APPELLATE CIVIL.

Before Addison and Bhide JJ.

MUSSAMMAT JIWAN (DEFENDANT) Appellant

1933

Feb. 16.

versus

ALI MOHAMMAD AND ANOTHER (PLAINTIFFS)
BUDHA (DEFENDANT)
} Respondents.

Civil Appeal No. 2120 of 1927.

Custom—Alienation—Gift of ancestral land to daughters—Arains *of village Kalsiyan,* Tahsil *Gujranwala*—Khanadamadi—Riwaj-i-am *discussed.*

Held, that no custom of *Khanadamadi* had been established among *Arains* of village Kalsiyan, *Tahsil* Gujranwala, (District Gujranwala), and that a gift of ancestral land in favour of a daughter could not affect the rights of the donor's reversioners.

First Appeal from the decree of Shahzada Sardar *Sultan Asad Jan, Senior Subordinate Judge, Gujranwala, dated the 31st March, 1927, granting the plaintiff a declaration to the effect that the gift of the land in suit made by defendant No. 1 in favour of defendant No. 2 shall not affect the plaintiffs' reversionary rights after the donee's death.*

MOHAMMAD HUSSAIN, for Appellants.

DIN MOHAMMAD and S. K. AHMAD, for Plaintiffs-Respondents.

ADDISON J.

ADDISON J.—The plaintiffs are nephews of Budha who gifted his land to his daughter *Mussammat* Jiwan and on the 25th January, 1925, had it mutated in her name. The parties are *Arains* of village Kalsiyan in the Gujranwala *Tahsil* of the Gujranwala District. The suit was for declaration that the gift of ancestral land by Budha to his daughter was invalid and should be held not to affect the reversionary rights of the

1933

MUSSAMMAT JIWAN v. ALI MOHAMMAD.

ADDISON J.

plaintiffs after Budha's death. It was denied that the land was ancestral and it was pleaded that, in any case, the gift was good by custom as the husband of Budha's daughter lived with Budha as his *Khanadamad*. The trial Judge held that the parties followed custom but that it had not been proved that there was any custom of *Khanadamadi* amongst *Arains* of this *Tahsil*. He also held that the land was ancestral. Accordingly he granted the plaintiffs a declaratory decree to the effect that the gift in question, being invalid, would not affect their reversionary rights. Against this decision *Mussammat* Jiwan, daughter of Budha, has appealed.

It was first argued that the land had not been proved to be ancestral. There is good evidence on the record that Chogatta, father of Budha, was owner of the land. The finding of the trial Court therefore that the land is ancestral *qua* the plaintiffs is correct.

The only evidence relied upon as regards the alleged custom before the trial Judge was statements of certain witnesses on both sides. The evidence of the defendants was very poor. The first three witnesses were respectively a *Qasab*, a *Sandhu Jat* and a *Gujar* of a village in the neighbourhood. Their statements are obviously of little or no value as to custom prevailing amongst *Arains*. The next two witnesses—D. Ws. 4 and 5—are *Arains* but they do not own land in village Kalsiyan. They are tenants who were imported into this village a few years before they gave evidence. This shows that the defendants had difficulty in obtaining evidence. The sixth witness—Chiragh—was an *Arain* of Kalsiyan who stated that amongst *Arains* a *Khanadamad* can be appointed. He referred as an instance to the case of his brother Hayat

1933

Mussammat Jiwan v. Ali Mohammad.

Addison J.

who gifted some land to his minor daughter aged 10 years though he had a son alive. This, however, was not a case of gift to a *Khanadamad* as he had a son and the custom of *Khanadamadi* only exists when there is no son. The seventh witness Fakir was a *Jat* of village Kalsiyan while the eighth witness Kalu was *Tarkhan* of a neighbouring village. Such evidence has been properly rejected.

On the other hand, the plaintiffs examined certain *Machhis* to show that they carried the *doli* of *Mussammat* Jiwan to her husband's village. This would not be done if the husband of the daughter was to be made *Khanadamad*. The other witnesses who are *Arains* of the village have deposed that the daughter and her husband only came to live with Budha some years after their marriage. In particular Sohna, Maula Dad and Hassan are *Arain* proprietors of the village who depose that *Arains* cannot appoint a *Khanadamad* or make a gift of ancestral land to a daughter. The seventh witness Bura, *Lambardar* of a neighbouring village has given similar evidence.

There is no doubt that on this evidence it was properly held that the custom of *Khanadamadi* had not been established. Parties relied upon this evidence only before the trial Judge. They did not put in a copy of the *Riwaj-i-Am* of the *Tahsil*, which is in vernacular, nor did they cite the Customary Law of the District prepared in 1914. The answer to question 48 of the second compilation was however referred to before us. The second, third and fourth paragraph of the answer have to be seen. As I read it, the second paragraph means that a daughter has no claim upon her father's estate even if she and her husband live with her father till his death. A *Khanadamad* is a

1933

MUSSAMMAT JIWAN *v.* ALI MOHAMMAD.

ADDISON J.

resident son-in-law. The third and fourth paragraphs appear to me to apply to *Tahsil* Wazirabad tribes and *Arains* of *Tahsil* Sharakpur amongst whom, according to the fourth paragraph, a resident son-in-law is entitled to inherit if there is no son, provided the father of the daughter has gifted or bequeathed to either his daughter or her husband his property *by a written deed*. In the present case there was only an oral gift followed by a mutation so that in any case this volume of Customary Law does not help the defendants. I have no doubt, however, that this fourth paragraph refers only to the tribes of *Tahsil* Wazirabad and the *Arains* of Sharakpur. This is made still clearer if the answers to questions 47 and 51 are seen. The answer to question 47 is that in no case can daughters inherit except amongst the tribes of *Tahsil* Wazirabad and the *Arains* of *Tahsil* Sharakpur. The tribes of *Tahsil* Wazirabad and the *Arains* of Sharakpur are again exceptions to the general rule laid down in answer 51. Lastly, the illustrations to question 48 are instances of daughters and *Khanadamads* succeeding in *Tahsil* Wazirabad.

For the reasons given, I would hold that the custom of gift to daughters or *Khanadamads* has not been proved in the present case and I would dismiss the appeal with costs.

BHIDE J.

BHIDE J.—I agree.

N. F. E.

Appeal dismissed.