claim has not been questioned before us. We accordingly see no ground for disturbing the decree of the lower Court.

The result therefore is that the appeal fails and is dismissed with costs.

Appeal dismissed.

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PURBI DIN *v.* HARDEO BAKHSH SINGH

APPELLATE CIVIL

Before Mr. Justice Bisheshwar Nath Srivastava and Mr. Justice E. M. Nanavutty

1936

December, 13

RABINATH BAKHSH SINGH AND ANOTHER (DEFENDANTS-APPELLANTS) *v.* RAM JIAWAN AND OTHERS (PLAINTIFFS-RESPONDENTS)*

Custom—Alleged family custom excluding daughters and their sons from inheritance—Evidence consisting of three wajib-ul-araez, some instances and opinion of a few witnesses—Custom, if established.

Where the evidence in support of the alleged family custom excluding daughters and their sons from inheritance consists of three wajib-ul-araez, one of which is irrelevant and a proper interpretation of the remaining two does not bear out the existence of the alleged custom, and of evidence of some instances and of the opinion evidence of a few witnesses, but the lower appellate Court expressly holds that the alleged instances are of no value and also rejects the opinion evidence, the alleged custom cannot be held as established.

Messrs. *Hyder Husain* and *Daya Kishen Seth*, for the appellants.

Messrs. *Radha Krishna Srivastava* and *S. N. Srivastava* for the respondents.

SRIVASTAVA and NANAVUTTY, JJ.:—This is a defendants' appeal arising out of a suit for possession of a zamindari share on the basis of inheritance. One Jugraj was the last male owner of the property in suit. He was succeeded by his widow Musammat Phulbasa who died

*Second Civil Appeal No. 230 of 1933, against the decree of M. Mohammad Abdul Haq, District Judge of Bara Banki, dated the 16th of February, 1933, confirming the decree of Dr. Chaudhri Abdul Majid Mohammad Abdul Azim Siddiqi, Subordinate Judge of Bara Banki, dated the 28th of November, 1932.

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RABINATH BAKHSH SINGH v. RAM JIAWAN

Srivastava and Nanavutty, JJ.

on the 14th of April, 1920 She left two daughters Musammat Bakta and Musammat Janaka of whom the former died in 1931 and the latter in 1932. Musammat Janaka left no issue but Musammat Bakta left three sons who were plaintiffs 1, 2 and 5 in the suit. On the death of Musammat Phulbasa one Sita Ram who claimed to be the nearest reversioner of her husband succeeded in obtaining mutation of names in his favour and has remained in possession ever since. The plaintiffs 3 and 4 were the transferees from plaintiffs 1 and 2 and the defendants-appellants are the transferees from Sita Ram The plaintiffs basing their cause of action on the death of the last surviving daughter claimed the property in the right of daughters' sons. The defendants opposed the claim on the ground that daughters and their sons were excluded from inheritance under a family custom The evidence led by the defendants in support of the custom consisted of three wajib-ul-araez, evidence of some instances and the opinion evidence of a few witnesses. Both the lower Courts have unanimously come to the conclusion that the alleged custom has not been established. The lower appellate Court has expressly held that the alleged instances were of no value and has also rejected the opinion evidence. It has also held that one of these three wajib-ul-araez namely exhibit A-5 was irrelevant and that on a proper interpretation the remaining two wajib-ul-araez do not bear out the existence of the alleged custom.

The learned counsel for the appellant has relied only on exhibits A-5 and A-6 and has contended that on a correct interpretation of these documents they should be held to afford sufficient evidence of the exclusion of daughters. Admittedly village Sheonam of which the wajib-ul-arz is exhibit A-5 is the parent village and the remote ancestors of Jugraj belonged to that village before they established themselves in village Serai Pande, the wajib-ul-arz of which is exhibit A-6. We are therefore of opinion that the wajib-ul-arz of village Sheonam is

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admissible in evidence as regards the custom obtaining in the family of Jugraj. Having, however, given our careful consideration to the terms of these two wajib-ul-araez, we are not satisfied that they are sufficient to make out the alleged custom. Admittedly, they do not contain any words expressly excluding daughters from inheritance. It is not enough merely to show that on certain possible implications such an exclusion could be inferred. In the absence of express words of exclusion the language must be sufficiently definite to show that the daughters must be excluded by necessary implication. We have failed to discover any such definite and clear provision in these wajib-ul-araez. The word *"waris"* used in exhibit A-6 in the context in which it has been used does not necessarily mean the male collaterals. It might in the setting in which it has been used well include a daughter. Similarly the provisions of exhibit A-5 are also not free from ambiguity. In the circumstances we can see no sufficient ground to disagree with the interpretation placed by the Courts below on these documents or to disturb their finding about the alleged custom not having been established.

Srivastava and Nanavutty, JJ.

The result therefore is that the appeal fails and is dismissed with costs.

Appeal dismissed.