

APPELLATE CIVIL.

Before Mr. Justice Martineau and Mr. Justice Fforde.

KAMIR (DEFENDANT) Appellant

versus

MEWAZ AND OTHERS }
 (PLAINTIFFS), MST. ROSHNAI } Respondents.
 AND ANOTHER (DEFEN- }
 DANTS) }

Civil Appeal No. 275 of 1921.

Custom—Alienation—by widow—Self-acquired property—Status of collateral to maintain a suit challenging the alienation in presence of a daughter without male issue.

Held, that the existence of a daughter without male issue does not preclude the near reversioner from contesting an alienation made by a widow of property inherited from her husband whether the property alienated is self-acquired or ancestral property.

Muhammad Umar v. Abdul Karim (1), and Kapuria v. Mangal (2), followed.

First appeal from the decree of Lala Khan Chand Janmeja, Senior Subordinate Judge, Jhang, dated the 15th November 1920, granting the plaintiffs a declaratory decree.

UMAR BAKHSH, for Appellant.

GHULAM MOHI-UD-DIN, for Respondents.

The judgment of the Court was delivered by—

FFORDE J.—This is a suit brought by the collaterals of one Ghulam to contest a mortgage made by his widow *Mussammat Jawai* and his mother *Raushnai* in favour of the defendant, Kamir.

It has been held by the trial Court that the parties are governed by the general custom of agri-

(1) 103 P.R. 1907.

(2) 149 P.R. 1908.

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culturists, and with this finding we entirely agree. It appears that Ghulam left him surviving one issue only, namely, a daughter, now aged some three years. It is contended by Mr. Umar Bakhsh, who appears for the mortgagee, that the alienation is valid as the property in question was admittedly the self-acquired property of Ghulam and is not ancestral *qua* the plaintiffs. Mr. Ghulam Mohi-ud-Din, who appears for the plaintiffs-respondents has referred to two cases; one, *Muhammad Umar and another v. Abdul Karim and others* (1), in which it was held that the existence of a daughter does not preclude the near reversioner from contesting the alienation made by a widow, and that it is immaterial whether the property alienated by the widow is self-acquired or ancestral property. In the other case cited by Mr. Ghulam Mohi-ud-Din, namely, *Kapuria v. Mangal and others* (2), it was held that where a widow's daughter has herself no male issue a distant reversioner may contest an alienation made by such widow. No case has been cited to the contrary and accordingly we must hold it to be clearly established that the plaintiffs under the circumstances of the present case have the right to bring this suit in spite of the fact that there is a daughter of the alienor *Mus-sammatt* Jawai living.

We agree with the trial Court that necessity for the alienation has not been established. Accordingly the appeal must be dismissed with costs.

A. N. C.

Appeal dismissed.

(1) 103 P.R. 1907.

(2) 149 P.R. 1908.