

1927

FATEH ALI  
SHAH  
v.  
MUHAMMAD  
BAKHSI.

JAI LAL J.  
BROADWAY J.

For the reasons stated above I am of opinion that the decree of the Senior Subordinate Judge must be affirmed and the appeal dismissed with costs.

BROADWAY J.—I concur in dismissing the appeal with costs.

N. F. E.

*Appeal dismissed.*

### APPELLATE CIVIL.

*Before Mr. Justice Tek Chand and Mr. Justice Bhide.*

OAJAL AND OTHERS (PLAINTIFFS) Appellants

*versus*

MST. SAHIB KHATUN AND OTHERS (DEFENDANTS)  
Respondents.

1928

Jan. 4.

Civil Appeal No. 1183 of 1923.

*Custom—Alienation—tamlík—to wife—Awans of district Shahpur—whether confers full ownership.*

Oné Nur, an *Awan*, stated before the Patwari that he made an oral *tamlík* of his entire holding to his wife *Mst. S. K.* and his predeceased son's son *G. M.* in equal shares. He also stated before the Tahsildar that his "heirs" were his wife *Mst. S. K.* and his grandson *G. M.*, and that he had settled his land by way of *tamlík* on both of them in equal shares. *Mst. S. K.* subsequently made a gift of her share to the sister of Nur, whereupon the collaterals of Nur sued to contest this gift.

*Held*, that the word *tamlík* connotes that the property alienated has been settled in full ownership on the donee, and the fact that *N.* described both the male and the female donee as his *warisan* and made no distinction as to the rights which were conferred on them, also shewed that *Mst. S. K.* had become full owner of her share and could therefore validly gift it to the sister of Nur.

*Surajmani v. Rabi Noth Ojha* (1), and *Mohan Lal v. Niranjan Das* (2), followed.

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*First appeal from the decree of Lala Khan Chand, Janmeja, Senior Subordinate Judge Sar-godha, dated the 1st March 1923, dismissing the plaintiff's suit.*

SAUNDERS and ANANT RAM. KHOSLA. for Appellants.

HARGOPAL for M. L. PURI, and S. L. PURI, for Respondents.

The judgment of the Court was delivered by—

TEK CHAND J.—On the 22nd of January, 1920, one NUR, an *Awan* of the Shahpur district, appeared before the village Patwari and stated that he had made an oral settlement (*tamlik zabani*) of his entire holding on his wife *Mussammat Sahib Khatun*, defendant No. 1, and his pre-deceased son's son Ghulam Muhammad, in equal shares. The Patwari entered the mutation which was put up before the Tahsildar for sanction on the 22nd of March, 1920. On that date Nur appeared again and made a statement to the following effect:—"My heirs after me are my wife *Mussammat Sahib Khatun* and my grandson, Ghulam Muhammad, minor. I settle my land by way of *tamlik* on both of them in equal shares". No objection was raised by anyone against the above settlement and the mutation was accordingly effected in favour of the two donees in equal shares. Shortly afterwards Ghulam Muhammad preferred an appeal against the order of the Tahsildar sanctioning the mutation, urging that the donor had no power to make the settlement on *Mussammat Sahib Khatun*. This appeal was rejected but the appellate Court express-

(1) (1908) I. L. R. 30 All. 84 (P.C.). (2) (1921) I. L. R. 2 Lah. 175.

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ed the opinion that the gift in favour of *Mussammat* Sahib Khatun was in lieu of maintenance and directed that in column 9 of the mutation register the words ' *hiba brae guzara* ' be added after the name of *Mussammat* Sahib Khatun. Some time after Ghulam Muhammad the grandson of Nur died childless.

On the 20th of March 1922 *Mussammat* Sahib Khatun describing herself as full owner of the half share which she had received by way of *tamlík* from Nur, executed a deed of gift in favour of *Mussammat* Nur Bhari, defendant No. 2, who is the sister of Nur. The plaintiffs who are the collaterals of Nur in the 6th degree have instituted the present suit to contest this latter gift. It is contended on their behalf that the *tamlík* by Nur in favour of *Mussammat* Sahib Khatun dated the 22nd of January, 1920, did not confer an absolute estate upon her and that consequently she was incompetent to transfer the property to *Mussammat* Nur Bhari. The lower Court has rejected this contention and has held that the *tamlík* conferred an absolute estate on *Mussammat* Sahib Khatun. The suit has been accordingly dismissed and the plaintiffs appeal.

After hearing the appellants' Counsel we are of opinion that there is no force in this appeal. The alienation by Nur is described as a *tamlík* which connotes that the property alienated has been settled in full ownership on the donee. Again the donor in his statement before the Tahsildar described both Ghulam Muhammad and *Mussammat* Sahib Khatun as his *warisan*, and made no distinction as to the rights that were being conferred on them. In these circumstances it must be held that *Mussammat*

Sahib Khatun had become full owner of the property in suit and could validly gift it to *Mussammatt Nur Bhari* (See *Surajmani v. Rabi Nath Ojha* (1), and *Mohan Lal v. Niranjan Das* (2)).

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Mr. Saunders has laid stress on the opinion expressed by the Assistant Collector on appeal that the gift to *Mussammatt Sahib Khatun* was merely in lieu of maintenance. But his opinion is not relevant and cannot be taken into consideration in ascertaining the real nature of the transaction.

The appeal fails and is dismissed with costs.

A. N. C.

*Appeal dismissed.*

### APPELLATE CIVIL.

*Before Mr. Justice Tek Chand and Mr. Justice Bhide.*

JALMEJA SINGH (PLAINTIFF) Appellant

*versus*

SARDARNI ASKAUR AND OTHERS (DEFENDANTS)

Respondents.

1928

Jan. 7.

Civil Appeal No. 389 of 1923.

*Civil Procedure Code, Act V of 1908, Order II, rule 2—Same "cause of action"—meaning of—sale of land by co-sharers including plaintiff's share without any authority—Suit by plaintiff to pre-empt sale of the shares of the other co-sharers—Subsequent suit by plaintiff for redemption of a mortgage on the land—whether barred by previous suit.*

J. S. mortgaged his land in favour of defendant 1, and on the death of J. S. it was duly mutated in favour of his five reversioners, *i.e.*, the plaintiff and defendants 2—5. Subsequently defendants 2—5 sold the whole land (including the share of the plaintiff) to defendant 1 whereupon plaintiff instituted a suit for pre-emption of the land sold, except his

(1) (1908) I. L. R. 30 All. 84 (P.C.). (2) (1921) I. L. R. 2 Lah. 175.