APPELLATE CIVIL.

Before Mr. Justice Scott-Smith and Mr. Justice Harrison.

1921

Dec. 9.

AHMAD (DEFENDANT) —*Appellant*,

versus

Mst. BANO AND OTHERS (PLAINTIFFS)—*Respondents.*

Civil Appeal No. 920 of 1917.

Custom—Alienation—by widow—status of sisters of deceased male proprietor to challenge the alienation—Tarars *of Chakwal Tahsil, Jhelum district*—Riwaj-i-am.

Cha Plaintiffs, the sisters of one K. deceased, a *Tarar* of the his kwal Tahsil, sued for possession of his land alienated by not widow to her sister's son. It was objected t at sisters are heirs at all by Customary Law. Talbot's Customary Law of the Jhelum District, answer to Question 68, was to the effect that sisters and their sons can inherit if there are no daughters and no agnates within the 4th degree, but this was unsupported by instances.

Held, that as the entry in the *Riwaj-i-am* was not opposed to general custom it was a strong piece of evidence in support of the plaintiffs' claim, and as it was not rebutted the lower Courts were right in decreeing the claim.

Beg v. *Allah Ditta* (1), *Wazira* v. *Mst. Maryan* (2), and *Chhuttan* v. *Hazari Lal* (3), followed.

Mussammat Jannat v. *Abdulla* (4), referred to.

Article 24 of Rattigan's Digest of Customary Law, explained.

Second appeal from the decree of C. L. Dundas, Esquire, District Judge, Jhelum dated the 23rd December 1916, *affirming that of Sardar Hukam Singh Subordinate Judge, 2nd Class, Jhelum, dated the 20th October* 1916, *and decreeing plaintiffs' claim.*

NAND LAL, for Appellant.

JAI GOPAL SETHI, for Respondents.

The judgment of the Court was delivered by—

SCOTT-SMITH, J.—The appeal is from an order of the District Judge of Jhelum decreeing the plaintiffs' claim for possession of land alienated by the widow of

(1) 45 P. R. 1917 (P. C.)
(2) 84 P. R. 1917.
(3) 7 P. R. 1916.
(4) 4 P. R. 1916.

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Karam *Tarar* to her sister's son. The plaintiffs are sisters of Karam deceased. The appeal is brought upon a certificate granted by the District Judge under section 41 (3 of the Punjab Courts Act. The question of custom involved is whether amongst *Tarar Jats* of Chakwal sisters of a deceased proprietor can contest the validity of a will executed by his widow in favour of her sister's son. Karam left no collateral and the Lower Appellate Court was of opinion that the sisters were heirs in the absence of collaterals and that therefore they could contest the validity of the will executed by Karam's widow who had only a life interest.

Dr. Nand Lal admits that if the sisters are heirs, they can contest the alienation and the only question, therefore, which we have to decide is whether they are heirs or not. The rulings cited in the judgment of the Lower Appellate Court, which Dr. Nand Lal has again cited in his argument before us, are not directly in point and do not in any way assist us. There is a passing remark in *Mussammat Jannat* v. *Abdulla* (1), that sisters generally are not heirs, but we are not aware of any ruling of this Court or the Chief Court in which it has been definitely laid down that sisters are not heirs in the absence of all agnates. In Article 24. of Rattigan's Digest of Customary Law it is stated that sisters are usually excluded as well as their issue, but we understand this to mean that they are usually excluded by agnates however distant. Counsel has not been able to cite to us any ruling in which it was held that sisters are not heirs in the absence of all agnates. Article 28 of the Digest is to the effect that subject to the exception thereunder mentioned in the event of a deceased proprietor dying without heirs his estate ordinarily escheats to Government. In the exception certain instances are given in which it was held that a sister's son excluded the village proprietary body. In our opinion the *onus* is upon the person asserting it to prove that a sister is not an heir in the absence of any agnate. Karam belonged to a Muhammadan tribe of the Chakwal *Tahsil* and the answer to question 68 of Mr. Talbot's Customary Law is to the

(1) 4 P. R. 1916.

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effect that sisters and their sons can inherit if there are no daughters and no agnates within the 4th degree. If this be correct then much more do sisters inherit if there are no agnates at all. In *Beg* v. *Allah Ditta* (1), their Lordships of the Privy Council held that an entry in a *Riwaj-i-am* was a strong piece of evidence in support of a custom. This ruling was considered by a Division Bench of the Chief Court in *Wazira* v. *Mussammat Maryan* (2), where it was held, following *Chhuttan* v. *Hazari Lal* (3), that statements in the *Riwaj-i-am* when opposed to general custom can carry very little weight unless supported by instances. The answer to question 68 in Talbot's Customary Law of the Jhelum District is not supported by instances, but in our opinion it is not opposed to general custom, especially in a case when there are no agnates at all and therefore we follow the ruling of the Privy Council in *Beg* v. *Allah Ditta* (1), and hold that this entry in the *Riwaj-i-am* is a strong piece of evidence in support of the plaintiffs claim. It is not rebutted.

The appeal fails and is dismissed with costs.

Appeal dismissed.

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(1) 45 P. R. 1917 (P. C.). (2) 84 P. R. 1917.

(3) 7 P. R. 1916.