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has been granted by the Judge who had decided the case. It is, of course, open to the petitioners, if so advised, to prefer separate applications for review, which will be considered on their merits, if and when presented.

A. N. C.

Petition dismissed.

APPELLATE CIVIL.

Before Tek Chand and Abdul Rashid JJ.

MUHAMMAD ASGHAR (DEFENDANT) Appellant
versus

MST. GHULAM FATIMA AND OTHERS (PLAINTIFFS)
 Respondents.

Civil Appeal No. 186 of 1934.

Punjab Custom (Power to Contest) Act, II of 1920, sections 2, 7 : Alienation by will of non-ancestral immovable property—whether can be contested by any person on the ground that the alienation is contrary to custom.

Held, that according to section 7 of the Punjab Custom (Power to Contest) Act, II of 1920, notwithstanding anything to the contrary in the *Riwaj-i-am*, no person is competent to contest any alienation by a male proprietor of his *non-ancestral* immovable property, on the ground that such alienation is contrary to custom, and that it is immaterial whether the contest to the alienation is raised by the descendants, collaterals or relations of the alienor, in a suit instituted by them, or by way of defence to a claim brought by the alienee.

First Appeal from the decree of Sheikh Mohammad Akbar, Senior Subordinate Judge, Sheikhpura, dated 28th November, 1933, decreeing plaintiffs' suit.

ZAFRULLAH KHAN, ASAD ULLAH KHAN and MOHAMMAD ASLAM KHAN, for Appellant.

GHULAM MOHY-UD-DIN and MOHAMMAD AMIN, for Respondents.

TEK CHAND J.—On the 24th January, 1933, one *Malik* Muhammad Amir Khan, an Awan of *mauza* Garhi Awan, Tahsil Hafizabad, district Gujranwala, executed a will bequeathing 93 *kanals* and 5 *marlas* of land situate in Chak No. 22, in Sheikhpura district to his daughters, *Mussammat* Ghulam Fatima, *Mussammat* Nawab Begam and *Mussammat* Bashir Begam, plaintiffs-respondents. *Malik* Muhammad Amir Khan died a few days later. After his death the daughters obtained possession of the bequeathed land, but the revenue authorities sanctioned the mutation in favour of Muhammad Asghar Khan, defendant-appellant, who is the son of the testator by another wife. Thereupon the daughters instituted a suit for a declaration that they were in rightful possession of the land under the will of their father and that the mutation had been wrongly sanctioned by the revenue authorities in the name of the son. The trial Court has decreed the suit granting the plaintiffs the declaration prayed for. The defendant appeals.

Before us Mr. Zafar Ullah Khan for the appellant has not contested the findings of the Court below, as indeed he could not do, in face of the very clear evidence on the record, that the will had been executed by Muhammad Amir Khan at a time when he had a disposing mind, and also that the bequeathed property was self-acquired of Muhammad Amir Khan. The only point argued is that in accordance with the custom prevailing among the Awans of Gujranwala District, a male proprietor is not competent to make a will of his property, and that it is immaterial whether the property is ancestral or self-acquired. In support of this contention the learned counsel has relied on the *Answer to Question 82* of the *Riwaj-i-Am* of the Gujranwala District, compiled by Sardar Dalip Singh in 1913-14.

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For the respondents it is maintained that the entry in the *Riwaj-i-Am* must be held to be applicable to ancestral property only, and that with regard to that property also the *Answer*, as recorded, does not state the custom correctly. It is, however, not necessary for the purposes of this case to examine the correctness of these rival contentions, for section 7 of (Punjab) Act II of 1920 is decisive of the dispute. In that section it is laid down in clear terms that "notwithstanding anything to the contrary contained in section 5 of the Punjab Laws Act, 1872, *no person shall contest any alienation of non-ancestral immovable property * * * on the ground that such alienation * * * is contrary to custom.*"

Mr. Zafar Ullah Khan contends that section 7 is inapplicable to the present case, as his client has not brought any suit to contest the bequest of non-ancestral property by Muhammad Amir Khan, but that he has raised the plea by way of defence to the plaintiffs-respondents' suit, and that such a plea is not barred by the Statute. In my opinion this contention is devoid of force and must be rejected. It will be seen that section 7, as enacted by the Legislature, does not lay down, as the learned counsel will have us assume, that "*no suit shall be brought to contest any alienation of non-ancestral property.*" Obviously the section is much more comprehensive in its terms. It was intended to, and does, debar the descendants, collaterals, or other relations of a proprietor from controlling his alienations of self-acquired or non-ancestral property, and thus deprive them of the right which, according to the custom prevailing in some tribes, they might have possessed before its enactment. It seems quite immaterial, whether the contest to the alienation is raised by the descendants,

collaterals or relations of the alienor in a suit instituted by them, or by way of defence to a claim brought by the alienee.

In the case before us the defendant can succeed only, if he is allowed to contest the bequest of his self-acquired land by Mohammad Amir Khan in favour of the plaintiffs-respondents, but this he cannot do under section 7, read with section 2, where the word "alienation," as used in the Act, is defined as including any "testamentary disposition of property." It must be held, therefore, that notwithstanding anything to the contrary contained in the *Riwaj-i-Am*, the bequest to the plaintiffs cannot be challenged by the defendant. Mr. Zafarullah Khan concedes that the appellant has no other defence to raise. The plaintiffs, are, therefore, in lawful possession of the land in dispute and their suit has been rightly decreed.

The appeal fails and I would dismiss it with costs.

ABDUL RASHID J.—I agree.

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TEK CHAND J.

ABDUL
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Appeal dismissed.