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by the three years' rule prescribed by Article 106 of the Limitation Act. The learned counsel for the appellant, however, contends that that claim is governed by the six years' rule as contained in Article 120. But even if we accept that contention, the suit is equally barred by time. It is, however, unnecessary to pronounce any final opinion on the question, because, as stated above, the plaintiff's suit must fail on the short ground that *Mussammat* Fatima Bai had gifted the whole of her estate to her three sons and that the plaintiff is not entitled to any share therein.

We accordingly affirm the decree of the Subordinate Judge and dismiss the appeal with costs.

A. N. C.

Appeal dismissed.

APPELLATE CIVIL.

Before Mr. Justice Zafar Ali and Mr. Justice Addison.

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Nov. 5.

DHANNA SINGH, ETC. (PLAINTIFFS) Appellants

versus

MST. NAMI AND ANOTHER (DEFENDANTS) AND MEHRA AND ANOTHER (PLAINTIFFS) } Respondents.

Civil Appeal No. 2076 of 1923.

Custom—Alienation—Ancestral property—Hindu Jats—village Mangowal—tahsil *Nawan Shahr—district Jullundur—Gift by a sonless proprietor to married daughter in lieu of services—whether valid*—Riwaj-i-am—*Residential house—whether presumably also ancestral.*

Held, that among Hindu *Jats* of village Mangowal, *tahsil* Nawan Shahr, district Jullundur, a sonless proprietor is not competent to make a gift of the whole of his ancestral estate to his married daughter in lieu of past and future services

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Sundar v. *Mst. Ralli* (1), followed.

Held also, as regards the residential house, that as there was nothing to shew whether it was ancestral or self-acquired it must be assumed to be of the latter character.

Muhammad Hussain v. *Sheru* (2), followed.

Nur Husain v. *Ali Sher* (3), not followed.

Second appeal from the decree of Rai Sahib Lala *Shibbu Mal, District Judge, Jullundur, dated the 7th July 1923, varying that of* Lala *Munna Lal, Subordinate Judge, 1st class, Jullundur, dated the 23rd January 1923, by directing that the gift in dispute shall not be binding on plaintiffs, in respect of one half.*

BADRI DAS, for Appellants.

FAQIR CHAND, for Respondents.

The judgment of the Court was delivered by—

ZAFAR ALI J.—The question of custom involved in this second appeal is whether a sonless Hindu *Jat* proprietor of village Mangowal in the Nawan Shahr *tahsil* of the Jullundur district is competent to make a gift of the whole of his ancestral estate to his married daughter in lieu of past and future services. The gift in question was made by one Ran Singh, and his collaterals in the 5th degree sue for a declaration that the gift was invalid and was inoperative as against them. The defence was that Ran Singh had been ill and bedridden for a number of years, that the only person who looked after him and nursed him was his daughter and that he had gifted his estate to her in lieu of her services. The trial Court found that custom was opposed to the gift of ancestral property to a daughter and it granted the plaintiffs-reversioners the declara-

(1) (1929) I. L. R. 10 Lah. 568. (2) 272 P. L. R. 1913.
(3) 33 P. R. 1905.

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tion sued for. On appeal the learned District Judge found that out of the land gifted a portion measuring about 4½ *kanals* was not ancestral *qua* the plaintiffs, and that the gift was binding on the reversioners to the extent of half of the donated property as it had been made for services rendered. The plaintiffs-reversioners have come up to this Court to contest this finding.

The donor Ran Singh, however, died after this appeal had been lodged and the learned counsel for the respondent-donee contends on the authority of *Mussammat Sat Bharai* v. *Mst. Sat Bharai* (1) that the appeal should be dismissed as the reversioners' remedy now is to sue for possession. But *Mussammat Sat Bharai* v. *Mst. Sat Bharai* (1) is quite distinguishable inasmuch as the reversioners' suit in that case had been dismissed by the trial Court and the donor died before their appeal against the order of dismissal had been decided. In the present case a declaration in respect of a moiety of the gifted property has already been granted to the reversioners, and as their suit with regard to one-half has been dismissed they cannot sue for the possession of the whole in the presence of the decree of the District Judge. It is, therefore, essential in this case to determine whether the order of the District Judge dismissing the plaintiffs' suit with regard to half of the property is maintainable or not.

Turning to the question of custom we find that the defendants failed to establish that the gift was valid as a whole or in part. According to the *riwaj-i-am* of the Nawan Shahr *tahsil*, Ran Singh had no power to make the gift. One Mandar, a Hindu *Jat* of Ran

(1) 65 P. R. 1913.

Singh's own village made like him a gift of his entire estate to his daughter in 1920, but the revenue authorities following the *riwaj-i-am* refused mutation in favour of the daughter. The defendants examined only one witness, namely, Kishan Singh, D. W. 1, to depose to the effect that the gift to the daughter was valid because she was nursing her father who had long been in a hopeless condition. But he cited no instance to show that a gift under such circumstances was valid by custom. The defendants cited two judicial instances, that is, one in which the donor gave $\frac{1}{4}$ of his property to a widowed childless daughter so that the gifted property was expected to revert to the reversioners after her death. In the other case the property gifted was less than 1/20th part of the estate of the donor and the gift had been made in lieu of long services. These two instances do not obviously go a long way to support the alleged custom. The learned counsel for the respondents conceded that he could not support the gift of the whole land but he argues that the *riwaj-i-am* does not contemplate a gift for services and urges that in this case it was a matter of necessity for Ran Singh to make the gift, and that this should be treated in the same way as any other alienation made for a valid necessity. But there is nothing on the record to show that the income from the estate was not sufficient for all the requirements of the donor and this being so we are unable to conclude that the donor had no other alternative but to make the gift.

Mr. Badri Das has brought to our notice a recent judgment of a Division Bench of this Court, *Sundar* v. *Mst. Ralli* (1), relating to a case of a gift to a daughter by a *Jat* agriculturist of the Jullundur dis-

(1) (1929) I. L. R. 10 Lah. 568.

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trict. Though the gift was alleged to have been made for services rendered by the daughter it was set aside on the ground that it was against the custom stated in the *riwaj-i-am*. We are, therefore, of opinion that the custom set up by the defendants was not proved.

As regards the house property it was not proved to be ancestral. In *Nur Husain* v. *Ali Sher* (1), there occurs the following passage:—"As regards the houses we may say at once that we think the houses being those of an agriculturist in a village must be considered as an appanage to the land and going with it." Without giving any further reasons the houses were taken to be ancestral property. But in *Muhammad Hussain* v. *Sheru* (2), where there was nothing to show whether the house in question was ancestral or acquired, it was held that in the absence of evidence to the contrary it must be assumed to be of the latter character. We are, therefore, of opinion that in the absence of any proof the residential house in question cannot be said to be ancestral property.

As regards the agricultural land it is conceded that 3 *kanals* and $3\frac{1}{2}$ *marlas* out of it is not ancestral *qua* the plaintiffs but 1 *kanal* 6 *marlas* out of the *Shamilat deh* which was considered by the District Judge to be non-ancestral was on the face of it ancestral and counsel for the appellants did not argue that it was not ancestral.

In view of all that has been stated above we accept the appeal and modifying the judgment and decree of the learned District Judge we decree the plaintiff's suit with regard to the whole of the ancestral land and dismiss it with regard to the residential

(1) 33 P. R. 1905. (2) 272 P. L. R. 1913.

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house and the 3 *kanals* and 3½ *marlas* of non-ancestral land specified in the judgment of the learned District Judge. Both these properties will remain with the daughter, the gift with regard to them being valid. We leave the parties to bear their own costs throughout.

A. N. C.

Appeal accepted in part.

APPELLATE CIVIL.

Before Mr. Justice Zafar Ali and Mr. Justice Addison.

1928

Nov. 13.

JAI DEV SINGH, ETC. (PLAINTIFFS)
Appellants
versus
ABDUL RAHMAN AND OTHERS (DEFENDANTS)
Respondents.

Civil Appeal No. 2376 of 1927.

Repealing (Punjab Loans Limitation) Act, III of 1923, section 5—Limitation of suits—extension of—where period expires on a Court holiday—Punjab General Clauses Act, I of 1898, section 8.

Held, that as the last day of the two years of grace allowed for the institution of certain suits under section 5 of the Repealing (Punjab Loans Limitation) Act of 1923, fell upon a Sunday, a suit referred to therein instituted on the following day (15th June 1925) was within time ; *vide* Punjab General Clauses Act, 1898, section 8.

Shevdas Daulatram v. *Narayen* (1), *Hira Singh* v. *Mst. Amarti* (2), *Murugesa Mudali* v. *Ramaswami Chettiar* (3) and *Dhanusingh* v. *Keshoprashad* (4), referred to.

First appeal from the decree of Sheikh *Ali Muhammad, Senior Subordinate Judge, Rawalpindi, dated the 31st January 1927, dismissing the suit.*

GOBIND DAS BHAGAT and GOBIND RAM KHANNA, for Appellants.

MOHSIN SHAH and S. M. HAQ, for Respondents.

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(1) (1911) I. L. R. 36 Bom. 268.
(2) (1912) I. L. R. 34 All. 375.
(3) (1913) 21 I. C. 770.
(4) (1923) 72 I. C. 388.