

## APPELLATE CIVIL.

*Before Tek Chand and Agha Haidar JJ.*

MOHAMMAD SHAH AND OTHERS (PLAINTIFFS)

Appellants

*versus*

BUKKAN SHAH AND OTHERS (DEFENDANTS)

Respondents.

Civil Appeal No. 1494 of 1925.

*Custom or personal law — Alienation — ancestral land—  
Qureshis of village Pindi Sheikh Musa, District Lyallpur—  
status of collaterals—to challenge alienation—onus probandi.*

*Held*, that it is not proved that the Qureshis of Mauza Pindi Sheikh Musa (which originally formed part of Montgomery district but is now included in Lyallpur district) have abandoned the rules of their personal law and adopted the customs prevailing among the dominant agricultural tribes of the Central Punjab; and that among them a male proprietor possesses unrestricted power to alienate ancestral property.

*Second appeal from the decree of Sardar Sewaram Singh, District Judge, Lyallpur, dated the 2nd April 1925, affirming that of Sardar Kartar Singh, Subordinate Judge, 2nd class, Lyallpur, dated the 16th April 1924, dismissing the plaintiffs' suit*

RAM CHAND MANCHANDA, for Appellants.

LAL CHAND and HAKUMAT RAI, for Respondents.

TEK CHAND J.

TEK CHAND J.—On the 29th June 1923 Bukkan Shah, defendant No. 1, a Qureshi of Mauza Pindi Sheikh Musa in the Lyallpur district sold the land in dispute for Rs. 10,000 to Rahim and Daim, defendants 2 and 3. The plaintiffs, who are the nephews and grand-nephews of the vendor Bukhan Shah, instituted the present suit for the usual declaration, alleging that the land was ancestral. that the

vendor did not possess unrestricted powers of alienation, and that the sale was without consideration and necessity. The defendants pleaded, that the land was not ancestral, that the vendor possessed unrestricted power of alienation, that the plaintiffs had no *locus standi* to maintain the suit, and that the transaction in question was for consideration and necessity.

1930  
 MOHAMMAD  
 SHAH  
 v.  
 BUKHAN SHAH.  
 TER CHAND J.

Both the Courts below have concurrently found the land to be ancestral but have dismissed the suit on the ground that it had not been shown that the vendor's power of alienation was restricted.

The plaintiffs have preferred this second appeal and urge that the case should have been decided according to the terms of the *wajib-ul arz* prepared for this village in the course of the settlement of 1857 (when it was a part of the Montgomery district) which lays down that all proprietors, to whatever tribe they might belong, have a restricted power to alienate immoveable property. In my opinion this contention is devoid of force and must be rejected. In the first place, the question raised is really one of custom, and no second appeal is competent as no certificate has been obtained from the District Judge. Secondly, the vendor in this case is a *Qureshi* living in a village, in which the proprietors do not admittedly belong to a compact village community. They are a heterogeneous body consisting of *Qureshis*, *Balochs*, *Sials*, *Anzaras*, *Khokars*, *Mirasis*, *Aroras*, *Udasis*, *Faqirs* and *Brahmans*. In these circumstances the *onus* lies heavily upon the plaintiffs to prove that *Qureshi* proprietors living in this village, have abandoned the rules of their personal law and have adopted the customs prevailing among the dominant agricultural tribes of the Central Punjab. Counsel for the appellants frank-

1930

MOHAMMAD

SHAH

v.

BUKHAN SHAH.

TER CHAND J.

ly concedes that there is no evidence on the record on this point.

Taking the entry in the *wajib-ul-arz* of 1857, on which reliance is placed, we find that it does not really deal with the power of collaterals to control alienations by a male proprietor without necessity. All that it provides for is, that in this village a proprietor "shall have, in future, a right to sell or mortgage his property, subject to his offering it in the first instance to his brothers, *yak jaddis* and *shurkayan deh* at a reasonable price." This is the usual pre-emption clause which was found in almost all the *wajib-ul-arzes* of the Punjab villages prepared soon after the annexation and which contained the agreement of the village proprietors relating to the rules of pre-emption, before the law on that subject was codified in the Punjab Laws Act No. IV of 1872. The entry in question does not in any way support the contention raised on behalf of the appellants.

In my opinion the suit has been rightly dismissed and I would dismiss this second appeal with costs.

AGHA HAIDAR J.

AGHA HAIDAR J.—I agree.

A. N. C.

*Appeal dismissed*