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we are dealing, there can be no manner of doubt that even the ground upon which the majority of the House of Lords took that particular case out of the purview of the rule, has no application to the case before us.

We are accordingly of opinion that the District Judge was right in non-suiting the plaintiffs. The appeal, therefore, fails and is dismissed with costs.

A. N. C. *Appeal dismissed.*

APPEAL FROM ORIGINAL CIVIL.

Before Mr. Justice Broadway and Mr. Justice Bevan-Petman.

1919

Nov. 12.

GHULAM MUHAMMAD, &c. (*Plaintiffs*) *Appellants*,

versus

Mussammat GAUHAR BIBI, &c. (*Defendants*) *Respondents*.

Civil Appeal No. 86 of 1914.

Custom (Succession)—daughter or near collaterals—Sipras of Miana Hazara, Tahsil Bhera, District Shahpur—entries in Wajib-ul-arz and Riwaj-i-am—value of—whether applicable to both self-acquired and ancestral property.

Mussammat G. B., the widow of plaintiff's uncle G. R., on 19th April 1913, made a gift of her husband's landed property in 3 villages in Tahsil Bhera, in favour of her daughter and her deceased daughter's son. The plaintiffs sue for a declaration that the gift shall not affect their reversionary right after the death or re-marriage of the widow. It was found by the High Court on appeal that some of the property was ancestral, and some was not. The entries in the *Wajib-ul-arz* of the villages concerned and in the *Riwaj-i-am* were against married daughters succeeding as heirs to their father's property.

Held, that the portions of a *Wajib-ul-arz* which refer to custom are not provisions intended to enure for the duration of the Settlement only, but are statements that a certain custom exists.

Rahiman v. *Bala* (1) and *Masta* v. *Pohlo* (2), followed.

Also that there is a certain presumption as to the correctness of such entries.

(1) 8 P. R. 1892. (2) 52 P. R 1896.

Dilsukh Ram v. *Nathu Singh* (1), *Dakas Khan* v. *Ghulam Kasim Khan* (2), *Digambar Singh* v. *Ahmad Sayad Khan* (3), *Aulia* v. *Alu* (4), *Ahmad Shah* v *Khuda Bakhsh* (5), *Maha Ram* v. *Ram Mohar* (6), and *Muhammad Faiyaz Ali* v. *Bihari* (7), followed

But that though such entries are evidence the presumption as to their correctness is a rebuttable one.

Held also, that entries in the *Riwaj-i-am* also carry with them certaain resumptions of correctness.

Sham Ram v. Mussammat *Hemi Bai* (8), *Ali Muhammad* v. *Dulla* (9), *Sheran* v. Mussammat *Sharman* (10), *Mehr Khan* v. *Karam Ilahi* (11), *Sher* v. *Alam Sher* (12), *Beg* v *Allah Ditta* (13), and *Saide Khan* v. Mussammat *Amir-un-Nissa* (14), followed.

These presumptions are also rebuttable and when positive instances are given the *Riwaj-i-am* cannot be regarded as overriding them.

Nidhu v. *Ram Singh* (15), Mussammat *Zainab Bibi* v. *Badar-ud-Din* (16), *Lelu* v. *Ram Chand* (17), Mussammat *Raj Kour* v. *Talok Singh* (18), and *Budhi Parkash* v. *Chander Bhan* (19), followed.

Held further, that in the case of self-acquired property the general custom is that daughters are preferred to collaterals.

Rattigan's Customary Law, Article 23 (2), referred to.

And as the entries in the *Wajib-ul-arz* of the villages concerned do not distinctly state that they relate to self-acquired property as well as ancestral property they should be read as referring merely to the latter.

Samand v. Mussammat *Jindwand*, C. A. No. 665 of 1905 (unpublished), followed.

Held, consequently, that in this case, in the absence of proof to the contrary the daughter is heir to the self-acquired property of her father and her mother's gift stands good to that extent, but will not bind the rights of the plaintiffs in respect of the ancestral property.

First appeal from the order of Munshi Rahim Bakhsh, District Judge, Shahpur, dated the 2nd December 1913, *granting a declaratory decree.*

NANAK CHAND, for *Appellants.*

SHEO NARAIN and NIAZ ALI, for *Respondents.*

(1) 98 P. R. 1894 F. B.
(2) (1918) I. L. R. 45 Cal. 793 P. C.
(3) (1914) I. L. R. 37 All. 129 P. C.
(4) 49 P. R. 1898.
(5) 33 P. R. 1903.
(6) 65 P. R. 1903.
(7) (1917) I. L. R. 40 All 56.
(8) 73 P. R. 1896.
(9) 26 P. R. 1901.
(10) 117 P. R. 1901.
(11) 13 P. R. 1902.
(12) 94 P. R 1905.
(13) 45 P. R. 1917 P. C.
(14) 94 P. R. 1918.
(15) 2 P. R. 1909.
(16) 43 P. R. 1913.
(17) 23 P. R. 1916.
(18) 38 P. R. 1916.
(19) 123 P. R. 1918.

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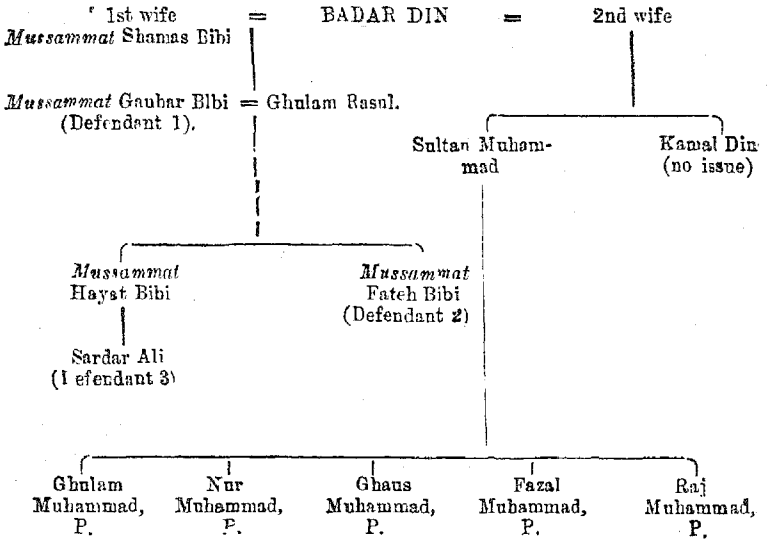
The judgment of the Court was delivered by—

BROADWAY, J.—The following pedigree table will assist in understanding this case :—



On the 19th of April 1913 *Mussammat* Gauhar Bibi, widow of Ghulam Rasul, executed a deed of gift in favour of her daughter, *Mussammat* Fateh Bibi, and her grandson, Sardar Ali, making over to them her deceased husband's estates in the village of Burj Ghulam Rasul, Bharat and Miana Hazara. On the 2nd of May 1913, Ghulam Muhammad and his brothers instituted the present suit alleging that the property conveyed under the deed of gift was ancestral with the exception of one-fourth of Sailanwala well and half of Kadhranwala well which was acquired by Ghulam Rasul, and that *Mussammat* Gauhar Bibi had no power to make the gift. It was prayed that the plaintiffs be granted a decree declaring that the said deed of gift was null and void and would not affect their reversionary rights on the death or re-marriage of *Mussammat* Gauhar Bibi. The defendants denied the right of the plaintiffs and pleaded *inter alia*—(1) that the entire property in suit was acquired by Ghulam Rasul, and was not ancestral ; (2) that the plaintiffs were not entitled to succeed to the property in the presence of the donees who were the rightful heirs ; (3) that on the death of Ghulam Rasul his mother, Shamas Bibi, had taken possession

of the property and held it adversely for 13 years and that on her death it had devolved on *Mussammat* Gauhar Bibi.

It was admitted that the parties were bound by agricultural custom in matters of succession, and alleged that by custom as well as by their personal law daughters succeeded to the acquired property of their father in preference to collaterals (page 570, Paper Book).

On the pleadings the following issues were settled :—

(1) Is the property in suit other than one-fourth of Sailanwala well and half of Kadhranwala well ancestral ?

(2) Are not the defendants 2 and 3 (donees) next heirs if the property is not ancestral ?

(3) If the property in suit is ancestral, had not Gauhar Bibi any right to make a gift of it to the defendants 2 and 3.

(4) Are the defendants 2 to 3 estopped from raising any such plea in view of the judgment, dated the 5th May 1906, by Mian Abdul Hamid ?

(5) Was *Mussammat* Shamas Bibi in adverse possession of the land in suit after the death of Ghulam Rasul and did she acquire full proprietary rights ?

(6) If so, how does it affect the case ?

The findings as to *issues 5 and 6* were that though the land had been mutated in favour of *Mussammat* Shamas Bibi on the death of Ghulam Rasul she had not been proved to have acquired full proprietary rights.

As to *issue 4* it was held that the defendants were not estopped from raising the pleas in question.

On *issues 2 and 3* it was found that daughters succeeded to their father's acquired property in preference to collaterals, and that *Mussammat* Gauhar Bibi had the power to make the gift so far as that was concerned, but that the plaintiffs were entitled to succeed to the ancestral property.

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In deciding *issue 1* the property in each of the three villages was dealt with separately and it was held—

(*a*) that the land in Burj Ghulam Rasul and Bharat was the self-acquired property of Ghulam Rasul ;

(*b*) that the property in Miana Hazara consisted of (I) Sailab land, (II) land attached to the wells Sailanwala and Kadhranwala and the Jhalar, (III) house ;

and that one-fourth of well Kadhranwala land and 278 *bighas* 1 *kanal* of Sailab land were ancestral and the rest acquired.

The plaintiffs were therefore granted a decree declaring that the said deed of gift executed by *Mussammat* Gauhar Bibi "shall not affect their reversionary rights after her death or re-marriage *re* one-fourth of Kadhranwala well and 278 *bighas* 1 *kanal* of land situate in Miana Hazara as claimed."

Against this decree both sides have preferred appeals which will be disposed of by this judgment.

The plaintiffs in their appeal claim that the whole of the property left by Ghulam Rasul was ancestral, while the defendants in their appeal attack the findings as to the property decreed.

It will be as well to consider first the nature of the properties in the three villages and to decide whether they are self-acquired or ancestral.

* * * * *

On the findings it follows that the lands in the villages of Burj Ghulam Rasul and Bharat in their entirety, and the Sailanwala and Kadhranwala wells and the house in Miana Hazara must be regarded as self-acquired, leaving an area of 702 *bighas* 1 *kanal* as ancestral, deducting from the total area of 832 *bighas* 3 *kanals* the sailanwala land, 19 *bighas* 2 *kanals*, and the Kadhranwala land, 111 *bighas*, or 130 *bighas* 2 *kanals*. Mr. Nanak Chand, however, contended that whether the property was ancestral or self-acquired collaterals excluded daughters.

Mr. Sheo Narain on the other hand urged that when a father divides his property in his life time among his sons, whether the division is on any particular

system or merely arbitrary, the heirs in one group so formed must be exhausted before the members of the other group or groups can succeed. *Kaila Singh* v. *Tahal Singh* (1).

Therefore, he argued, if the daughters are heirs to their father's property the gift by *Mussammat* Gauhar Bibi merely accelerated the succession and the plaintiffs, not being the heirs, could not sue. So far as the self-acquired property is concerned this is no doubt correct, but ancestral property does not necessarily cease to be ancestral, nor become self-acquired or non-ancestral, on partition. The question therefore is whether the daughters are the heirs of Ghulam Rasul.

As to this Mr. Nanak Chand referred to the *Wajib-ul-arz* of Miana Hazara (1859), Exhibit P. 39, page 92, Printed Book, in paragraph 5 of which it is declared that the rule of descent is *pagvand* and that daughters did not succeed. Badr Din, however, had it entered that he had given Ghulam Rasul half of his property and that his other sons would succeed to the property held by him at his death, thus departing from the ordinary rule. The entries in the Revenue Records of the other two villages Burj Ghulam Rasul and Bharat are to the same effect, see Exhibit P. 22, page 29, Printed Book, and Exhibit P. 21, page 28, Printed Book, which both relate to 1859.

Those portions of a *Wajib-ul-arz* that refer to custom are not provisions intended to enure for the duration of the Settlement only, but are statements that a certain custom exists—see *Rahiman* v. *Bala* (2), *Masta* v. *Pohlo* (3). There is also a certain presumption as to the correctness of such entries as held in *Dilsukh Ram* v. *Nathu Singh* (4), *Dakus Khan* v. *Ghulam Kasim Khan* (5), *Digamber Singh* v. *Ahmad Sayed Khan* (6), *Aulia* v. *Alu* (7), *Ahmad Shah* v. *Khuda Bakhsh* (8), and *Maha Ram* v. *Ram Mohar* (9) and *Muhammad Faiyaz Ali Khan* v. *Bihari* (10), but, though such entries are evidence, the presumption as to their correctness is a rebuttal one.

(1) 143 P. R. 1888.
(2) 8 P. R. 1892.
(3) 52 P. R. 1896.
(4) 98 P. R. 1894 F. B.
(5) (1918) I. L. R. 45 Cal. 793 P. C.
(6) (1914) I. L. R. 37 All. 129 P.C.
(7) 49 P. R. 1898.
(8) 33 P. R. 1903.
(9) 65 P. R. 1903.
(10) (1917) I. L. R. 40 All. 56 F. B.

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Mr. Nanak Chand then referred to Wilson's Tribal Custom in the Shahpur District, pages 46, 48 and 49 and contended that Badr Din and his family being *Khokars* the customs referred to by Mr. Wilson applied to them and were conclusive.

Badr Din, is shown in Exhibit P. 23, page 31, Printed Book, as a "Sipra" *Khokar*, but this is the only instance of his being so described, and having regard to Ibbetson's Punjab Ethnography (paragraphs 468-469), the Census Report 1901, Table XIII, page XCIII, the Census Report, 1911, page 464, and the Shahpur Gazetteer, 1917, page 86, note, it is by no means certain that "Sipras" are a sub-section of *Khokars*. They would of course be included in the miscellaneous Muhammadan tribes. Wilson's Tribal Custom is no doubt a work of considerable authority, but it cannot be regarded in the present case as finally settling the point in issue.

The *Riwaj-ii-am* also carries with it certain presumption of correctness as has been repeatedly held in decisions such as *Sham Ram* v. Mussammat *Hemi Bai* (1), *Ali Muhammad* v. *Dulla* (2), *Sheran* v. Mussammat *Sharman* (3), *Mehr Khan* v. *Karam Ilahi* (4), *Sher* v. *Alam Sher* (5), *Beg* v. *Allah Ditta* (6) and *Saide Khan* v. Mussammat *Amir-un-nissa* (7), which it is not necessary to discuss in detail.

These presumptions, are also however rebuttable and the trend of the decisions cited by Mr. Sheo Narain, *viz. Nidhu* v. *Ram Singh* (8), Mussammat *Zainab Bibi* v. *Badr-ud-Din* (9), *Lelu* v. *Ram Chand* (10), Mussammat *Raj Kour* v. *Talok Singh* (11) and *Budhi Parkash* v. *Chandar Bhan* (12), seems to be that when positive instances are given the *Riwaj-i-am* cannot be regarded as over-riding them. In the case of self-acquired property the general custom is that daughters are preferred to collaterals—Article 23 (2) Rattigan's Digest of Customary Law. In the present case the entries in the *Wajib-ul-arz* of these villages do not distinctly

(1) 73 P. R. 1896.
(2) 26 P. R. 1901.
(3) 117 P. R. 1901.
(4) 13 P. R. 1902.
(5) 94 P. R. 1905.
(6) 45 P. R. 1917 P. C.
(7) 94 P. R. 1918.
(8) 2 P. R. 1909.
(9) 43 P. R. 1913.
(10) 23 P. R. 1916.
(11) 38 P. R. 1916.
(12) 123 P. R. 1918.

state that they relate to self-acquired property as well as ancestral and in *Sawand* v. Mussammat *Jiwandi* (Civil Appeal No. 665 of 1905), printed at page 498, Printed Book, it was held by a Division Bench of the Chief Court that similar entries should be read as referring merely to ancestral property. There is no reason to doubt the correctness of this *dictum* nor does the answer to question 17, page 49, of Wilson's Tribal Custom, militate against it.

It is then for the plaintiffs to show that collaterals exclude daughters and this they have not done, while as pointed out by the trial Court, various specific instances have been given by the other side, which afford good evidence in rebuttal of the entries in the *Wajib-ul-arz* and the *Riwaj-i-am*. *Qua* ancestral land however the general custom is against daughters succeeding and the instances referred to do not assist the defendants so far as the ancestral land is concerned and the *Wajib-ul-arz* and *Riwaj-i-am*, standing unrebutted as they do, must be given effect to. I would, therefore, vary the decree of the Court below so as to grant the plaintiffs a decree as prayed declaring that the deed of gift executed by *Mussammat* Gauhar Bibi shall not affect their reversionary right, on her death or re-marriage, in 702 *bighas* 1 *kanal* of land situate in village Miana Hazara and now in suit. The claim relating to the other properties I would dismiss leaving the parties to bear their own costs throughout.

Appeal accepted in part.