

APPELLATE CIVIL.

Before Mr. Justice Martineau and Mr. Justice Moti Sagar.

KALA AND OTHERS (PLAINTIFFS) Appellants

versus

MAM CHAND AND OTHERS (DEFENDANTS)

Respondents.

Civil Appeal No. 3078 of 1922.

Custom—Alienation—Ancestral property—Gujars—Rohtak Tahsil—Riwaj-i-am.

Held, that by custom *Gujars* of the Rohtak Tahsil have unrestricted powers of alienation in respect of ancestral land.

Giani v. Tek Chand (1), and *Uggar Sain v. Telu* (2), followed.

Budal v. Kirpa Ram (3), distinguished.

Beg v. Allah Ditta (4), referred to.

Second appeal from the decree of J. Coldstream, Esquire, District Judge, Delhi, dated the 15th March 1922, reversing that of Agha Muhammad Sultan Mirza, Munsif, 1st Class, Rohtak, dated the 7th July 1921, and dismissing the plaintiffs' suit.

SHAMAIR CHAND, for Appellants.

BHAJAN LAL, for Respondents.

The judgment of the Court was delivered by—

MARTINEAU J.—The land in suit, which was the ancestral property of Hira, a *Gujar* of the Rohtak Tahsil, was sold by him to defendants 1 and 2. Some of his collaterals sue for possession of the land, contending that the sale is invalid for want of necessity. The lower appellate Court has dismissed the suit, holding that Hira had an unrestricted power of alienation, and the only question in this second appeal is whether that decision is correct.

The late Mr. Clifford, Divisional Judge of Delhi, in a number of cases took the view that in the Rohtak

(1) (1922) 64 Indian Cases 549; I. L. R. 4 Lah. 111.

(2) (1923) 71 Indian Cases 329; I. L. R. 4 Lah. 113.

(3) 76 P. R. 1914. (4) 45 P. R. 1917 (P. C.).

District a proprietor had wide powers of alienation and that the *onus* of proving that his power of alienating ancestral property was restricted lay on the person alleging it. This view was followed in the Chief Court in several cases to which the learned District Judge has referred. The entry in the *Riwaj-i-Am* of 1879 was to the effect that reversioners could not object to alienations, and in the current *Riwaj-i-Am* compiled by Mr. Joseph it was definitely stated that a sonless proprietor has full power to alienate his property even without necessity. The appellants rely on *Budal v. Kirpa Ram* (1), in which it was held by a Division Bench that it was not proved that by custom an agricultural proprietor of the Rohtak District can dispose at pleasure of his ancestral land. But the previous rulings to the contrary were not considered in that case, and the decision has not been followed in more recent judgments, namely, *Giani v. Tek Chand* (2) and *Uggar Sain v. Telu*. In *Uggar Sain v. Telu* (3), Campbell J., pointed out that *Budal v. Kirpa Ram* (1) dealt with land in another *tahsil*, and also that in that case the *Riwaj-i-Am* was not before the Court, and he observed that that judgment must be read subject to what was laid down regarding the *Riwaj-i-Am* by the Privy Council in *Beg v. Allah Ditta* (4). He decided therefore that a sonless proprietor of the Rohtak *Tahsil* of the Rohtak District had unrestricted powers of alienation in respect of ancestral land. An appeal from his decree under the Letters Patent was dismissed, the Division Bench agreeing with his conclusions. This finally sets the matter at rest, and we accordingly agree with the decision of the lower appellate Court and dismiss this appeal with costs.

C. H. O.

Appeal dismissed.

(1) 76 P. R. 1914.

(2) (1922) 64 Indian Cases 549 :
I. L. R. 4 Lah. 11.

(3) (1923) Indian Cases 829 :

I. L. R. 4 Lah. 113.

(4) 45 P. R. 1917 (P. C.).