

APPELLATE CIVIL

Before Mr. Justice LeRoussignol.

GIANI (DEFENDANT)—Appellant,

versus

TEK CHAND (PLAINTIFF)—Respondent.

Civil Appeal No. 436 of 1921.

Custom—Alienation—by male proprietor—Jats, tahsil Rohtak—Locus standi of reversioners to challenge the alienation—Hindu law—Riwaj-i-am.

Held, that among Jats in the Rohtak *tahsil* an alienation by a male proprietor can be challenged by the reversioners only on grounds valid under Hindu law

Telu v. Chuni (1), followed.

Riwaj-i-am of 1879 of the Rohtak *tahsil*, referred to.

Second appeal from the decree of Lt.-Col. R. W. E. Knollys, District Judge, Karnal, dated the 29th March, 1920, affirming that of Munshi Ghulam Hussain, Munsif, 1st Class, Rohtak, dated the 15th July 1918, decreeing plaintiff's claim.

AMAR NATH CHONA, for Appellant.

C. L. GULATI, for Respondent.

LEROSSIGNOL J.—This appeal arises out of a suit by a son who challenges his father's mortgage of ancestral property.

The mortgage has been found to be without necessity and the District Judge has decreed for the plaintiff, but has granted a certificate for second appeal on the question whether among Jats in Rohtak district a sonless proprietor has an unrestricted power of alienation over his ancestral property.

The certificate is bad, for this case does not deal with a sonless proprietor, but I take it that the error is due solely to negligence. The land is situate in the Rohtak *tahsil* and as the *Riwaj-i-ams* of the different *tahsils* are not uniform, I see no necessity to come to

(1) 281 P. L. E. 1918.

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a finding regarding the whole district. The *Riwaj-i-am* of 1879 of Rohtak *tahsil* is very clear that a proprietor of that *tahsil* has very wide powers of alienation and I concur in the view expressed in *Telu v. Chuni* (1) that his alienations can be challenged only on grounds valid under Hindu Law.

A very large part of the Customary Law regarding restrictions on alienation is purely case-made law and the law primarily applicable to Hindus is Hindu Law modified by custom.

In Rohtak *tahsil* then, the *Riwaj-i-am* places upon the plaintiff the onus of proving that he has a right to attack the mortgage; in this case the plaintiff has not cited one instance in which a son has successfully challenged his father's alienation on the ground that there was no necessity for it and in view of the lengthy enquiry in this and in other cases, which established the absence of such instances, I see no reason to suppose that a remainder at this stage would be of sufficient instances to be of advantage to plaintiff.

The findings are that much of the consideration passed, but that no necessity is made out; that on the other hand, immorality is not established.

On these findings, the plaintiff's suit must be dismissed.

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

Appeal accepted.

The mortgage has been found to be without necessity and the District Judge has decreed for the plaintiff, but has granted a certificate for second appeal on the question whether there was a reserved power of alienation over his ancestral property.

The certificate is bad for this case does not deal with a son's proprietor, but I take it that the error is due solely to negligence. The land is situated in the Rohtak *tahsil* and as the *Riwaj-i-am* of the different *tahsils* are not uniform, I see no necessity to come to