

APPELLATE CIVIL.

Before Mr. Justice Campbell.

UGGAR SAIN AND ANOTHER (DEFENDANTS)—
Appellants

versus

TELU AND ANOTHER (PLAINTIFFS) } Respondents.
Mst. DAKHAND ETC. (DEFENDANTS) }

1923

Jan. 5.

Civil Appeal No. 325 of 1922.

Custom—Alienation—ancestral land, by sonless proprietor—Rohtak tahsil—whether reversioners have any right to challenge such alienation—Riwaj-i-am.

Held, that having regard to the entry in the 1879 *Riwaj-i-am* of the Rohtak *Tahsil* to the effect that the collateral heirs of a sonless proprietor cannot control alienations by him but possess merely the right to pre-empt, the *onus* of proving that he had a right to challenge the alienation in dispute made by his sonless collateral was upon the plaintiff and that he had entirely failed to discharge that *onus*.

Beg v. Ailān Ditta (1), Civil Appeal No. 33 of 1913 (unpublished) and *Giani v. Tej Chand* (2), followed.

Ramji Lal v. Tej Ram (3) and *Budal v. Kirpa Ram* (4), distinguished.

Second appeal from the decree of Rai Bahadur Lala Sri Ram, Poplai, Additional Judge, Rohtak, at Hissar, dated 4th November 1921, affirming the decree of Mr. A. Lazarus, Munsif, 2nd Class, Rohtak, dated the 16th April 1921, awarding plaintiff a decree for the possession of the land only.

SHAMAIR CHAND and SAGAR CHAND, for Appellants.

BADRI DAS, for Respondents.

CAMPBELL J.—The question for decision in this second appeal is whether a sonless proprietor of land in the Rohtak *tahsil* of the Rohtak district has unrestricted-

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

(3) 78 P. R. 1395 (F. B.)

(2) (1931) I. L. R. 4 Lah. 111.

(4) 76 P. R. 1914.

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ed powers of alienation. In the certificate granted by the District Judge under Section 41 (3) of the Punjab Courts Act the question was stated to be whether the powers to alienate of a sonless proprietor in the Rohtak district are not restricted, but the land in suit being situate in the Rohtak *tahsil* it is unnecessary to give a decision on the custom prevailing in the rest of the district. This is what was held in similar circumstances by this Court in *Giani v. Tek Chand* (1) (a ruling to be mentioned in more detail presently) for the reason that the *Riwaj-i-ams* of the different *tahsils* are not uniform.

The trial Court placed the *onus* of proving restricted powers on the plaintiffs and found in their favour on the strength of certain judicial decisions *viz.* *Budal v Kirpa Ram* (2), (which did not relate to the Rohtak *tahsil*), a judgment by Major Knollys, District Judge in Civil Appeal No. 280 of 1919 (since reversed on appeal by this Court in *Giani v. Tek Chand* (1), a judgment by Mr. Anderson, District Judge, in Civil Appeal No. 136 of 1920 (a case of Jhajjar *tahsil*), and a judgment by Agha Muhammad Sultan, Mirza, Munsif which is eulogised as "memorable," but which dealt with land in *Tahsil Gohana*.

The learned District Judge affirmed the Munsif's findings, holding that Major Knollys' judgment and *Budal v. Kirpa Ram* (2) had settled authoritatively the previous controversy, whether or not the custom of the Rohtak District differed from that of the other neighbouring districts of the Province, and that it was for the defendants to establish a special custom which they had not done.

The defendants placed on the record a copy of a declaration in the 1879 *Riwaj-i-am* of the Rohtak *tahsil* to the effect that the collateral heirs of a sonless proprietor cannot control alienations by him but possess merely the right to pre-empt. The current *Riwaj-i-am* contains no question on the subject.

It was held by this Court in *Giani v. Tek Chand* (1) referred to above, that the Rohtak *tahsil Riwayat-i-am* of 1879 placed upon a son the *onus* of proving that he had

(1) (1921) I. L. R. 4 Lah. 111.

(2) 76 P. R. 1914.

a right to attack a mortgage by his father of ancestral land and that alienations by a proprietor in that *tahsil* could be challenged only on grounds valid under Hindu Law. Another decision by this Court in Civil Appeal No. 33 of 1913 upheld on similar grounds the dismissal of a suit by the present plaintiff challenging another alienation of land in *tahsil* Rohtak by the self-same alienor whose sale is now in dispute.

These two decisions are conclusive in favour of the defendant-appellants, for no instance from the Rohtak *tahsil* of control by a reversioner was proved by the plaintiff except Major Knollys' judgment which is nullified by *Giani v. Tek Chand* (1). All that the learned counsel for the plaintiff-respondent can urge is that the Full Bench decision *Ramji Lal v. Tej Ram* (2) enunciated a general rule which the *Riwaj-i-am* cannot override and that this rule was re-affirmed for the Rohtak district by a Division Bench in *Budal v. Kirpa Ram* (3)—*Ramji Lal v. Tej Ram* (2), however, was considered in Civil Appeal No. 33 of 1913, and *Budal v. Kirpa Ram* (3) dealt with land in another *tahsil* and the *Riwaj-i-am* of Rohtak *tahsil* was not before the Court (nor, apparently, was the *Riwaj-i-am* of any *tahsil*). Both judgments, moreover, must be read subject to what was laid down regarding the *Riwaj-i-am* by the Privy Council in *Beg v. Allah Ditta* (4).

The learned District Judge while finding that there is no evidence of necessity has held that consideration passed in full. There was never any allegation of immorality against the vendor. Thus the suit must fail.

I accept the appeal and dismiss the suit with cost throughout.

C. H. O.

Appeal accepted.

(1) (1921) J. L. R. 4 Lab. 111.

(2) 76 P. R. 1914.

(3) 73 P. R. 1893 (F. B.)

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