

APPELLATE CIVIL.

Before Mr. Justice Harrison and Mr. Justice Jai Lal.

MUHAMMAD ASLAM KHAN AND OTHERS

(DEFENDANTS) Appellants

versus

JAHAN KHAN AND OTHERS (PLAINTIFFS)

Respondents.

Civil Appeal No. 735 of 1922.

Custom—Alienation—Gift of ancestral property to a daughter—Awans—Talagang Tahsil, Attock District—Riwaj-i-am.

Held, that by custom a sonless *Awan* of the Talagang Tahsil, Attock District, has an unrestricted power of gifting his property, ancestral or non-ancestral, to his daughter or the issue of such daughter.

Amir Ali v. Baggo (1), and *Mussammatt Rakhi v. Baza* (2), followed.

Yakub Khan v. Fateh Khan (3), *Lal Khan v. Nura* (4), *Nur Ahmad v. Ghulam Hussain* (5), *Devi Das v. Bhakra* (6), *Khuda Bakhsh v. Waham Ali* (7), and *Nur Khan v. Sarfraz* (8), referred to.

Second Appeal from the decree of J. A. Ross, Esquire, District Judge, Attock, at Campbellpur, dated the 31st January 1922, reversing that of Rai Sahib Lala Diwan Chand, Senior Subordinate Judge, Attock at Campbellpur, dated the 18th July 1921, and granting the plaintiffs the declaration as prayed for.

NANAK CHAND, for Appellants.

H. D. BHALLA, for Respondents.

The judgment of the Court was delivered by—
HARRISON J.—The only question to be decided in these two appeals is whether a sonless *Awan* of the

(1) 15 P. R. 1907.

(2) (1923) I. L. R. 5 Lah. 34.

(3) 5 P. R. 1914.

(4) 72 P. R. 1914.

(5) 56 P. R. 1915.

(6) 53 P. R. 1899.

(7) 88 P. R. 1911.

(8) 100 P. R. 1912.

Talagang Tahsil of the Attock District has an unrestricted power of alienation of his ancestral property in favour of his daughter. The District Judge has decided the point in favour of the contesting reversioners and has reversed the finding of the trial Court. The authorities have been well reviewed by the trial Court and the chief reason given by the District Judge for coming to a different conclusion is that *Lal Khan v. Nura* (1), in his opinion suggests that an *Awan* can only make an alienation of ancestral property with the consent of the reversioners, and it appears to him that the *Riwaj-i-am*, i.e., the *Riwaj-i-am* compiled by Mr. Talbot when the Talagang Tahsil was in the Jhelum District, supports this view. So far as the *Riwaj-i-am* is concerned support can be found for both views. The concluding paragraph No. 105 is to the effect that a sonless *Awan* has full power of alienation, and in an earlier passage in answer to question No. 89, it is stated that ancestral property cannot be given without the consent of the reversioners up to the fourth degree. We are of opinion that this *Riwaj-i-am* cannot be relied upon one way or the other, and on going through the authorities we find that the whole position has been most ably and carefully analysed in *Amir Ali v. Baggo* (2), by Johnstone J. He quotes all the authorities up to that time and also the various instances which had occurred and his conclusion is in favour of an unrestricted right of alienation. So also the last authority, *Mussammatt Rakhi v. Baza* (3), which decided that an *Awan* of Talagang had no power of making a will disposing of his ancestral property, recited as a well established proposition that a sonless *Awan* had unrestricted power to make such a gift.

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(1) 72 P. R. 1914.

(2) 15 P. R. 1907.

(3) (1923) I. L. R. 5 Lah. 84.

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Counsel for the respondents has attached great weight to *Amir Ali v. Baggo* (1), a Rawalpindi case, in which a gift to a resident daughter was maintained and that to a non-resident daughter was set aside, and he also relied on the general view taken in *Yakub Khan v. Fateh Khan* (2) and *Lal Khan v. Nura* (3). As against these decisions there is a great weight of authority in support of the contention of the appellants, and we need only quote *Nur Ahmad v. Ghulam Husain* (4), *Devi Das v. Bhakra* (5), *Khuda Bakhsh v. Waham Ali* (6) and *Nur Khan v. Sarfraz* (7).

We find it fully established that a sonless *Awan* of the Talagang Tahsil of the Attock District has an unrestricted power of gifting his property, ancestral or non-ancestral, to a daughter, or the issue of such daughter.

We accept both appeals with costs.

C. H. O.

Appeal accepted.

(1) 15 P. R. 1907.

(4) 56 P. R. 1915.

(2) 5 P. R. 1914.

(5) 53 P. R. 1899.

(3) 72 P. R. 1914.

(6) 88 P. R. 1911.

(7) 100 P. R. 1912.