APPELLATE CIVIL.

Before Mr. Justice Broadway and Mr. Justice Fforde.

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April 27.

FATEH SHAH (PLAINTIFF) Appellant

versus

MST. NURAN AND OTHERS (DEFENDANTS) Respondents.

Civil Appeal No. 2666 of 1920.

Custom—Alienation—Gift of ancestral land to daughters in presence of a son—Sayads of Basti Kesa in the Okara Tahsil, Montgomery district—Wajib-ul-arz *and* Riwaj-i-am *—presumption of correctness.*

A gift of ancestral land made by a Sayad of Basti Kesa in favour of his daughters was contested by his son in a suit for a declaration that his reversionary rights should not be affected thereby. The trial Court dismissed the suit. The *Riwaj-i-am* of the Tahsil prepared in 1872 shewed that such gifts were recognised and the *Wajib-ul-arz* prepared at the settlement of 1857 shewed that the power to make a gift of ancestral property to a daugher's son was recognised, provided the gift was made in writing and was followed by possession.

Held, that in the absence of evidence rebutting the presumption of correctness that attaches to entries in the Revenue records, the suit was rightly dismissed.

First appeal from the decree of Lala *Ghanshyam Das, Senior Subordinate Judge, Montgomery, dated the 30th August 1920, dismissing the plaintiff's suit.*

MAHESH DAS, for Appellant.

MUHAMMAD TUFAIL, for Respondents.

JUDGMENT.

BROADWAY J. BROADWAY J.—This appeal has arisen out of a suit brought by one Fateh Shah challenging a gift of ancestral land made by his father Bahab Shah in favour of *Mussammat* Sahib Bibi, *Mussammat* Saidan Bibi and *Mussammat* Badshah Bibi, Bahab Shah's

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daughters by his wife *Mussammat* Nuran. A declaration was asked for to the effect that the said gift would not affect the plaintiff's reversionary rights.

When the suit was instituted Badshah Bibi had died leaving a son named Madad Ali, who was made a party under the guardianship of the Assistant Clerk of the Court. *Mussammat* Sahib Bibi died without issue during the pendency of the suit which was dismissed, it being held that the parties who are *Sayads* of Basti Kesa in the Okara Tehsil of the Montgomery District were governed by custom by which gifts of a portion of the ancestral property could be validly made to daughters in the presence of a son of the donor. Against this decree of dismissal Fateh Shah preferred this appeal in November 1920, and while it has been pending in this Court Bahab Shah and *Mussammat* Saidan Bibi have both died, the latter leaving no issue.

Fateh Shah himself has been brought on to the record as the legal representative of the father Bahab Shah and *Mussammat* Nuran as that of *Mussammat* Saidan Bibi and *Mussammat* Sahib Bibi. She alone has contested the appeal through Mr. Muhammad Tufail. The case was remanded under Order XLI, rule 25, Civil Procedure Code, by an order of a Division Bench of this Court, dated the 4th April 1925, and has now come up for disposal.

Although other matters were raised in the grounds of appeal the only point argued before us was whether the decision of the trial Court on the question of custom was correct. Mr. Mahesh Das for the appellant urged that the evidence on the record did not justify the finding arrived at, while Mr. Muhammad Tufail contended that the finding was correct.

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Fateh Shah is now in possession of the property which was the subject-matter of the gift, and, as pointed out by Mr. Mahesh Das, as Mr. Muhammad Tufail's clients have died without issue, the said property must revert to the heirs of the donor. A reference to the *Wajib-ul-arz* of Basti Kesa prepared at the settlement of 1857 shows that the power to make a gift of ancestral property to a daughter's son was recognised, provided the gift was made in writing and was followed by possession. Again the *Riwaj-i-am* of this tahsil prepared in 1872 shows that gifts of lands to daughters were recognised and these entries are supported by two instances. A presumption of correctness attached to the entries in such revenue records.

In order to rebut the presumption the plaintiff produced certain witnesses. P. W. 1 *Chogatta* is a Churera of a neighbouring village and says that *Sayads* "cannot gift ancestral land to daughters." P. W. 2 *Nathu* and P. W. 3 *Bahadur* are Bhattis and afford no assistance, as they do not claim to know what the custom among *Sayads* is. P. W. 4 *Shamas Din* is a *Sayad* and the uncle of Bahab Shah. He says *Sayads* cannot make gifts of this nature, but had to admit that Taboo Shah, Bahab Shah's brother, had made such a gift. P. W. 5 *Waryam*, a Kharl, supports the plaintiff but gives his evidence in general terms. The evidence of P. W. 6, Imam Shah, is similar to that of Waryam. P. W. 7, Taboo Shah, while admitting that he made a gift to his daughter says that it was revoked later. At the same time he admits that the customs they follow are entered in the settlement records and have not altered since 1872. In this he is supported by P. W. 9, Mehr Shah. P. W. 8, *Mulak Shah*, a *Sayad*, says generally that such

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gifts cannot be made, but in cross-examination admitted that his uncle had made a gift to his daughters that had not been challenged. P. W. 11, Muhammad Amir, a Lashari Biloch, says that *Sayads* follow the general agricultural custom which prohibits such gifts.

On the other hand, for the defendants Sardar Ali and Hassan Shah, both *Sayads*, assert that gifts to daughters are recognised by custom and give instances. After a consideration of this evidence I am of opinion that the plaintiff's evidence does not rebut the presumption of correctness that attaches to the entries in the revenue records, which in the present case are further supported by the instances referred to by the defendants' witnesses. I would, therefore, dismiss the appeal, but in the circumstances leave the parties to pay their own costs.

FFORDE J.

FFORDE, J.—I agree.

N. F. E.

Appeal dismissed.