We refer the appeal to the lower Court under Order XLI, rule 25, for trial of the following issues and return of evidence and findings thereon within three months :—

(1) What was the market rate for white wheat first quality on the date of each default from *Sambat* 1953 to *Sambat* 1961 ?

(2) What is the total value at those rates of the wheat due to the plaintiff on 3rd April 1904 calculated as directed by us above ?

A. N. C.

Appeal accepted, case remanded.

APPELLATE CIVIL.

Before Mr. Justice LeRossignol and Mr. Justice Zafar Ali.

Mussammat HAJRA BIBI AND ANOTHER (DEFENDANTS) Appellants,

versus

Mst. JANAT BIBI AND OTHERS (PLAINTIFFS) Respondents.

1922

Nov. 11.

Civil Appeal No. 3150 of 1918.

Custom—Succession—Qureshi Qazis *of Multan City—Family custom—whether daughters are excluded from succession to agricultural land in presence of sons though they take their share in urban immoveable property according to Muhammadan Law.*

Held, that the plaintiff-collaterals had failed to prove a special custom in the family of the Qureshis of Multan City to which the parties belonged, according to which daughters do not succeed to agricultural land in the presence of sons, though as regards urban immoveable property they take their share according to Muhammadan Law.

1922

Mst. HAJRA BIBI *v.* *Mst.* JANAT BIBI.

Second appeal from the decree of J. Coldstream, Esq., District Judge, Multan, dated the 26th July 1918, modifying that of Sheikh *Ali Muhammad, Subordinate Judge, 1st Class, Multan, dated the 28th March 1917, decreeing plaintiffs' claim in part.*

NANAK CHAND, for Appellants.

B. D. KURESHI, for Respondents.

The judgment of the Court was delivered by—

ZAFAR ALI J.—The only question before us for determination in this second appeal is, whether the evidence on the record is sufficient to establish the special custom set up by the plaintiffs according to which daughters in the family of the parties do not succeed to agricultural land in the presence of sons, though as regards urban immoveable property they take their share according to Muhammadan Law.

The parties are *Qureshis* of Multan City. The last male owner, whose property is the subject matter of dispute, was Abdul Aziz. On the death of Wali Muhammad, father of Abdul Aziz, his urban immoveable property was divided among his daughters and son Abdul Aziz according to Muhammadan Law, but the whole of his agricultural land was mutated in the name of Abdul Aziz who was at that time a little child, and was still a minor when he died nine years later. His full sisters, *Mussammat* Hajra Bibi and *Mussammat* Aisha Bibi, asserted that though the entire agricultural land was mutated in the name of the minor, they had been receiving their share of the produce of the land and were owners of one-half share therein. The plaintiffs, who are male collaterals of Abdul Aziz, urged on the other hand that according to the special family custom Abdul Aziz alone succeeded to his father's agricultural land and that therefore they as residuaries were entitled to get one-third of the entire land which had descended to Abdul Aziz from Wali Muhammad and not to one-third of one-half of it. Thus the plaintiffs' case is that they follow Muhammadan Law in respect of urban immoveable property and that they them-

selves are entitled, according to Muhammadan Law, to one-third of the property of the deceased, whilst his full sisters would get the other two-thirds. In this way they themselves accept the Muhammadan Law in respect of urban immoveable property, and claim one-third of the property of the deceased as residuaries according to that very law and allow two-thirds of it to his sisters, but they renounce that personal law and set up a special rule of custom, by urging that the ladies who can inherit agricultural land as sisters, cannot inherit the same as daughters. If there had prevailed a rule of custom depriving daughters of their share in agricultural land, we should have expected it to apply with greater vigour to sisters; because the general custom is more unfavourable to sisters than to daughters.

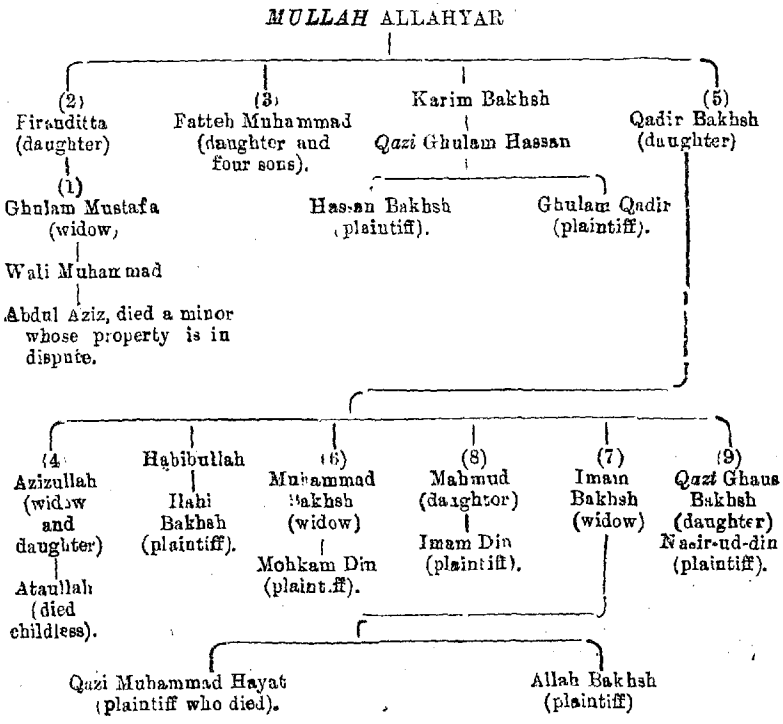
Besides this aspect of the case, there is the fact that plaintiffs' family occupation is that of a priest as indicated by the fact that their ancestor, Allah Yar, is described as *Mullah* Allah Yar; Wali Muhammad, father of the deceased minor, was known as *Qazi* Wali Muhammad; Ghulam Hassan, father of two of the plaintiffs and one of the plaintiffs himself, *i.e.*, Muhammad Hayat, bore the designation of *Qazi*. As *Mullahs* or *Qazis* it is a function of these people to preach Islamic doctrines and to impress upon their followers that none of the Islamic rules including those of inheritance can be infringed. It is therefore not likely that they should ever have had the courage to declare previously that they had adopted the alleged custom in contravention of the Islamic law of inheritance. This explains why *Qazi* Muhammad Hayat, plaintiff, who died later on, accepted before the trial Court the defendants' proposal that plaintiffs should get their share according to Muhammadan Law from the deceased minor's self-acquired property as well as from all that property which could devolve upon him according to Muhammadan Law.

In the light of these preliminary observations we proceed to consider and weigh the instances cited in support of the alleged special custom. These instances may conveniently be stated by a reference to the

1922

Mst. HAJRA BIBI *v.* *Mst.* JANAT BIBI.

pedigree table of the parties which is as below :—



(NOTE—In the above pedigree table the figures indicate the numbers of the instances, in the order in which they are dealt with in the judgment of the Lower Appellate Court, and the word "daughter," or "widow," or "widow and daughter," is noted down against the name of the man whose daughter or widow was excluded by his son).

Altogether nine instances are cited showing that sons excluded daughters in five, widows in two, and "widows and daughters" in two cases. Out of these nine, six relate to the families of the plaintiffs themselves and are therefore quite recent and do not carry much weight. The evidence of one of the plaintiffs' own witnesses may be referred to with regard to instance No. 9. This witness named Nur-ul-Haq (P. W. 10) was the husband of *Mussammat* Allah Ditti, daughter of Ghaus Bakhsh (9). He deposed that his wife had three brothers, *i.e.*, Nasir-ud-din, plaintiff, Rahmat Ullah and Khuda Bakhsh, and that on the death of Rahmat Ullah, one of the remaining two brothers caused a share to be given to her out of the landed property. It appears from his evidence that her share of the house property had been promised to her, but was

not given on account of her death. There is nothing to indicate the circumstances under which daughters or widows failed to get their shares in the rest of the cases. Generally a widow would not wish to have her name associated with that of her son in the revenue records because the latter is bound to maintain her and look to all her needs, and she does not care for more. Similarly sisters are averse to create strained relations with their brothers, and generally forego their right of inheritance. But from a few instances of this nature the existence of a custom against them cannot be inferred, specially when no instance is cited to show that a daughter or widow claimed her share but was refused. The instances cited are not sufficient to prove the alleged custom.

The appeal is therefore accepted and the decree of the first Court is restored. Plaintiffs shall pay appellants' costs in this Court as well as in the Lower Appellate Court, and the order of the first Court as to costs will stand.

A. N. C.

Appeal accepted.