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KIRPAL SINGH v. JIWAN MAL.

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biguous that it seems to me impossible to hold that it provides a certain time for the payment of the debt. That being so, the plaintiff is not entitled to succeed in his claim to interest under the provisions of the Interest Act.

I would accordingly accept the appeal to the extent of reducing the decretal amount from Rs 1,224 to Rs. 900 with interest at 6 *per cent. per annum* from the date of suit till realisation. As the appellant has succeeded upon the only question argued before us I would allow him the costs of the appeal.

CAMPBELL J.

CAMPBELL J.—I agree.

Appeal accepted in part.

N. F. E.

APPELLATE CIVIL.

Before Mr. Justice Fforde and Mr. Justice Campbell.

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Jan. 31.

KAHAN SINGH, ETC. (DEFENDANTS) Appellants

versus

GOPAL SINGH, ETC. (PLAINTIFFS) }
MST. BHOLI (DEFENDANT) } Respondents.

Civil Appeal No. 2244 of 1922.

Custom—Alienation—ancestral property—gift by sonless proprietor to daughters—in presence of collaterals— Sainis—*Hoshiarpur district*—Riwaj-i-am.

Held, that by custom among *Sainis* of the Hoshiarpur district a gift by a sonless proprietor of ancestral property to a daughter is valid only if she has rendered services to the donor, it not having been shewn that the entry in the *Riwaj-i-am* to this effect is incorrect or unreliable.

Beg v. *Allah Ditta* (1), and *Labh Singh* v. *Mst. Mango* (2), followed.

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(1) 45 P. R. 1917 (P. C.). (2) (1927) I. L. R. 8 Lah. 281.

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KAHAN SINGH
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Second appeal from the decree of Rai Sahib Lala *Ganga Ram, Wadhwa, Additional District Judge, Hoshiarpur at Jullundur, dated the 5th July 1922, modifying that of* Mirza *Abdul Rab, Subordinate Judge, 1st class, Hoshiarpur, dated the 13th October 1921, by granting plaintiffs a decree in respect of the shares of the daughters (donees) who had not rendered services to the donor.*

FAKIR CHAND, for Appellants.

G. S. SALARIYA and JAGAN NATH BHANDARI, for Respondents.

JUDGMENT.

CAMPBELL J.

CAMPBELL J.—This was a suit by the collaterals in the fifth degree of one Kahan Singh for a declaration that a gift of land by Kahan Singh to his four daughters should not affect the plaintiffs' reversionary rights. The trial Court decreed the plaintiffs' claim. On appeal the Additional Judge gave the plaintiffs a decree for three-fourths of the land only, holding that one of the daughters *Mussammat* Bholi was entitled by custom to retain possession of the other one-fourth in that she was a daughter who had rendered services to the donor and was hence a person to whom a valid gift could be made by a sonless proprietor.

Both sides have come to this Court on second appeal. For the defendant-appellants it is urged, firstly, that the decision by the Courts below that the property gifted was ancestral is not supported by evidence, but this is not the case. The finding is one of fact, and there is evidence on the record to support it. Secondly, the defendant-appellants attacked the finding of the learned Additional Judge in regard to custom, but their learned counsel admits that unless the finding of the Additional Judge that the three

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other daughters, namely, *Mussammat* Hukman, *Mussammat* Nikko and *Mussammat* Sardho, did not render services to the donor can be got over, he is unable to rebut the entry in the *Riwaj-i-am* stating the custom prevalent. This statement is to be found in the answer to question 90 on page 219, Humphreys' Customary Law of the Hoshiarpur District, and is to the effect that amongst Sainis of that district, the tribe to which the present parties belong, in the absence of lineal male heirs a man can gift his whole property or any part of it to a daughter in return for services rendered.

There is a distinct finding by the learned Additional Judge that the three daughters *Mussammat* Hukman, *Mussammat* Nikko and *Mussammat* Sardho did not render services to their father, the donor, and if there are statements of the witnesses on the record that they did, this simply means that the learned Additional Judge has refused to believe those witnesses. The finding is one of fact and cannot be interfered with in second appeal.

Appeal No. 2244 of 1922 by the defendants must therefore fail in my opinion.

The plaintiffs' appeal is No. 2757 of 1922, and this asks that the decision be set aside that *Mussammat* Bholi is under custom entitled to retain possession of one-fourth of the gifted property. The learned counsel for the appellants has asked us to reject the evidence provided by the *Riwaj-i-am* entry quoted above on the ground that it is unsupported by instances. We are unable to do so. The law has been laid down by their Lordships of the Privy Council in *Beg* v. *Allah Ditta* (1) and in a recent case *Labh Singh* v. Mussammat *Mango* (2) we have given our

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reasons for considering that certain subsequent decisions by this Court and by the Chief Court have gone unwarrantably far in laying down as a general proposition that an entry in a *Riwaj-i-am* unsupported by instances is of little evidentiary value and insufficient to cast the onus of rebuttal upon the other side. The reliability of the *Riwaj-i-am* with which we are dealing has not been assailed. In my opinion the entry in question imposed upon the plaintiffs the burden of proving that it was an incorrect statement of custom, and this burden has not been discharged.

I consider that appeal No. 2757 of 1922 must fail also, and I would dismiss both appeals with costs.

FFORDE J.

FFORDE J.—I concur in regard to both appeals.

C. H. O.

Appeals dismissed.