The plaintiffs appealed to the High Court.

Babu *Durga Charan Banerji*, for the appellants, referred to *Mohim Chunder Sanyal* v. *Kashi Kant Sanyal* (1) and *Balwant Singh* v. *Ram Dei*, unreported.*

Munshi *Govind Prasad* (with him Babu *Jogindro Nath Chaudhri* and Babu *Girdhari Lal Agarwala*), for the respondents, supported the judgment of the court below.

STANLEY, C. J., and BANERJI, J.—This appeal arises out of a suit to recover possession of property which formerly belonged to one Ganga Dan. Ganga Dan was one of the two sons of Salig Ram, Sheo Lal being the other. Ganga Dan had a son named Khushal

* The judgment in this case (S. A. 414 of 1905, decided on December 7, 1906) was as follows :—

STANLEY, C. J., and KNOX, J.—In the suit out of which this appeal has arisen the plaintiff appellant Balwant Singh claimed to be entitled to the possession of a certain house which formerly belonged to his relatives Ram Chandra and Lachman. In his plaint he sets forth the death of Lachman in the year 1875, the death of Ram Chandra in the year 1876, and states that after the death of Lachman his widow Musammat Jamna Dei had been in possession and occupation of the house first jointly with Ram Chandra during his life time and subsequently with Musammat Chinti, the daughter of Ram Chandra. Then the plaint sets forth the death, childless, of Musammat Chinti in 1886, and that since that date Musammat Jamna Dei had been in exclusive possession of the house until her death on the 18th of January, 1903. The plaintiff then alleges that he is the nearest reversioner of Lachman and Ram Chandra and upon these facts he bases his claim to possession.

(1) (1897) 2 C. W. N., 161.

Ram, who died in his father's life time, leaving a widow, Musammat Ishri, him surviving. The other son of Salig Ram, namely Sheo Lal, had a son named Narain Das and his wife was one Musammat Amri, a defendant in the suit. Ganga Dan died in the year 1882 or 1883, leaving his daughter-in-law Musammat Ishri him surviving, who upon his death entered into possession of his property and continued in possession until the year 1899, when she died. It has been found by the court below, and there is no controversy as to this, that Musammat Ishri acquired an absolute title to the property of Ganga Dan by adverse possession.

Included in the prayers for relief is a prayer that "having regard to the facts of the case, any additional relief or any relief in place of the relief sought which the court may be able to grant may also be granted." The court of first instance settled, amongst other issues, the issue whether Musammat Jamna Dei had been in adverse possession of the house for over 12 years and had become absolute owner at the time of her death, and if so whether or not the plaintiff was entitled to inherit that property. He held that the plaintiff was entitled to succeed as the reversionary heir of Ram Chandra and Lachman, but that even if Musammat Jamna Dei became absolute owner by adverse possession for over 12 years that would make the property her personal property and in respect of it the plaintiff as her husband's nearest heir was entitled to succeed. On appeal the learned District Judge reversed the decision of the court below holding that in his plaint the plaintiff did not claim to be entitled to the property as the heir of Musammat Jamna Dei, but that he merely claimed it as the nearest heir of Lachman and Ram Chandra. He says in his judgment that, finding that Musammat Jamna Dei had acquired title by adverse possession, he need not go into the other points as to whether the suit being brought on the present plaint, a decree in favour of respondent as heir of Jamna Dei could be passed. "It was not prayed that respondent should be put into possession of the property as heir of Musammat Jamna Dei: no issue was struck as to whether the respondent was her heir, to decide which it might even be necessary to consider the question of *stridhan*, the heirs being different according to the kind of *stridhan* the property in question was." This is altogether in our opinion too narrow a construction to place upon the language of the plaint. The plaintiff set forth all the facts material for the determination of his rights in respect of the property, and whilst he asked for proprietary possession as the nearest reversioner of Lachman and Ram Chandra he also asked that "having regard to the facts of the case any additional relief or any relief in place of the relief sought which the court may be able to grant, may also be granted" to him. We think that the learned Additional Judge ought to have determined the question which was knit between the parties in the court of first instance, namely, whether in view of the facts the plaintiff was entitled to inherit the property, whether as heir of Lachman and Ram Chandra or as heir of Musammat Jamna Dei. Before therefore we can determine this appeal we must refer the following issue to the

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The plaintiffs claiming to be the nearest reversionary heirs of Musammat Ishri instituted the suit out of which this appeal has arisen for recovery of possession of the property. The court below has dismissed their claim on three grounds. First of all, the court held that the suit was barred by limitation, it not having been brought within 12 years from the death of Ganga Dan. The learned Subordinate Judge was of opinion that the plaintiffs' claim was as reversionary heirs of Ganga Dan for the recovery of his property; but upon a perusal of the plaint it will be seen that their claim was not based on their heirship to Ganga Dan but on their heirship to Musammat Ishri. In the third paragraph of their plaint the plaintiffs say that they are the heirs and next reversioners of Musammat Ishri and are entitled to the possession of the property in dispute. Musammat Ishri having acquired title by adverse possession, it passed upon her death to her heirs, whoever they may be, as her *stridhan*. She died in 1899 and the present suit was instituted on the 8th of May, 1906, that is, well within the period of 12 years. The learned Subordinate Judge thinks that property acquired by a female by adverse possession is not her *stridhan*: but this is contrary to the views expressed by their Lordships of the Privy Council in the case of *Brij Indar Bahadur Singh* v. *Rani Janki Koer* (1) and also contrary to the decision in *Mohim Chunder Sanyal* v. *Kashi Kant Sanyal* (2). (See also the decision of this Bench in the case of *Balwant Singh* v. *Musammat Ram Dei*, S. A. No. 414 of 1905, decided on the 7th of December, 1906, which has not been reported.* It is clear upon the authorities that property so acquired by a female is her *stridhan* and as such *stridhan* passes to her heirs.

Then the learned Subordinate Judge was of opinion that the suit was barred by section 43 of the former Code of Civil

learned Additional Judge for determination, namely:—"Is the plaintiff the nearest reversionary heir of Musammat Jamna Dei and as such entitled to her *stridhan*, including the house in question?"

We refer this issue under the provisions of section 566 of the Code of Civil Procedure and direct that the lower appellate court shall take such additional relevant evidence as may be adduced by the parties. On return of the finding the parties will have the usual ten days for filing objections.

(1) (1877), L. R., 5 I. A., 1: S. C., 1 C. L. R., 818.

(2) (1897) 2 C. W. N., 161.

* Printed as a foot-note to this case.

Procedure for these reasons:—Musammat Amri, the widow of Narain Das, entered into possession of her husband's property upon his death. She made a gift of portion of it to one Gopal Sahai; whereupon the plaintiffs, claiming to be the reversionary heirs of Narain Das, instituted a suit to have this gift in favour of Gopal Sahai set aside as against them. The gift was set aside on the ground that Musammat Amri had only a widow's life estate and was not entitled to dispose of the property of Narain Das beyond her life estate. The court below was of opinion that the plaintiffs in that suit ought to have claimed the property which they seek to recover in this suit, but in this the learned Subordinate Judge is clearly in error. The claim in the former suit to have the deed of gift set aside was based on a distinct cause of action. It was not incumbent on the plaintiffs in it to join a claim to recover the property owned by Musammat Ishri.

The preliminary grounds upon which the court below dismissed the suit are untenable, and it will be necessary therefore to remand the suit to that court for trial upon the merits. We accordingly allow the appeal, set aside the decree of the court below, and remand the suit to that court under the provisions of order 41, rule 23, of the Code of Civil Procedure, with directions that it be readmitted in the file of pending suits and be disposed of according to law. The appellants will have the costs of this appeal in any event. All other costs will abide the event.

Appeal allowed and cause remanded.

Before Mr. Justice Richards and Mr. Justice Tudball.

SADANAND PANDE (PLAINTIFF) *v.* ALI JAN AND OTHERS (DEFENDANTS)*.

1910 *January* 5.

Act (Local) No. III of 1901 (*United Provinces Land Revenue Act*) *sections* 56, 86—*Market Right to levy tolls—Cess.*

Held that the levy by the owner of a private market of market dues at so much per head for every beast sold and of rent for land occupied by stalls is not illegal. *Sukhdeo Prasad* v. *Nihal Chand* (1) distinguished.

THE facts of this case were as follows:—

The plaintiff asked for a declaration that he was entitled to realize the income and profits of a certain fair jointly with the

* First Appeal No. 198 of 1908, from a decree of Srish Chandra Basu, Subordinate Judge of Ghazipur, dated the 13th of June 1908.

(1) (1907) I. L. R., 29 All., 740.