APPELLATE CIVIL.

1926

Nov. 8.

Before Mr. Justice Broadway and Mr. Justice Zafar Ali.

CHAWA (DEFENDANT), Appellant,

versus

AHMAD AND ANOTHER (PLAINTIFFS), Respondents.

Civil Appeal No. 513 of 1922.

Custom—Alienation—Ancestral land—Gift to son-in-law —Gogera Kharals of Mauza *Gogera, tahsil Okara (formerly tahsil Gogera), district Montgomery*—Khana damad—Riwaj-i-am—*presumption of correctness.*

Held, that Gogera Kharals of *Mauza* Gogera, tahsil Okara, district Montgomery, are governed by custom and have *no* power to gift ancestral property to daughters or sons-in-law living as *khana damads.*

Held also, that where a particular paragraph of the *Riwaj-i-am* is supported by definite instances, the presumption of correctness which attaches thereto is not necessarily rebutted by an adverse finding to the effect that the *Riwaj-i-am* as a whole should be received with caution.

Ganpat Rai v. *Kesho Ram* (1), referred to.

First appeal from the decree of Sardar *Ali Hussain Khan*, Kazilbash, *Senior Subordinate Judge, Montgomery, dated the 16th November 1921, awarding the plaintiffs' possession of the land in dispute.*

ZAFARULLAH KHAN, for Appellant,

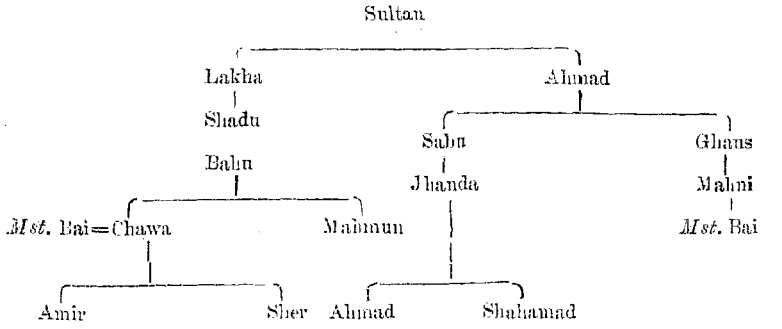
B. D. KURESHI, for Respondents.

JUDGMENT.

BROADWAY J. BROADWAY J.—The following pedigree table will

(1) 34 P. R. 1909.

be of assistance in this case :—



On the 11th January 1910 Mahni, a Gogera Kharal of *Mauza* Gogera, executed a deed of gift which was duly registered in favour of Chawa, his sister's son as well as son-in-law. Mahni and his widow having died the plaintiffs Ahmad and Shahamad instituted a suit on the 8th July 1920 for possession of the land belonging to Mahni which had passed to Chawa under the deed of gift. They alleged that the land in suit was ancestral and that the parties being governed by custom Mahni had no power to make a gift of it. Further, that according to custom Mahni had no power to appoint a *khana damad*, or resident son-in-law, nor had he the power to appoint his sister's son as his heir. Finally, it was urged that as a matter of fact Mahni had not made Chawa his *khana damad*.

The suit was contested by Chawa who pleaded that he had been appointed *khana damad* by Mahni and that Mahni had power to make the appointment. He also pleaded that in any event the suit was bad in the presence of Mahni's daughter and her sons. The trial Court settled the following issues :—

(1) Are the parties bound by the agricultural custom in matters of alienation, and are the powers of alienation of a sonless proprietor unlimited?

1926

CHAWA
v.
AHMAD.

BROADWAY J.

(2) Was the defendant made a *khana damad* by Mahni, deceased?

(3) Is there a custom to make a *khana damad* in the Kharal tribe?

(4) If the defendant was appointed a *khana damad*, have the plaintiffs a right to contest the alienation in question in the presence of the defendant and sons of the daughter of the deceased?

(5) Was the gift for consideration and, if so, what is its effect on the rights of the plaintiffs?

and after considering the evidence, documentary and oral, led by the parties came to the conclusion that Chawa had been appointed *khana damad* by Mahni, but that Mahni had no power, by the custom prevailing among Kharals of Gogera, to make the appointment or to make the gift in question. It accordingly decreed the plaintiffs' suit with the result that Chawa has now come up to this Court in appeal.

It has been urged on behalf of the appellant by Mr. Zafarullah Khan that the decision arrived at by the lower Court is erroneous, and that on the evidence on the record it is perfectly clear that the inhabitants of Gogera where the parties lived are not restricted by custom in the alienation of property, whether it be ancestral or self-acquired. He has taken us through the entire evidence and has commented on the same. The plaintiffs produced an extract, Exhibit P. 10, from the *Riwaj-i-am* relating to the Kharals of the Gogera tahsil of the Montgomery district. This *Riwaj-i-am* was prepared in 1872, and this document, Exhibit P. 10, clearly shows that the Kharals of this tahsil are governed by custom and have not the power

to make a gift of their ancestral property, oral or in writing, to their daughters or sons-in-law living as *khana damads*. This statement of the custom is supported by definite instances. Mr. Zafarullah Khan admitted that his client has been unable to produce a single instance opposed to this entry in the *Riwaj-i-am*. As has been held by the Judicial Committee a presumption of correctness arises in regard to entries in the *Riwaj-i-am* such as these. No evidence having been produced to rebut this presumption it would seem that this entry should be given effect to. Mr. Zafarullah Khan has, however, laid great stress on the document, Exhibit D. 2 (page 13 of the paper-book). This document is an extract from the revenue records and relates to the foundation of, and acquisition of ownership in, this village. It has been urged that this document shows that daughters of sonless proprietors actually acted as conduit pipes through whom succession to lands had flowed to their male issue. Stress was laid on a paragraph at page 15 and it was pointed out that one Chuhar having died sonless leaving him surviving his daughter *Mussammat* Azim Khatun, married to Sher, a Gogera Kharal, Chuhar's lands passed to Sher's descendants. This document, however, does not show who Chuhar was and it is quite possible, if not probable, that Chuhar himself was not a Kharal. The mere fact that his daughter succeeded to his property does not, therefore, establish the contention raised by Mr. Zafarullah Khan, and I do not think this document, Exhibit D. 2, in any way rebuts the presumption of correctness attaching to Exhibit P. 10. Mr. Zafarullah Khan referred to *Ganpat Rai* v. *Kesho Ram* (1) in which

(1) 34 P. R. 1909.

1926

CHAWA
v.
AHMAD.

BROADWAY J.

there are certain observations relating to the *Riwaj-i-am* of the Montgomery district. This *Riwaj-i-am* was prepared by Mr. Purser, and it has been pointed out by their Lordships in the authority cited that Mr. Purser himself noted that the entries in the *Riwaj-i-am* of this district are not to be entirely trusted.

I have referred to the Revised Land Revenue Settlement Report in question and gather that the remarks made in *Ganpat Rai* v. *Kesho Ram* (1) are based on paragraph 10, page 207 of the said Report.

It is true that Mr. Purser comments adversely on the manner in which the *Riwaj-i-ams* were prepared in this district (Montgomery) and says that they "ought to be received with much caution," but he also says that they are of "undoubted value if so received; and the precedents and exceptions entered in them will be always useful."

In the present case the *Riwaj-i-am* is supported by instances and, after exercising all possible caution, in the consideration of this statement of the custom in question I am unable to discover any real reason to refuse to accept it as a correct record of the said custom.

A presumption of correctness attaches to this *Riwaj-i-am* and in the absence of any evidence in rebuttal of this presumption I feel bound to give effect to it.

In the circumstances I dismiss this appeal with costs.

ZAFAR ALI J.

ZAFAR ALI J.—I agree.

N. F. E.

Appeal dismissed.

(1) 34 P. R. 1909.