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 SUNDER DAS  
 v.  
 BELI RAM.  
 TEK CHAND J.

(See *Budha v. Mulraj* (1) and *Basanta v. Indar Singh* (2). It would appear from LVII, M. L. J. (*Notes of Recent Cases*) page 59, that the Madras High Court, also, has since changed its opinion. It is stated in these Notes that in S. A. No. 304 of 1926, decided on the 10th December, 1929, a Division Bench of that Court dissented from the two earlier Single Bench decisions referred to above, and held that a suit by the assignee of the second mortgage to redeem the first mortgage was governed by Article 148 and not 132.

I hold that both on the plain wording of the Statute as well as on authority the suit has been rightly held to be within time. I would accordingly dismiss this appeal with costs.

MONROE J.

MONROE J.—I agree.

A. N. C.

*Appeal dismissed.*

#### APPELLATE CIVIL.

*Before Addison and Bhide JJ.*

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Feb. 15.

BEHARI AND OTHERS (PLAINTIFFS) Appellants

*versus*

BHOLA AND OTHERS (DEFENDANTS) Respondents.

Civil Appeal No. 1229 of 1927

*Custom—Alienation—Ancestral property—Hindu Jats, Tahsil Gohana, District Rohtak — only challengeable on grounds valid under Hindu Law—Riwaj-i-am.*

*Held*, that by custom, among Hindu Jats of Gohana Tahsil, District Rohtak, an alienation by a proprietor can be challenged only on grounds valid under Hindu Law.

*Suraj Kumar v. Baldeo Das* (3), *Giani v. Tek Chand* (4), *Uggar Sain v. Telu* (5), *Kala v. Mam Chand* (6), and C. A. 267 of 1899 (unpublished), relied upon.

The Customary Law of Rohtak District and *Riwaj-i-am* of Gohana Tahsil, referred to.

(1) (1918) 48 I. C. 916.

(2) (1920) 2 Lah. L. J. 419.

(3) 231 P. L. R. 1913.

(4) (1923) I. L. R. 4 Lah. 111.

(5) (1923) I. L. R. 4 Lah. 113.

(6) (1923) I. L. R. 4 Lah. 282.

*First appeal from the decree of Lala Munshi Ram, Senior Subordinate Judge, Rohtak, dated the 7th January, 1927, decreeing the plaintiffs' suit, in part.*

SHAMAIR CHAND, for Appellants.

AMAR NATH CHONA and NIHAL SINGH, for Respondents.

ADDISON J.—The plaintiffs are the sons of one Chandgi Ram who effected seven mortgages of portions of his property. The sons sued for the usual declaration that these mortgages were not binding on them as their father had no power of alienation under customary law as regards ancestral property while it was also asserted that he was of immoral character. The suit failed as regards one of the seven mortgages on the ground that the mortgagee in question had died before the suit was brought. His name was accordingly struck out and the suit proceeded as regards the other six mortgages (a) to (f) mentioned in paragraph 2 of the plaint at pages 3 and 4 of the paper book. The defendants denied that the land was ancestral, pleaded necessity and consideration and claimed that the mortgagor had unrestricted power of alienation. The mortgagor was a Hindu *Jat* of the Gohana *tahsil* of the Rohtak District. The trial Judge held the land to be ancestral, and further held that alienations by Hindu proprietors in Rohtak District could be challenged only on grounds valid under Hindu Law and that immorality had not been proved. As regards alienation (a) he held that consideration had been established only to the extent of Rs. 320 and he disallowed the balance of Rs. 1,120. As regards alienation (b) he held that consideration was proved to the extent of Rs. 1,197 but not for the sum of Rs. 338 which was disallowed. Alienation (c) was allowed to the

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extent of Rs. 5,394 and disallowed to the extent of Rs. 1,106. Alienation (*d*) was completely set aside on the ground that consideration was not proved at all. As regards alienation (*e*), it was held that consideration was proved for the sum of Rs. 615 but the balance of Rs. 235 was disallowed as not having been proved to have been paid. Alienation (*f*) was completely set aside on the ground that no consideration was proved.

The plaintiffs have appealed with regard to alienations (*b*), (*c*) and (*e*) claiming that certain sums were allowed by the trial Court which had not been established. This is appeal No. 1229 of 1927. Hoshiar Singh, etc. appealed as regards alienation (*e*), claiming that the sum of Rs. 1,106 disallowed should have been allowed. This is appeal No. 956 of 1927. Nathu has appealed as regards alienation (*a*), claiming that consideration was fully established. (No. 1230 of 1927).

It was not disputed that the land was ancestral. The evidence as regards immorality is of a very general nature and I am in entire agreement with the trial Court that immorality of the mortgagor has not been established. He was a well-to-do man who built an expensive residence and his indebtedness cannot be held to be excessive in view of the large estate he possesses.

It was, however, contended by the learned counsel appearing for the plaintiffs that it had been proved that the custom as regards alienation was not so wide amongst these *Jats* as held by the trial Court. There are many authorities to the effect that there is a much wider power of alienation in Rohtak District which does not actually form a part of the Punjab proper where custom applies in full force. This was the

view taken in civil appeal No. 267 of 1899, decided by a Division Bench of the Punjab Chief Court. Again it was held in *Suraj Kumar v. Baldeo Das* (1), that in the Rohtak District the burden of proving that a reversioner was competent to contest an alienation of ancestral property made by a sonless male proprietor lay on the reversioner except when it was challenged on the ground that it was made for immoral purposes. To a similar effect is *Giani v. Tek Chand* (2), where it was held that among *Jats* in the Rohtak *tahsil* an alienation by a sonless proprietor can be challenged by a reversioner only on grounds valid under Hindu Law. This merely puts into different words the decision in the preceding ruling. In *Uggar Sain v. Telu* (3), it was held that among proprietors of the Rohtak *tahsil* collateral heirs of a sonless proprietor could not control alienations by him but possessed merely the right to pre-empt while a Division Bench in *Kala v. Mam Chand* (4), held that by custom *Gujjars* of the Rohtak *tahsil* had unrestricted powers of alienation in respect of ancestral land.

The first proper enquiry into this question was made by Mr. Clifford, Divisional Judge, in original suit No. 34 of 1896 (*Hardial and others v. Sheonath and others*). The note to the answer to question 102 of Joseph's Customary Law of the Rohtak District, 1911, is that a sonless proprietor has full power to alienate his property by sale or mortgage even if there is no necessity, the only ground on which the heir can impugn his action being that the alienation was due to debauchery, which is not the case here. The *Riwaj-i-am* of the Gohana *tahsil* has been carefully considered by the trial Judge who has come to the

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(1) 231 P. L. R. 1913.

(3) (1923) I. L. R. 4 Lah. 113.

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conclusion that it does permit an heir to challenge alienations not made for necessary but this necessity must be interpreted as being what an ordinary Hindu understood by it. The judicial instances quoted are relevant under section 13 of the Evidence Act and go a considerable way to help in the interpretation of the *Riwaj-i-am* of the *tahsil*. Of the witnesses examined only three have deposed as to the custom. The first is Dharam Chand, D. W. 13, who said that amongst *Jats* mortgages could be made even without necessity, but a sale could not be made without the consent of the reversioners. Siri Ram, *Zaildar*, D. W. 20, deposed that in Gohana *tahsil* mortgages could be effected even without necessity, while the seventh witness for the plaintiff, Dile Ram, *Jat*, stated that amongst *Jats* mortgages were sometimes made without necessity though they could be set aside at the instance of reversioners. In my judgment the decision of the trial Judge is right that alienations by Hindu proprietors can be challenged only on grounds valid under Hindu Law. There have been very few contests in the past by sons and reversioners in this District as compared with the Punjab proper where they are very considerable in number.

The alienations still disputed by the plaintiffs are (b), (c) and (e). As regards (b) the passing of Rs. 1,197 has been held to be proved. Of this amount Rs. 446 were due to the mortgagee on *bahi* account while Rs. 601 were due to Mauji on *bahi* account. Both these debts have been proved and the accounts were examined in Court. There is a further sum of Rs. 150 paid to Badlu also on *bahi* account which has been proved. Dealings with all these persons were admitted by the mortgagor. There can, therefore, be no doubt that the decision of the Court below is correct

as regards this alienation. No appeal has been instituted by the opposite party as regards the sum of Rs. 338 disallowed.

Similarly as regards alienation (c), Rs. 3,794 have been proved to be due to the mortgagees on *bahi* account while Rs. 1,600 were paid to Beli Ram a previous mortgagee. These two items have been established beyond any doubt and there is no force in the plaintiffs' appeal as regards this mortgage. The other side, however, has appealed as regards the sum of Rs. 1,106 not allowed. In view of the fact that the *Tahsildar* denied that the money was paid before him it cannot be said that consideration for this sum has been proved. Both the appeals as regards this alienation, therefore, must fail.

As regards alienation (e) Rs. 615 were held to have been paid to Chandgi whose *bahi* account was admitted by the mortgagor. This sum was, therefore, properly allowed and there is no appeal as regards the balance of Rs. 235 which was not allowed.

This leaves the appeal of the mortgagees in the case of alienation (a). As regards this alienation Rs. 320 only were allowed and Rs. 1,120 were disallowed. The sum of Rs. 1,120 is said to have been paid before the *Patwari* and out of this sum certain sums were to be paid to various people. These allegations have been carefully examined by the trial Judge and the evidence has been again considered by us. I can see no reason to disagree with the finding of the trial Judge as regards this alienation.

As a result I would dismiss all the three appeals but leave the parties to bear their own costs here.

BHIDE J.—I agree.

A. N. C.

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*Appeals dismissed.*