

LETTERS PATENT APPEAL.

*Before Sir Shadi Lal, Chief Justice and Mr. Justice
LeRossignol.*

Mussammat RAKHI (DEFENDANT) Appellant,

versus

BAZA (PLAINTIFF) Respondent.

Letters Patent Appeal No. 39 of 1923.

*Custom—Alienation—Will—Ancestral property—Sonless
Awans of Talagang Tahsil—Riwaj-i-am, Jhelum District—
effect of entry.*

Held, that the appellant had failed to prove that a sonless *Awan* of Kot Sarang, *Tahsil* Talagang, is competent to make a testamentary disposition of his ancestral property.

Sonless *Awans* of the *Talagang Tahsil* have no doubt an unrestricted power to make a gift of their ancestral property and an initial presumption arises that there is a co-extensive power of testation. This presumption has however been rebutted by an entry in the *Riwaj-i-am* compiled in 1901 which shows that *Awans* are not entitled to dispose of their ancestral property by will.

Nura v. Tora (1), *Khudayar v. Fatteh* (2), *Mussammat Bano v. Fateh Khan* (3), and Talbot's Tribal Custom in the Jhelum District, page 53, question 78, referred to.

Appeal under clause 10 of the Letters Patent from the judgment of Mr. Justice Broadway, dated the 11th December 1922.

GHULAM MOHY-UD-DIN, for Appellant.

N. C. MEHRA and H. D. BHALLA, for Respondent.

The judgment of the Court was delivered by—

LEROSSIGNOL J.—The sole question for determination in this appeal is whether a sonless *Awan* of Kot

(1) 46 P. R. 1900.

(2) 8 P. R. 1906.

(3) 43 P.R. 1903 (F.B.).

Sarang in *Tahsil Talagang* is competent to make a testamentary disposition of his ancestral estate. Now, there are several judgments to the effect that a sonless *Awan* of *Talagang Tahsil* has unrestricted powers to make a gift of his ancestral property, *vide inter alia Nura v. Tora* (1) and *Khudayar v. Fatteh* (2); and Mr. Ghulam Mohy-ud-Din, who has ably argued the case for the appellant, contends on the authority of *Mussammatt Bano v. Fateh Khan* (3) that, as the power of gift has been proved to exist in the case of *Awans*, an initial presumption arises that there is a co-extensive power of testation. The presumption is, however, rebutted by an entry in the *Riwaj-i-am* compiled in 1901 which shows that *Awans* are not entitled to dispose of their ancestral property by will, *vide* answer to Question No. 78 at page 53 of Talbot's Tribal Custom in the Jhelum District (Talagang was a part of Jhelum District at that time).

Our attention has been invited to some judgments of the Punjab Chief Court in which it has been pointed out that the *Riwaj-i-am* compiled by Mr. Talbot is not a satisfactory document ; but no adverse criticism has been, or can be, levelled against the entry relating to the testamentary power of the *Awans*.

We accordingly concur in the conclusion of Mr. Justice Broadway and dismiss the appeal with costs.

A. N. C.

Appeal dismissed.

(1) 46 P. R. 1900. (2) 8 P. R. 1906.
3) 43 P. R. 1903 (F. B.).