Respondents.

## APPELLATE CIVIL.

Before Addison and Bhide JJ.

## MUSSAMMAT JIWAN (DEFENDANT) Appellant

versus

1933

Feb. 16.

ALI MOHAMMAD AND ANOTHER (PLAINTIFFS)
BUDHA (DEFENDANT)

Civil Appeal No. 2120 of 1927.

Custom—Alicnation—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, Gujran wala, 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.—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

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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 v. Ali Монаммар. 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

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 ALI MOHAMMAD. 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.

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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 he 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. 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 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

resident son-in-law. The third and fourth paragraphs

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appear to me to apply to Tahsil Wazirabad tribes and Arains of Tahsil Sharakpur amongst whom, according to the fourth paragraph, a resident son-inlaw 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 de-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

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 cests.

in answer 51. Lastly, the illustrations to question 48 are instances of daughters and *Khanadamads* suc-

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BHIDE J.—I agree.

ceeding in Tahsil Wazirabad.

N. F. E.

Appeal dismissed.